Senne v. Village of Palatine: The Seventh Circuit's Parking Ticket Payout

Debbie J. Sluys
ddegrego@slu.edu

SENNE V. VILLAGE OF PALATINE: THE SEVENTH CIRCUIT'S PARKING TICKET PAYOUT

INTRODUCTION

On August 20, 2010, Jason Senne parked his car overnight on a public way in violation of the Village of Palatine's parking ordinance.[1] A police officer printed Senne a twenty-dollar parking ticket and left it on his windshield.[2] The ticket was printed on the Village's standard form and included Senne's name, address, driver's license number, date of birth, sex, height, and weight.[3] Upon receipt of this ticket, Senne proceeded to bring a class action lawsuit, along with other parking violators, against the Village for violation of the Federal Driver's Privacy Protection Act (the DPPA or Act).[4] The DPPA prohibits the disclosure of personal information obtained from a State Department of Motor Vehicles (DMV) unless the disclosure falls under one of the statute's fourteen exceptions.[5] The DPPA was passed to prevent criminals from obtaining personal information from state DMVs for a nominal fee.[6] On August 6, 2012, the United States Court of Appeals for the Seventh Circuit held that the Village of Palatine's windshield parking tickets amounted to a disclosure under the DPPA, and that the city violated the DPPA unless every piece of personal information on the ticket was necessary under the governmental or service of process exceptions.[7] This decision could potentially turn a twenty-dollar ticket[8] into an automatic $2500 claim against the Village, resulting in a potential total liability to the city of eighty million dollars.[9] The majority asserted that the aim of the DPPA's language and legislative intent is to protect against any disclosure of personal information obtained from a DMV that is not necessary "for use" under one of the statute's exceptions.[10] This Comment will examine

---

1. Senne v. Vill. of Palatine, Ill., 695 F.3d 597, 600 (7th Cir. 2012) (en banc), *cert. denied*, 133 S. Ct. 2850 (2013).

2. *Id.*

3. *Id.*

4. *Id.*

5. 18 U.S.C. § 2721(a)–(b)(14) (2000).

6. *The Drivers Privacy Protection Act (DPPA) and the Privacy of Your State Motor Vehicle Record*, ELECTRONIC PRIVACY INFORMATION CENTER, http://epic.org/privacy/drivers/ (last visited July 29, 2013).

7. *Senne*, 695 F.3d at 608–09.

8. *Id.* at 600.

9. *Id.* at 611 (Posner, J., dissenting).

10. *Id.* at 606–607 (majority opinion).

the legislative and judicial history of the DPPA and the Seventh Circuit's struggle in interpreting the language of this statute. The author will argue that the plain meaning interpretation of the statute appears to allow *any* use of personal information for the stated exception purposes, and as this language is unambiguous, the court need not consult legislative intent. Furthermore, upon examining its original intent, the legislature may disagree with the Seventh Circuit's interpretation, which potentially creates severe liabilities for municipalities and serves to benefit "scofflaws."[11] As Judge Posner aptly states in his dissent, from now on, "only a sucker would park legally in the Village of Palatine."[12]

I. HISTORY AND DEVELOPMENT OF THE DRIVER'S PRIVACY PROTECTION ACT (DPPA)

In 1994, Congress enacted the DPPA in response to a series of crimes resulting from the purchase of personal information from state DMVs.[13] The murder of the young aspiring actress, Rebecca Schaeffer, served as a catalyst for this legislation.[14] Robert John Bardo, an obsessed fan, hired a private investigator to obtain Schaeffer's address.[15] For a four-dollar fee, the private investigator acquired Schaeffer's information from the California DMV.[16] Armed with this information, Bardo drove to Schaeffer's home and shot her in the chest.[17]

The legislative hearings and debates surrounding the enactment of the DPPA discussed other crimes that highlighted the need for this statute.[18] In Iowa, a group of robbers used the license plate numbers of expensive cars to obtain the victims' addresses and proceeded to rob their homes.[19] In California, a man used the license plate numbers of five women in their early twenties to obtain their addresses from the DMV and sent them disturbing letters.[20] One such letter stated, "I looked for you though all I knew about you was your license plate. Now I know more and yet nothing. I know you're a Libra, but I don't know what it's like to smell your hair while I'm kissing your neck and

---

11. *Id.* at 612 (Posner, J., dissenting).

12. *Senne*, 695 F.3d at 612 (Posner, J., dissenting).

13. *The Drivers Privacy Protection Act (DPPA) and the Privacy of Your State Motor Vehicle Record*, *supra* note 6.

14. *See* 139 CONG. REC. S29,466 (daily ed. Nov. 16, 1993) (statement of Sen. Boxer); *See also Senne*, 695 F.3d at 607.

15. Beth Johnson, *A Fan's Fatal Obsession*, ENT. WKLY. (July 14, 1995), http://www.ew.com/ew/article/0,,297902,00.html.

16. *Id.*

17. *See id.*

18. *See infra* text accompanying notes 19–27.

19. 139 CONG. REC. 27,327 (daily ed. Nov. 3, 1993) (statement of Rep. Moran).

20. 139 CONG. REC. S29,466 (daily ed. Nov. 16, 1993) (statement of Sen. Boxer).

holding you in my arms."[21] In Virginia, after visiting her doctor to save her pregnancy, Karen Stewart received a hurtful letter from an anti-abortion group, which obtained her address by noting her license plate number while she was at her doctor's office.[22] That particular office also performed abortions.[23] The letter included references to "God's curses for the shedding innocent blood . . ." and to "the guilt of having killed one's own child."[24] These words were especially stinging because Karen miscarried shortly after her visit.[25] David Beatty, as the Director of Public Affairs of the National Victim Center, testified to several instances of abuse victims who could not escape their abusers because of the availability of this information through state DMVs.[26] Beatty stressed that "in the vast majority of cases, the hunter needs no such specialized trainig [sic] or knowledge to find their prey. They need only find . . . a DMV office."[27]

One of the bill's main proponents, Senator Barbara Boxer, acknowledged at that time "[i]n 34 States, someone [could] walk into a State Motor Vehicle Department with your license plate number and a few dollars and walk out with your name and home address."[28] She stressed that even if an individual had an unlisted phone number or address, "someone [could] find [his or her] name or see [his or her] car, go to the DMV and obtain the very personal information that [he or she] may have taken painful steps to restrict."[29] Congressman James P. Moran, also a co-sponsor of the bill, echoed Senator Boxer's concerns and argued the DPPA "will stop State government from being an accomplice to the crime."[30]

However, Congressman Morgan also acknowledged that certain institutions still require access to state DMV information.[31] In drafting the DPPA, Morgan assured that:

> Careful consideration was given to the common uses now made of this information and great efforts were made to ensure that those uses were

---

21. *Id.*

22. 139 CONG. REC. S15,766 (daily ed. Nov. 16, 1993) (statement of Sen. Harkin).

23. *Id.*

24. *Id.*

25. *Id.*

26. Davis Beatty, *Protecting Drive Privacy: Driver's Privacy Bill of 1993*, HOUSE OF REP. JUD. CIVIL AND CONST. (Feb. 3, 1994), *available at* 1994 WL 212822.

27. Beatty, 1994 WL 212822.

28. 139 CONG. REC. S29,466 (daily ed. Nov. 16, 1993) (statement of Sen. Boxer).

29. *Id.*

30. 139 CONG. REC. 27,328 (daily ed. Nov. 3, 1993) (statement of Rep. Moran).

31. James P. Moran, *Protecting Driver Privacy: Statement of Congressman James P. Moran before the Subcommittee on Civil and Constitutional Rights on H.R. 3365, the Driver's Privacy Protection Act of 1993*, HOUSE OF REP. JUD. CIVIL AND CONST., Feb. 3, 1994, *available at* 1994 WL 212698.

allowed. . . . Among those who will continue to have unfettered access are federal and state governments and their contractors, for use in auto recalls, by businesses (such as an insurance company) to verify the accuracy of personal information submitted by a licensee, for use in any civil or criminal proceeding, in research activities, and in marketing activities as long as the individual has been given the opportunity to opt out.[32]

Although Congress recognized the importance of the DPPA's ability to prevent future crimes, it also emphasized that certain entities require open access to this information.[33] Congress finally enacted the DPPA in 1994 as part of the Violent Crime Control and Law Enforcement Act.[34]

II. THE DRIVER'S PRIVACY PROTECTION ACT

As currently enacted, the DPPA provides that a state's DMV "*shall* not knowingly disclose or otherwise make available" the following: (1) personal information except as allowed in 18 U.S.C. § 2721(b); or (2) highly restricted personal information without the express consent of the person, except as "permitted in subsections (b)(1) [governmental functions], (b)(4) [legal proceedings], (b)(6) [insurance investigations], and (b)(9) [verification of commercial driver's licenses] . . . ."[35] Personal information includes a driver's identification number, name, address (but not zip code), and telephone number.[36] An individual's photograph, social security number, and medical or disability information is classified as "highly restricted personal information."[37] Under subsection (b) of the DPPA, Congress has listed fourteen exceptions where the disclosure of this personal information is permitted.[38] A few of these exceptions include: "[f]or use in connection with matters of motor vehicle or driver safety and theft . . . .";[39] for use by insurers "in connection with claims investigation activities, antifraud activities, and rating or underwriting";[40] and for use in bulk marketing if individuals consent.[41] The exceptions pertinent to *Senne v. Village of Palatine* include: (b)(1) "[f]or use by any government agency . . . in carrying out its functions . . . ."[42] and (b)(4) "[f]or use in connection with any civil, criminal,

---

32. Moran, 1994 WL 212698.

33. *Id.*

34. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (1994) (codified as amended at 18 U.S.C. §§ 2721–25).

35. 18 U.S.C. § 2721(a) (2000) (emphasis added).

36. *Id.* § 2725(3).

37. *Id.* § 2725(4).

38. *Id.* § 2721(b).

39. *Id.* § 2721(b)(2).

40. 18 U.S.C. § 2721(b)(6).

41. *Id.* § 2721(b)(12).

42. *Id.* § 2721(b)(1).

administrative, or arbitral proceedings . . . including the service of process . . . ."[43] Finally, "[a]n authorized recipient of personal information . . . may resell or redisclose the information only for a use permitted under subsection (b) . . . ."[44]

The United States may bring an action against private and public parties, including states, for a violation of the DPPA and may impose criminal and civil fines.[45] In addition, the statute creates a private cause of action and mandates that a "person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court."[46] The court may award: (1) "actual damages, but not less than liquidated damages in the amount of $2,500"; (2) "punitive damages upon proof of willful or reckless disregard of the law"; (3) "reasonable attorneys' fees . . . ."; and (4) "such other preliminary and equitable relief as the court determines to be appropriate."[47]

III. COURT INTERPRETATION

A. Constitutionality

After a series of cases,[48] the U.S. Supreme Court upheld the DPPA's constitutionality in *Reno v. Condon*.[49] There, the Court established that Congress has authority, under the Commerce Clause, to regulate motor vehicle information because this personal information is an "article of commerce" being sold by the States to parties "engaged in interstate commerce" for them to use to "contact drivers with customized solicitations," and is used in the "stream of interstate commerce" by various entities in regards to interstate motoring.[50] In this context, the sale or release of this information into the "interstate stream of business is sufficient to support congressional regulation."[51] Furthermore, the Court held the DPPA did not violate the Tenth Amendment and its federalism principles because it does not "require the

---

43. *Id.* § 2721(b)(4).

44. *Id.* § 2721(c).

45. 18 U.S.C. § 2723.

46. *Id.* § 2724(a).

47. *Id.* § 2724(b).

48. *See* Deborah F. Buckman, Annotation, *Validity, Construction, and Application of Federal Driver's Privacy Protection Act, 18 U.S.C.A. §§ 2721 to 2725*, 183 A.L.R. FED. 37 (2003).

49. Reno v. Condon, 528 U.S. 141, 141 (2000). South Carolina's laws were in direct conflict with provisions of the DPPA; therefore, South Carolina and its Attorney General filed suit alleging the DPPA was unconstitutional.

50. *Id.*

51. *Id.* at 141–42.

States in their sovereign capacity to regulate their own citizens" or "enact any laws or regulations," nor does it "require state officials to assist in the enforcement of federal statutes regulating private individuals."[52] Instead, the DPPA simply regulates the States as owners of databases.[53]

In addition, in *Travis v. Reno*, the Seventh Circuit also upheld the constitutionality of the DPPA against several other constitutional attacks.[54] The Seventh Circuit held that the DPPA did not violate the Eleventh Amendment because the DPPA allows only the United States, not private individuals, to bring suits against any State or state agency.[55] Although the plaintiffs claimed the DPPA violated the First Amendment by "limiting . . . access to information in public records," the Seventh Circuit found that "[p]eering into public records is not part of the 'freedom of speech' that the first amendment protects."[56] Finally, the plaintiffs in *Travis* contended that the DPPA violates Article IV, Section 4 of the United States Constitution, the Guarantee Clause, which guarantees to every State a "Republican Form of Government . . . ."[57] The Seventh Circuit, however, held that this argument had little merit because "[n]o sensible person believes that the supremacy clause, which explicitly binds states to federal law, contradicts the guarantee clause and thereby puts the Constitution at war with itself."[58] Instead, the court found that the DPPA "leaves the state's internal and political affairs alone and regulates only how it interacts with private parties who seek information in its possession."[59]

B.   Interpretation

1.   Bringing Suit

The DPPA limits the individuals and entities that can bring suit under its provisions.[60] Under 18 U.S.C. § 2723, the United States can impose criminal and civil fines for a violation of the Act against private and public parties including states.[61] In addition, 18 U.S.C. § 2724 authorizes a private suit

---

52. *Id.* at 142.

53. *Id.*

54. Travis v. Reno, 163 F.3d 1000, 1001–02 (7th Cir. 1998), *cert. denied*, 528 U.S. 1114 (2000). In *Travis v. Reno*, Wisconsin's DMV and its Director sued to challenge the constitutionality of the DPPA because they claimed the DPPA would require them to make costly changes to their procedures and cause Wisconsin to lose eight million dollars in annual revenue from selling mailing lists. *Id.* at 1002.

55. *Id.* at 1006–07.

56. *Id.* at 1007.

57. *Id.*; U.S. CONST. art. IV, § 4.

58. *Travis*, 163 F.3d at 1007.

59. *Id.* at 1008.

60. 18 U.S.C. §§ 2723–2724 (2000).

61. *Id.* § 2723.

against any "person who knowingly obtains, discloses or uses personal information . . . for a purpose not permitted . . ." and they "shall be liable to the individual to whom the information pertains . . . ."[62] A "person" includes "an individual, organization or entity, but . . . not . . . a State or agency thereof."[63] Beyond these articulated actions, courts have hesitated to extend the availability of private suits to other individuals, including individuals seeking disclosure.[64]

Further, in *Margan v. Niles*, the United States District Court for the Northern District of New York interpreted the range of possible plaintiffs and defendants under the DPPA very broadly.[65] In *Margan*, a workers' compensation administrator hired private investigators to determine if Niles was disabled.[66] Niles gave the license plate numbers of the investigators to a police officer friend who used information from the New York DMV to obtain the investigators' addresses.[67] Niles then sent threatening messages to the investigators at their homes.[68] The investigators and their families sued Niles, the police officer, and the municipality that employed the police officer.[69] Their claims included violation of the DPPA and conspiracy to violate the DPPA.[70] First, the court held that from the language of the statute "any individual whose address was obtained from a motor vehicle record is a proper plaintiff," including spouses and children whose addresses appear but who may not be the "motor vehicle operator."[71] The court expanded the possible plaintiffs under the DPPA because: (1) the statute references "*an individual*" to whom the information pertains, not a "*motor vehicle operator[]*," and (2) by using the indefinite article of "an" in "an individual," the "language is broad enough to include personal information pertaining to individuals other than the motor vehicle operator . . . ."[72] In addition, in *Margan* the court held that a municipality could be vicariously liable under the DPPA for the actions of its

---

62. *Id.* § 2724(a).

63. *Id.* § 2725(2).

64. *See, e.g.*, McCready v. White, 417 F.3d 700, 701, 703–04 (7th Cir. 2005) (holding that an individual requesting disclosure under the DPPA had no private right of action because 42 U.S.C. § 1983 only authorizes a remedy against State actors in the absence of express statutory language to the contrary when the statute creates person-specific rights); *see also* Pichler v. UNITE, 228 F.R.D. 230, 241 (E.D. Pa. 2005), *aff'd*, 542 F.3d 380 (3d Cir. 2008) (noting that "the only 'interest' that the DPPA protects is an individual's interest in the privacy of motor vehicle records that include information about her.").

65. Margan v. Niles, 250 F. Supp. 2d 63, 77 (N.D.N.Y. 2003).

66. *Id.* at 66.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Margan*, 250 F. Supp. 2d at 66.

71. *Id.* at 70.

72. *Id.* (emphasis added).

police officers because "'[w]hen Congress creates a tort action, it legislates against the legal background of ordinary tort-related vicarious liability rules and consequently intends its legislation to incorporate those rules.'"[73] Furthermore, although § 2724(a) and § 2725(2) explicitly exempt States and state agencies from civil liability,[74] municipalities are not given the same exemption.[75] The court in *Margan* did, however, slightly restrict potential suits brought under the DPPA by stating that a plaintiff cannot bring a cause of action for conspiracy to violate the DPPA because the statute does not create that independent cause of action.[76]

In order for a person to be liable under the DPPA, they must "*knowingly* obtain[], disclose[] or use[] personal information, from a motor vehicle record, for a purpose not permitted . . . ."[77] In *Pichler v. UNITE*, a union collected license plate numbers of employees from a factory parking lot, obtained their addresses from DMV records, and visited employees at their homes.[78] These employees sued the union for violating the DPPA, and the union claimed it had used this practice since the 1970s and did not know it violated the DPPA.[79] The United States Court of Appeals for Third Circuit, however, held that a defendant need not "know" that their actions are impermissible under the DPPA in order to be held liable for actual or liquidated damages, and instead need only knowingly obtain, disclose or use the personal information.[80] Otherwise, the reading of the DPPA becomes "incomprehensible" because it would make "every single violation one for which punitive damages would apply."[81]

Under § 2724(b)(1), as a remedy for the private cause of action allowed under the DPPA, "[t]he court may award . . . actual damages, but not less than liquidated damages in the amount of $2,500 . . . ."[82] Under this category of

---

73. *Id.* at 74–75 (quoting Meyer v. Holley, 537 U.S. 280, 280 (2003)).

74. 18 U.S.C. § 2724(a) (2000) ("[a] person . . . shall be liable to the individual to whom the information pertains . . . ."); *Id.* § 2725(2) ("'person' means an individual, organization or entity, but does not include a State or agency thereof . . . .").

75. *Margan*, 250 F. Supp. 2d at 75.

76. *Id.* at 76.

77. 18 U.S.C. § 2724(a) (emphasis added).

78. Pichler v. UNITE, 542 F.3d 380, 383–84 (3d Cir. 2008), *cert. denied*, 556 U.S. 1127 (2009).

79. Pichler v. UNITE, 228 F.R.D. 230, 236, 239–40 (E.D. Pa. 2005), *aff'd*, 542 F.3d 380 (3d Cir. 2008).

80. *Pichler*, 542 F.3d at 396–97; *see also* Rios v. Direct Mail Express, Inc., 435 F. Supp. 2d 1199, 1205 (S.D. Fla. 2006) ("under the express language of the DPPA the term 'knowingly' only modifies the phrase 'obtains, discloses, or uses personal information.' It does not modify the phrase 'for a purpose not permitted under this Chapter.'").

81. *Pichler*, 542 F.3d at 397; 18 U.S.C. § 2724(b)(2) ("[t]he court may award . . . punitive damages upon proof of willful or reckless disregard of the law. . . .").

82. 18 U.S.C. § 2724(b)(1).

damages, courts have held that a party need not prove actual damages in order to collect the $2500 liquidated damages.[83] In *Pichler v. UNITE*, the Third Circuit held that proof of actual damages was not required under the DPPA because (1) the language limits the court's authority by creating a damage award floor whether or not the plaintiff can prove statutory damages; and (2) the phrase "liquidated damages" illustrates Congress's intent to substitute these damages for actual damages when they are uncertain or immeasurable.[84] In addition, the court in *Pichler* held that although a single plaintiff could not get cumulative damages for a single instance of disclosure and use, they may be able to recover cumulative damages if the defendant repeatedly used or disclosed their information.[85] Furthermore, in *Kehoe v. Fidelity Federal Bank & Trust*, the United States Court of Appeals for the Eleventh Circuit held that the introductory language of § 2724(b), stating "[t]he court *may* award,"[86] indicates that courts have a "degree of discretion" in fashioning the appropriate award.[87]

Finally, although the "DPPA provides no statute of limitation for actions brought under its provisions; civil actions arising under federal law . . . must be brought within four years of the action giving rise to the suit" under 28 U.S.C. § 1658(a).[88]

2. Exceptions Applicability

a. Governmental Functions

Courts have interpreted the governmental functions exception broadly, with the exception encompassing several different uses by government agencies.[89] Under 18 U.S.C. § 2721(b)(1), motor vehicle information may be disclosed "[f]or use by any government agency, including any court or law

---

83. *See* Kehoe v. Fid. Fed. Bank & Trust, 421 F.3d 1209, 1212 (11th Cir. 2005), *cert. denied*, 547 U.S. 1051 (2006); *see also Pichler*, 542 F.3d at 398.

84. *Pichler*, 542 F.3d at 398–99; *see also Kehoe*, 421 F.3d at 1213 (holding under the plain meaning of the statute, a "plaintiff need not prove actual damages to be awarded liquidated damages" because (1) no language "confines liquidated damages to people who suffered actual damages" and (2) "[s]ince liquidated damages are an appropriate substitute for potentially uncertain and unmeasurable actual damages of a privacy violation, it follows that proof of actual damages is not necessary for an award of liquidated damages.").

85. *Pichler*, 542 F.3d at 393–94 (holding that the loss or injury that might have been anticipated for these liquidated damages was "one instance of obtaining and one of use," but when a defendant repeatedly uses an individual's information, the statute's language that "the court may award" "indicates a degree of discretion granted to the court in awarding damages.").

86. 18 U.S.C. § 2724(b) (emphasis added).

87. *Kehoe*, 421 F.3d at 1216–17.

88. Hurst v. State Farm Mut. Auto. Ins. Co., No. 10–1001–GMS, 2012 WL 426018, at *9 (D. Del. Feb. 9, 2012); 28 U.S.C. § 1658(a) (2006).

89. *See infra* notes 91–96 and accompanying text.

enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions."[90] In *Davis v. Freedom of Information Commission*, the Superior Court of Connecticut held that the tax assessor's use of DMV personal information was allowed as a governmental function under § 2721(b)(1).[91] Furthermore, the court required the assessor to release the master list of name, address, and vehicle registration information gathered from the DMV to the public for inspection because such inspection was part of the tax assessor's function as a government agency.[92] Also, under this exception, several courts have allowed state DMVs to disclose this information to third party contractors that send registration renewal notices along with advertisements to help offset the DMV's costs.[93] In *Parus v. Kroeplin*, the United States District Court for the Western District of Wisconsin held that under the governmental functions exception, a police dispatcher was allowed to give DMV information to a warden with the Department of Natural Resources, even though the warden used the information for his own personal purpose.[94] Finally, in *Trautmann ex rel. Trautmann v. Christie*, the Superior Court of New Jersey held that the State's requirement that holders of special permits under the age of twenty-one display decals on their vehicles did not violate the DPPA.[95] Although this use may arguably fall under the governmental functions exception, the court held it did not violate the DPPA because an "age group" is not personal information under the DPPA; therefore, the DPPA does not apply to this information.[96]

b.   Driver's Safety and Commercial Licenses

Subsection (b) of 18 U.S.C. § 2721, before listing the DPPA's fourteen exceptions, starts with a broad exception allowing the disclosure of personal information "for use in connection with matters of motor vehicle or driver

---

90.   18 U.S.C. § 2721(b)(1).

91.   Davis v. Freedom of Info. Comm'n et al., 790 A.2d 1188, 1192–93 (Conn. Super. Ct. 2001).

92.   *Id.* at 1193.

93.   *See* Downing v. Globe Direct LLC, 682 F.3d 18, 22–24 (1st Cir. 2012); Rine v. Imagitas, Inc., 590 F.3d 1215, 1223–26 (11th Cir. 2009). However, this decision as to the issue of solicitation tied with an excepted use could change pursuant to the Supreme Court's grant of certiorari in *Maracich v. Spears*, 675 F.3d 281 (4th Cir. 2012), *cert. granted*, 133 S. Ct. 98 (U.S. Sept. 25, 2012) (No. 12–25).

94.   Parus v. Kroeplin, 402 F. Supp. 2d 999, 1007 (W.D. Wis. 2005) (reasoning that if the court were to hold otherwise "police dispatchers would be required to second-guess the requests of law enforcement officials any time an officer requested protected information in a manner deemed by the dispatcher to be less than obvious or routine.").

95.   Trautmann *ex rel.* Trautmann v. Christie, 15 A.3d 22, 25–26 (N.J. Super. Ct. App. Div. 2011).

96.   *Id.* at 26.

safety . . . ."[97] Furthermore, § 2721(b)(9) states that personal information may be released "[f]or use by an employer . . . to obtain or verify information relating to a holder of a commercial driver's license . . . ."[98] Based on these two exceptions, the Wisconsin Appellate court in *Atlas Transit Inc. v. Korte* held that schools are allowed to disclose bus drivers' names and driver's license numbers to the public because this disclosure is in connection with driver safety and for use by the employer to verify that they hold a commercial driver's license.[99] This case illustrates that more than one exception may permit the disclosure of personal DMV information in a particular case.[100]

c.   Investigation in Anticipation of Litigation vs. Solicitation

Under 18 U.S.C. § 2721(b)(4), DMV personal information may be disclosed:

> For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.[101]

However, § 2721(b)(12) states that in order to use this information in "bulk distribution for surveys, marketing or solicitations," the State must obtain "the express consent of the person to whom such personal information pertains."[102]

In *Maracich v. Spears*, the United States Court of Appeals for the Fourth Circuit found that an attorney's use of DMV information to solicit potential clients for litigation fell under the exception in § 2721(b)(4), as an "investigation in anticipation of litigation."[103] Although the plaintiffs argued this fell under the "solicitation exception" requiring their consent, codified in § 2721(b)(12), the court held that where solicitation "is an accepted and expected element of, and is inextricably intertwined with, conduct satisfying the litigation exception under the DPPA, such solicitation is not actionable by persons to whom the personal information pertains."[104] Nevertheless, the interpretation of the DPPA's exceptions in this area may continue to develop as the U.S. Supreme Court has granted writ of certiorari to review this case.[105]

---

97.   18 U.S.C. § 2721(b) (2000).

98.   *Id.* § 2721(b)(9).

99.   Atlas Transit, Inc. v. Korte, 638 N.W.2d 625, 633 (Wis. Ct. App. 2001).

100.   *Id.*

101.   18 U.S.C. § 2721(b)(4).

102.   *Id.* § 2721(b)(12).

103.   Maracich v. Spears, 675 F.3d 281, 283–84 (4th Cir. 2012), *cert. granted*, 133 S. Ct. 98 (U.S. Sept. 25, 2012) (No. 12–25); 18 U.S.C. § 2721(b)(4).

104.   *Maracich*, 675 F.3d at 283–84.

105.   *Id.* at 281, *cert. granted*, 133 S. Ct. 98 (U.S. Sept. 25, 2012) (No. 12–25).

Furthermore, in *Pichler v. UNITE*, union organizers argued their use of DMV information was tied with the "litigation exception" under § 2721(b)(4)'s "investigation in anticipation of litigation" clause.[106] However, the United States Court of Appeals for the Third Circuit refused to extend the DPPA's enumerated exceptions to include a use not specifically articulated in the statute, namely "union organizing," because the "statute clearly prevents obtaining or using personal information 'for a purpose not permitted under this chapter.'"[107] The court held that "[t]he Act contains no language that would excuse an impermissible use merely because it was executed in conjunction with a permissible purpose."[108] This ruling seems to be in conflict with *Maracich* and "the advertising registration renewal cases" such as *Downing v. Globe Direct Inc.*, because both of those cases involved solicitation without consent allowed "in conjunction" with other permissible purposes.[109] Hopefully, the Supreme Court will resolve this division amongst the circuits in its review of *Maracich* on writ of certiorari.[110]

d. Resale and Redisclosure

The courts are also split regarding the interpretation of § 2721(c), which allows for the resale and redisclosure by "authorized recipient[s]" of personal information obtained from the DMV.[111] In *Russell v. Choicepoint Services, Inc.*, the plaintiffs alleged the defendant obtained their DMV information for the impermissible purpose of disclosure and distribution by resale to their customers.[112] The United States District Court for the Eastern District of Louisiana held that under the plain language of the DPPA, an "authorized recipient" is not required to have a permissible use for the information, but instead, under § 2721(c) could resell or redisclose the information to an end user for their permissible use.[113] Furthermore, the court found the "recipients" were "authorized" by the States serving as the gatekeeper of this

---

106. Pichler v. UNITE, 542 F.3d 380, 395 (3d Cir. 2008), *cert. denied*, 556 U.S. 1127 (2009); 18 U.S.C. § 2721(b)(4).

107. *Pichler*, 542 F.3d at 396 (quoting 18 U.S.C. § 2724(a)).

108. *Id.* at 395.

109. *Maracich*, 675 F.3d at 283–84, 296; Downing v. Globe Direct LLC, 682 F.3d 18, 22–24 (1st Cir. 2012).

110. *Maracich*, 675 F.3d, *cert. granted*, 133 S. Ct. 98 (U.S. Sept. 25, 2012) (No. 12–25).

111. 18 U.S.C. § 2721(c).

112. Russell v. Choicepoint Servs., Inc., 302 F. Supp. 2d 654, 657 (E.D. La. 2004).

113. *Id.* at 664 ("[t]he language of 18 U.S.C. § 2721(c) permitting resale and redisclosure by 'authorized recipients' instead of 'authorized users' or 'permissible users' indicates Congress's anticipation that entities . . . would obtain drivers' personal information from DMVs strictly to redistribute it to persons with permissible uses."). *See also, e.g.*, Young v. W. Publ'g Corp., 724 F. Supp. 2d 1268, 1271 (S.D. Fla. 2010); Graczyk v. W. Publ'g Co., 660 F.3d 275, 279–80 (7th Cir. 2011), *cert. denied*, 132 S. Ct. 2391 (2012); Taylor v. Acxiom Corp., 612 F.3d 325, 336 (5th Cir. 2010), *cert. denied*, 131 S. Ct. 908 (2011).

information.[114] However, the United States District Court for the Western District of Missouri in *Wiles v. Worldwide Information, Inc.*, another reseller case, held just the opposite—that the term "authorized recipient" is only an entity that obtains this personal information for one of the permissible uses under § 2721(b) because: (1) the "resale and redisclosure" provision directly follows these fourteen permissible uses in the statute; and (2) in *Reno v. Condon*, the U.S. Supreme Court in dicta suggested this same interpretation.[115] Furthermore, the court held that it would be "simply illogical that Congress intended to delegate to the States the right to decide who could purchase the DMV records, since the DPPA was passed specifically to restrict the States' sales of those DMV records."[116] The court in *Wiles* also found that a reseller violates the DPPA when it provides its customers an entire database of DMV information, although the customer only had a permissible purpose for some of the drivers' information.[117] However, the Western District of Missouri in *Cook v. ACS State & Local Solutions, Inc.* held just a year before *Wiles* that the stockpiling of driver records was allowed for parties who may have a permissible use in the future.[118]

In conclusion, the courts have struggled to interpret the DPPA's exceptions and this struggle continued in *Senne v. Village of Palatine*.

IV. *SENNE V. VILLAGE OF PALATINE*

A. *Background Facts*

Jason Senne parked his car overnight on a public way in violation of the Village of Palatine's parking ordinance.[119] A Village police officer placed a twenty-dollar parking citation under the windshield wiper blade of Senne's vehicle at 1:35 AM, and the ticket remained on the car until Senne removed it

---

114. *Russell*, 302 F. Supp. 2d at 665 ("[i]t is doubtful that Congress employed the term 'authorized' to refer to the DPPA directly sanctioning a recipient because the Act otherwise speaks in terms of 'use' rather than 'user' and it provides no process or guidelines for authorization.").

115. Wiles v. Worldwide Info., Inc., 809 F. Supp. 2d 1059, 1071 (W.D. Mo. 2011) (citing Reno v. Condon, 528 U.S. 141, 146 (2000) (equating authorized recipients with "private persons who have obtained drivers' personal information for one of the aforementioned permissible purposes to further disclose that information for any one of those purposes.")).

116. *Wiles*, 809 F. Supp. 2d at 1071.

117. *Id.* at 1080–81.

118. Cook v. ACS State & Local Solutions, Inc., 756 F. Supp. 2d 1104, 1109 (W.D. Mo. 2010). *See also Taylor*, 612 F.3d at 335, 337, *cert. denied*, 131 S. Ct. 908 (2011) (allowing private entities to buy DMV personal information in bulk and keep it, although they may only use some of it for permitted uses at that point in time).

119. Senne v. Vill. of Palatine, Ill., 695 F.3d 597, 599 (7th Cir. 2012) (en banc), *cert. denied*, 133 S. Ct. 2850 (2013).

five hours later.[120] The ticket consisted of several fields of electronically-printed information including "the make, model, color, year, license number and vehicle identification number . . . . [Senne's] full name, address, driver's license number, date of birth, sex, height and weight."[121] The ticket provided that Senne could either pay the fine in person, through the mail using the citation that doubled as an envelope, or request a hearing to contest the citation.[122]

B. *Procedural Posture*

Following these events, Senne filed a claim in the United States District Court for the Northern District of Illinois for himself and a putative class requesting statutory liquidated damages, injunctive relief in the form of a temporary restraining order, and a preliminary injunction prohibiting the Village from printing personal information on its parking tickets.[123] The Village filed a motion to dismiss under Rule 12(b)(6),[124] for failure to state a claim, in which it argued: (1) the Village's parking ticket did not amount to a disclosure; and (2) if the court did find it to be a disclosure, the Village's actions were permitted under the exceptions listed in the DPPA.[125] In an oral ruling, the district court agreed that the Village's parking tickets was not a "disclosure," and also found that the DPPA's governmental function exception in § 2721(b)(1) and possibly other exceptions would apply regardless.[126]

On appeal, a Seventh Circuit three-judge panel held that the parking ticket did amount to a disclosure, but affirmed the district court's decision that this disclosure was allowed under the statute's exceptions, specifically the service of process exception listed in § 2721(b)(4).[127] However, the Seventh Circuit agreed to rehear the case en banc.[128]

The Seventh Circuit held the parking ticket constituted a disclosure under the DPPA because it fell within the broad statutory language, "disclose or

---

120. *Id.* at 600.

121. *Id.*; *See infra* image accompanying note 238.

122. *Senne*, 695 F.3d at 600. The Seventh Circuit does not discuss the possible disclosure from mailing this envelope in with the personal information printed on its outside, *id.*, but in his Complaint, Senne argued by using these envelopes that "individuals are unwittingly disclosing their personal information to anyone who comes in contact with the returned citation." Complaint-Class Action for Damages and Other Relief Under the Driver's Privacy Protection Act at 5, Senne v. Vill. of Palatine, Ill., 695 F.3d 597 (7th Cir. 2012) (No. 10–3243), 2010 WL 3459438, at *17.

123. *Senne*, 695 F.3d at 600.

124. FED. R. CIV. P. 12(b)(6).

125. *Senne*, 695 F.3d at 600.

126. *Id.* at 600–01.

127. Senne v. Vill. of Palatine, Ill., 645 F.3d 919, 920, 923–24 (7th Cir. 2011), *vacated*, 695 F.3d 597 (7th Cir. 2012).

128. *Senne*, 695 F.3d at 599.

otherwise make available to any person or entity."[129] Next, the Seventh Circuit remanded the case to the district court to determine if each piece of the disclosed information was necessary "for use" in carrying out the purpose of the exceptions.[130] In his dissent, Judge Posner agreed that the parking ticket was a disclosure but argued, based on the literal interpretation of the DPPA, that the Village's disclosure fell under the DPPA's service of process exception, § 2721(b)(4).[131] Judge Flaum's dissent, joined by Judges Easterbrook, Posner, and Sykes, also agreed that the ticket was a disclosure, but disagreed with the majority's view that "permissible disclosures are limited to such information as is necessary to effectuate the purposes of the statutory exceptions" because neither the text nor the legislative intent of the DPPA presented this limitation.[132] These conflicting arguments will be further analyzed below.[133]

Following the Seventh Circuit's ruling, the Village of Palatine filed (1) a writ of certiorari to the U.S. Supreme Court and (2) a motion to stay the mandate.[134] The Seventh Circuit denied the motion to stay,[135] and the Supreme Court denied the Village's writ.[136] Furthermore, as a result of this case, the Village of Palatine has amended its parking ticket procedures.[137]

C.   Analysis of Senne v. Village of Palatine

1.   "Disclosure"

The Village of Palatine first argued that the display of the parking ticket on Senne's windshield was not a "disclosure" under the DPPA because a disclosure requires that a third party actually see the information; therefore, as Senne failed to allege another party saw his ticket, a disclosure did not occur.[138] The district court agreed with this argument stating that "what the

---

129. 18 U.S.C. § 2721(a) (2000); *Senne*, 695 F.3d at 601–603.

130. *Senne*, 695 F.3d at 608–609.

131. *Id.* at 610, 612 (Posner, J., dissenting).

132. *Id.* at 612 (Flaum, J., dissenting).

133. *See infra* Part IV.C.

134. Senne v. Vill. of Palatine, Ill., 695 F.3d 617, 618 (7th Cir. 2012); Petition for Writ of Certiorari, *Senne*, 695 F.3d 597 (No. 12–573).

135. *Senne*, 695 F.3d at 618–19 (denying the Village's motion for stay because it did not establish that its petition for writ of certiorari would likely succeed on the merits and that the Village would suffer irreparable harm absent the stay).

136. Petition for Writ of Certiorari, *supra* note 134; Vill. of Palatine, Ill. v. Senne, 133 S. Ct. 2850 (2013).

137. Oral Argument at 42:20–42:30, Senne v. Vill. of Palatine, Ill., 695 F.3d 597 (7th Cir. 2012) (en banc) (No. 10–3243), *available at* http://media.ca7.uscourts.gov/sound/2012/migrated. orig.10-3243_02_09_2012.mp3.

138. Brief of the Defendant-Appellee Vill. of Palatine, Ill. at 9, Senne v. Vill. of Palatine, Ill., 695 F.3d 597 (7th Cir. 2012) (No. 10–3243).

statute is talking about is what people commonly call a disclosure, which is turning something over to somebody else."[139] However, the Seventh Circuit, including the dissenting judges, disagreed with the district court's interpretation.[140] First, the Seventh Circuit held that "such an interpretation ignores the broad language [disclose or otherwise make available] employed by Congress to define and regulate disclosures."[141] Second, this reading proposed by the Village "turns the statutory structure on its head" because the default rule is that a person authorized to view the information is prohibited from sharing it, unless the statute specifically authorizes the disclosure for that "limited object" and to those "limited class of recipients."[142]

Next, the Village argued that the parking ticket did not constitute a disclosure under the meaning of the statute because the police did not "knowingly disclose" the information.[143] The Village claimed that the police did not intend for the theft of the information nor did they know it would happen; therefore, it was not liable because the statute does not impose liability for accidental disclosures.[144] However, according to the Seventh Circuit, the Village's argument "fundamentally misunderstands the term 'knowingly.' Voluntary action, not knowledge of illegality or potential consequences, is sufficient to satisfy the mens rea element of the DPPA."[145]

2. Permitted Uses: Governmental Function and Service of Process

As both the Seventh Circuit majority and dissent reasoned that the Village's parking ticket constituted a disclosure,[146] the more important inquiry became whether this disclosure was permitted under one of the DPPA's exceptions listed in 18 U.S.C. § 2721(b). The Village posited that the relevant inquiry for a claim under the DPPA "is not whether the [Village] *used* the information permissibly, but whether [it] had a permissible *purpose*."[147] The majority, however, examined the statute's purpose and legislative intent and narrowly defined the term "for use" contained within the exceptions.[148] "For use" according to the majority, means "that the actual information disclosed—i.e., the disclosure as it existed in fact—must be information that is *used* for the

---

139. Senne v. Vill. of Palatine, Ill., 695 F.3d 597, 599 (7th Cir. 2012) (en banc), *cert. denied*, 133 S. Ct. 2850 (2013).

140. *Id.* at 603 (majority opinion); *Id.* at 612 (Posner, J., dissenting); *Id.* (Flaum, J., dissenting).

141. *Senne*, 695 F.3d at 603 (majority opinion).

142. *Id.*

143. Brief of the Defendant-Appellee Vill. of Palatine, Ill., *supra* note 138, at 9.

144. *Id.* at 11–12.

145. *Senne*, 695 F.3d at 603.

146. *Id.* (majority opinion); *Id.* at 612 (Posner, J., dissenting); *Id.* (Flaum, J., dissenting).

147. Brief of the Defendant-Appellee Vill. of Palatine, Ill., *supra* note 138, at 20.

148. *Senne*, 695 F.3d at 605–06.

identified purpose."[149] If "for use" is not interpreted in this manner, the majority argued that "the statute's purpose of safeguarding information for security and safety reasons . . . is frustrated."[150] Although it agreed that the citation did constitute service of process in an administrative proceeding and that its issuance was a function of the Village's police department, the majority ultimately found that the "complaint does put in issue whether all of the disclosed information actually *was used* in effectuating either of these purposes."[151] Therefore, the court remanded the case to the district court to determine if each piece of personal information was actually used for these purposes.[152] However, the majority did state that for some of the information disclosed, it would be "difficult to conceive, even on a theoretical level, how such information could play a role in the expected law enforcement purposes."[153]

The two dissenting opinions addressed the issue of permitted uses and readily disagreed with the majority's narrow interpretation.[154] Even Judge Posner, who professed he was "not a fan of literal interpretation,"[155] emphasized in his dissent that literal interpretation "is the proper default rule when it has reasonable consequences and there is no indication that the legislature stumbled in trying to translate legislative purpose into words."[156] Based upon this principle, Judge Posner argued that the literal interpretation of the statute's exceptions clearly allows the Village's law enforcement agency to disclose this information on its parking tickets.[157] He emphasized that the issuance of the parking ticket was an administrative proceeding, and the "personal information on the parking ticket placed on the windshield of the alleged violator's vehicle is 'for use in connection with' an 'administrative . . . proceeding' in a 'local court,' and more specifically the 'service of process' phase of the proceeding."[158] As the ticket is process and the conventional method of serving it is on the windshield of the violator's car, a literal interpretation is that "the police can place personal information on the ticket."[159]

The conflicting interpretations of the DPPA by the majority and the dissents pose larger questions of judicial interpretation. Does the statute's

---

149. *Id.* at 606.
150. *Id.*
151. *Id.* at 608.
152. *Id.* at 609.
153. *Senne*, 695 F.3d at 608.
154. *Id.* at 609–12 (Posner, J., dissenting); *Id.* at 612–617 (Flaum, J., dissenting).
155. *Id.* at 609 (Posner, J., dissenting).
156. *Id.*
157. *Id.* at 610.
158. *Senne*, 695 F.3d at 610 (Posner, J., dissenting).
159. *Id.*

language present enough ambiguity to look to legislative intent or is the literal wording sufficiently unambiguous? Even if the language is ambiguous, which interpretation is consistent with the legislative intent? These questions are examined below.[160]

V. THE SEVENTH CIRCUIT'S INTERPRETATION OF THE DPPA

A.   *Did the Seventh Circuit Legislate?*

Under the plain meaning doctrine, the Supreme Court has held that in regards to judicial interpretation of a statute, first a court must "determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case."[161] The judicial inquiry "must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'"[162] In support of this method of interpretation, the Court has emphasized that Congress's "authoritative statement is the statutory text, not the legislative history."[163]

Although courts are often tempted to use legislative history, many academics complain that when they do, judges are similar to "scavengers rummaging through 'the ashcans of the legislative process.'"[164] Former Circuit Court Judge and Assistant Attorney General for Legislative Affairs, Patricia Wald, noted that in her experience, legislative history materials' "reliability, relevance, and thoroughness" are "significant concerns."[165] She emphasized that "[m]uch of the pertinent legislative discussion is unrecorded or inadequately recorded[;] . . . what is said by the opponents of a proposed bill cannot be trusted and many proponents will not have read or understood the bill."[166] These materials "do not, and probably never will, accurately and comprehensively record what actually took place during the convoluted process of enactment."[167] Instead, when a judge consults these materials, it is akin to "looking over a crowd and picking out your friends."[168] For these reasons, judges should be cautious when consulting legislative intent unless the statutory language is ambiguous.

---

160. *See infra* Part V.

161. Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997).

162. *Id.* (citing United States v. Ron Pair Enters., Inc., 489 U.S. 235, 240 (1989)).

163. Chamber of Comm. of the U.S. v. Whiting, 131 S. Ct. 1968, 1980 (2011) (citing Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 568 (2005)).

164. Patricia M. Wald, *Some Observations on the Use of Legislative History in the 1981 Supreme Court Term*, 68 IOWA L. REV. 195, 200 (1983).

165. *Id.* at 195, 200.

166. *Id.* at 200.

167. *Id.* at 216.

168. *Id.* at 214 (quoting Judge Harold Leventhal).

1.   The Plain Meaning of the DPPA

In *Senne*, the majority stated that the plain text of the statute narrowly limits the personal information that can be released under the statute's exceptions.[169] The court asserted the statutory purpose, "clear from its language alone, is to prevent all but a limited range of authorized disclosures . . ." because the statute starts with a broad prohibition of disclosure and then lists fourteen specific exceptions.[170] Therefore, the "for use" language at the beginning of every exception should also be interpreted narrowly in that the "actual information disclosed—i.e., the disclosure as it existed in fact—must be information that is *used* for the identified purpose."[171] To support this view, the majority noted that under the DPPA, highly-restricted personal information (i.e. social security numbers) can be disclosed for governmental functions and legal proceedings without the person's express consent.[172] The court stated, based on this provision, that using the Village's broad interpretation would allow the Village to print this highly-restricted personal information on its publically displayed tickets in violation of the statute's "chief aim of privacy protection."[173] In conclusion, the court maintained that without its narrow interpretation of the "for use" language, the statute's purpose of "safeguarding information for security and safety reasons" is frustrated.[174]

Although the court pointed to the DPPA's structure to support its narrow interpretation of "for use,"[175] it likely used legislative history to shape its analysis. The language of 18 U.S.C. § 2721 begins with a general prohibition of disclosure of personal DMV information and then immediately lists fourteen exceptions where this information "may be disclosed."[176] Based solely on this structure, the majority argued that disclosure under the statute is only allowed in limited circumstances; therefore, those circumstances should also be interpreted narrowly.[177] However, in its opinion, the majority did not highlight that: (1) the exceptions themselves contain no additional limiting language; (2) the types of users for the exceptions vary greatly to include government agencies, insurers, statistical researchers, private investigative agencies, private employers, and marketers; and (3) the DPPA contains *fourteen* exceptions.[178]

---

169.   Senne v. Vill. of Palatine, Ill., 695 F.3d 597, 606 (7th Cir. 2012) (en banc), *cert. denied*, 133 S. Ct. 2850 (2013).
170.   *Id*. at 605.
171.   *Id.* at 606.
172.   *Id.*
173.   *Id.*
174.   *Senne*, 695 F.3d at 606.
175.   *Id.*
176.   18 U.S.C. § 2721(a)–(b)(14) (2000).
177.   *Senne*, 695 F.3d at 606.
178.   18 U.S.C. § 2721(b).

These aspects of the statute tend to support a broader interpretation of the exceptions' language. However, the majority likely reached its narrower interpretation through its limited review of the legislative history. In its examination of legislative history, the majority extracted specific comments by Senator Tom Harkin stating that the law enforcement exception was not meant to be a "gaping loophole" in the statute.[179] The court also noted Senator John Warner's statement that "[t]here are specific exceptions of course for law enforcement individuals and other areas where proven experience shows that this information should flow. But in those instances we have to presume it is somewhat protected."[180] These pieces of legislative history likely shaped the majority's interpretation leading them to focus on the "limiting" structure of the overall statute, and to deemphasize the exceptions' broad characteristics.

The dissenting Judges presented a strong argument in favor of a broad interpretation as the unambiguous, literal interpretation of the DPPA.[181] The exceptions analyzed in *Senne* state that:

> Personal information . . . may be disclosed[182] . . . [f]or use by any government agency, including any court or law enforcement agency, in carrying out its functions[183] . . . [and] [f]or use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process . . . .[184]

Although the majority applies a narrow limitation on these uses,[185] the plain language of this statute does not make any reference to limiting the party's use of this information for the stated purposes.[186] As the dissents emphasized, "[t]he text of the DPPA simply does not contain the 'actual use' limitation that the majority reads into it"[187] nor does it "limit disclosure that falls within one of its exceptions to what is 'reasonable' or 'necessary,' or authorize judges to impose such a requirement."[188] Although the court stated that it "[does] not read 'use' to mean 'necessary use,' nor [does it] require the Village to adopt some form of 'best practices,'"[189] the majority did in fact

---

179. *Senne*, 695 F.3d at 608 (quoting 139 CONG. REC. S15,962 (daily ed. Nov. 17, 1993) (statement of Sen. Harkin)).

180. *Senne*, 695 F.3d at 608 (emphasis omitted) (quoting 139 CONG. REC. S15,764 (daily ed. Nov. 16, 1993) (statement of Sen. Warner)).

181. *Id.* at 609–10 (Posner, J., dissenting); *Id.* at 612–14 (Flaum, J., dissenting).

182. 18 U.S.C. § 2721(b).

183. *Id.* § 2721(b)(1).

184. *Id.* § 2721(b)(4).

185. *See supra* notes 148–153 and accompanying text.

186. 18 U.S.C. § 2721(b).

187. *Senne*, 695 F.3d at 616 (Flaum, J., dissenting).

188. *Id.* at 610 (Posner, J., dissenting).

189. *Id.* at 606–07 n.12 (majority opinion).

impose a "necessary use" form of best practices by holding that the Village is liable for any disclosure of information that is not specifically "*used* for the identified purpose."[190]

Furthermore, although the majority correctly recognized that the "chief aim" of the DPPA was for "privacy protection,"[191] it discounted that one of the central purposes of the statute, which is made clear from its language, is to balance the need for privacy protection with the need for government agencies and other organizations to use this information.[192] The language of the DPPA begins with the prohibition that a "State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity" a driver's personal information.[193] However, in the next subsection, the statute immediately articulates fourteen exceptions that provide for access and use of this information.[194] The majority noted that from this structure, "the statute's purpose, clear from its language alone, is to prevent all but a limited range of authorized disclosures of information contained in individual motor vehicle records."[195] However, the court then proceeded to read this "limited range" of fourteen exceptions even more narrowly and discount that the structure of the statute also shows its purpose was to balance privacy protection with government agencies' use of this information.[196] The governmental functions and service of process exceptions, from their language, alone make "clear that Congress intended to leave states with considerable leeway."[197] Although the majority was rightly concerned that this broad interpretation allows the Village to print highly-restricted personal information on its parking tickets,[198] Congress should make these modifications to the statute, instead of the courts limiting the text after the fact and punishing municipalities for this disclosure. The text is clear that in balancing the protection of this highly restricted information and the government's need for it, the drafters determined that, for certain exceptions, unrestricted use and access to this information was essential. The statute does not limit the government and other agencies' use of this information under these particular exceptions, but defers to their discretion. In fact, the drafters felt so strongly about it that they allowed the

---

190. *Id.* at 606.
191. *Id.*
192. 18 U.S.C. § 2721 (2000).
193. *Id.* § 2721(a).
194. *Id.* § 2721(b).
195. *Senne*, 695 F.3d at 605.
196. *See supra* notes 148–153 and accompanying text; 18 U.S.C. § 2721.
197. *Senne*, 695 F.3d at 614 (Flaum, J., dissenting).
198. *Id.* at 606.

government and other agencies to use this highly-restricted personal information without the parties' consent.[199]

When examining the statute's text, the majority may have allowed pieces of the statute's legislative history to shape its narrow interpretation; however, as presented by the dissent, the language of the statute unambiguously grants government agencies unlimited discretion in using this information for their core governmental functions.[200]

2. What was Congress's Intent?

The DPPA's language is unambiguous enough that courts need not look to legislative history. But even if courts did, the *Senne* majority's interpretation may be at odds with Congress's original intent.

After its analysis of the statutory text, the court turned to the legislative history to bolster its narrow interpretation.[201] The majority briefly mentioned the numerous crimes discussed in the congressional hearings, but it failed to emphasize that all of these crimes were committed in connection with obtaining information from state DMVs for a nominal fee.[202] The majority focused mainly on testimony from Senator Harkin who stated that the law enforcement exception is not a "gaping loophole in this law" but provides these agencies "with latitude in receiving and disseminating . . . personal information" when done "for the purpose of deterring or preventing crime or other legitimate law enforcement functions."[203] With this limited review of the statute's history, the majority deemed that "Congress did not intend that the statutory exceptions be divorced, logically or practically, from the purpose of the statute."[204]

However, the majority's interpretation of the legislative history discounted that the original purpose for this statute was to protect against criminals purchasing personal information from state DMVs.[205] The legislative history is full of stories involving information obtained in this manner and does not contain any stories alluding to crimes committed by criminals obtaining personal information from parking tickets.[206] In addition, as Judge Posner

---

199. 18 U.S.C. § 2721(a)(2) (stating that a party cannot disclose or otherwise make available highly restricted personal information without the express consent of the person to whom it applies, except for uses permitted under governmental functions, (b)(1), service of process, (b)(4), insurance investigations, (b)(6), and commercial driver's license verifications, (b)(9)).

200. *Senne,* 695 F.3d at 616–17 (Flaum, J., dissenting).

201. *Id.* at 607–08 (majority opinion).

202. *Id.* at 607.

203. *Id.* at 608 (emphasis omitted) (quoting 139 CONG. REC. S15,962 (daily ed. Nov. 17, 1993) (statement of Sen. Harkin)).

204. *Id.*

205. *See supra* notes 13, 18–30 and accompanying text.

206. *See Id.*

observed, even Senne's lawyer admitted at oral argument that he had never heard of such a thing.[207]

Furthermore, the majority overlooked the balancing purpose of the statute. The legislative history plainly states, "The purpose of this Act is to protect the personal privacy and safety of licensed drivers *consistent with* the legitimate needs of business and government."[208] The legislative history of the DPPA "does not convey an intent to eliminate any and all dangers that can be traced back to the disclosure of information from the motor vehicle records,"[209] otherwise, the statute would have no exceptions to permit additional use of this information. Instead of attempting to protect against "all imaginable dangers," Congress emphasized its "intent to prevent the specific danger that arises when individuals are able to obtain personal information *upon request* from state motor vehicle records."[210] Furthermore, in listing these exceptions, the legislative history clearly shows that Congress respected the need for this information for government functions and proceedings.[211] Senator Boxer, the main proponent of this statute, emphasized the importance of striking "a critical balance between the legitimate governmental and business needs for this information, and the fundamental right of our people to privacy and safety."[212] Even Senator Harkin stressed the importance of the law enforcement exception, stating it "should be interpreted so as not to in any way restrict or hinder successful law enforcement and crime prevention strategies."[213] Instead, Senator Harkin thought the threshold question should be "whether the law enforcement agency's action is taken in carrying out its functions."[214] In situations like the one presented in *Senne*, the Village could easily argue its use of this information was just an action "taken in carrying out its functions."[215]

If Congress now disagrees with the rule it codified into law, it "remains at liberty to amend the statute, and, for the policy reasons advanced by the majority, it may well see the need to do so."[216] However, the judiciary should be cautious to create unclear disclosure guidelines for municipalities that are not explicitly in the statute's text.

---

207. *Senne*, 695 F.3d at 610 (Posner, J., dissenting).

208. 139 CONG. REC. 26,266 (1993) (emphasis added).

209. *Senne*, 695 F.3d at 614 (Flaum, J., dissenting).

210. *Id.*

211. *See infra* text accompanying notes 212–13.

212. 139 CONG. REC. S29,468 (daily ed. Nov. 16, 1993) (statement of Sen. Boxer).

213. 139 CONG. REC. S29,697 (daily ed. Nov. 17, 1993) (statement of Sen. Harkin).

214. *Id.*

215. *Id.*

216. Senne v. Vill. of Palatine, Ill., 695 F.3d 597, 614 (7th Cir. 2012) (en banc) (Flaum, J., dissenting), *cert. denied*, 133 S. Ct. 2850 (2013).

B. Possible Constitutional Problems

In its writ of certiorari, the Village urged the Supreme Court to take this case, and one of its central arguments stressed that the Seventh Circuit's interpretation of the DPPA could create constitutional problems.[217] In *Reno v. Condon*, the Court upheld the constitutionality of the DPPA based on the Commerce Clause powers of the federal government. The Court found that this personal information was an "article of commerce" sold by the States to parties "engaged in interstate commerce" for them to use to "contact drivers with customized solicitations," and used in the "stream of interstate commerce" by various entities in regards to interstate motoring.[218] Therefore, the disclosure of this information into the "interstate stream of business is sufficient to support congressional regulation."[219] However, the Village argued that under the majority's interpretation, Congress is not simply regulating inherently interstate commercial activity, but instead it is regulating "States or municipalities when [it uses] personal information to carry out core, non-commercial government functions like issuing parking tickets."[220] Therefore, this interpretation could make the DPPA unconstitutional because regulating the noncommercial disclosure by state government agencies would seem to fall outside Congress's Commerce Clause authority.[221] According to the Village, "the en banc court violated the cardinal rule that 'where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.'"[222] Congress, by not expressly limiting state and municipal use of this information, may have intended to avoid this constitutional issue, and if that is the case, "the en banc court interpreted the DPPA to interfere with the very state and local government functions Congress clearly left undisturbed."[223]

VI. WHAT EFFECT COULD THIS INTERPRETATION POTENTIALLY HAVE ON OTHER MUNICIPALITIES?

Although the majority stated in a footnote that a discussion of potential damages at this point would be "premature,"[224] Judge Posner stressed that this

---

217. Petition for Writ of Certiorari, *supra* note 134, at 3.

218. Reno v. Condon, 528 U.S. 141, 148 (2000).

219. *Id.*

220. Petition for Writ of Certiorari, *supra* note 134, at 25.

221. *Id.* at 8, 25.

222. *Id.* at 25 (citing Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps. of Eng'rs, 531 U.S. 159, 173 (2001)).

223. Petition for Writ of Certiorari, *supra* note 134, at 21.

224. Senne v. Vill. of Palatine, Ill., 695 F.3d 597, 609 n.20 (7th Cir. 2012) (en banc), *cert. denied*, 133 S. Ct. 2850 (2013).

view may be "short sighted" because "[b]efore creating a new cause of action, a court should consider the consequences."[225] As for the Village of Palatine, it claims to have issued approximately 32,000 parking tickets in the last four years;[226] therefore, at just the minimum liquidated damages of $2500 per ticket, the Village is potentially facing $80 million in liability.[227] Given the population of Palatine, that total is approximately $1000 per resident.[228] These damages "are more than 100 times the total revenue generated by the parking tickets at issue."[229] Furthermore, the Village's counsel during the en banc hearing stated that just in examining the municipalities surrounding Chicago, he had found ten other municipalities that included the owner's name on their parking tickets, six that included the owner's name and address, and one that also included the driver's license number.[230] Senne's attorney argued that based on this statute, the only information municipalities should include on parking tickets is the vehicle's tag number, which is the current practice in Chicago.[231] When asked about this particular procedure in Palatine, the Village's counsel stated that the pieces of information on its parking tickets are required for a moving violation under Illinois law; therefore, the Village simply used the same information on its parking and speeding tickets.[232] In its 12(b)(6) motion, the Village did not provide a reason for its use of some of this information (i.e., eye color, height, weight) in a governmental or service of process capacity;[233] however, it could have made the argument that the information was for police pedigree purposes or to prevent and detect potential profiling. Furthermore, as Judge Posner illustrated, this information could also be used to serve a "modest error-correction function," to ensure the DMV's information was still correct.[234] Although these purposes could prove that each piece of information was "necessary for use" in connection with a governmental function under the majority's narrow interpretation of the statute,[235] such analysis is unnecessary if the Seventh Circuit had followed the dissents' literal interpretation of the statute. Instead, the majority's opinion

---

225. *Id.* at 612 (Posner, J., dissenting).

226. Brief of the Defendant-Appellee Vill. of Palatine, Ill., *supra* note 138, at 2.

227. *Senne*, 695 F.3d at 611 (Posner, J., dissenting).

228. *Id.*

229. Petition for Writ of Certiorari, *supra* note 134, at 4 (emphasis omitted).

230. *Senne* Oral Argument, *supra* note 137, at 57:43–58:21.

231. *Senne* Oral Argument, *supra* note 137, at 6:35–7:10; *See also* Saukstelis v. City of Chi., 932 F.2d 1171, 1174 (7th Cir. 1991).

232. *Senne* Oral Argument, *supra* note 137, at 41:05–41:40.

233. Brief of the Defendant-Appellee Vill. of Palatine, Ill., *supra* note 138, at 18; Oral Argument, *supra* note 137, at 48:40–48:50.

234. Senne v. Vill. of Palatine, Ill., 695 F.3d 597, 611 (7th Cir. 2012) (en banc) (Posner, J., dissenting), *cert. denied*, 133 S. Ct. 2850 (2013).

235. *See supra* notes 148–53 and accompanying text.

could cause every police department in the Seventh Circuit to be sued for parking tickets issued over the past four years because "the statute [did] not place Palatine or any other community on notice that including personal information on a parking ticket is prohibited."[236] As Judge Posner aptly stated, only "scofflaws," not innocent victims, benefit from this decision and "[f]rom now until the statute is amended . . . only a sucker would park legally in the Village of Palatine."[237]

CONCLUSION

Although the majority stated its interpretation of the DPPA was based solely on its text, its narrow interpretation was more likely influenced by its analysis of the legislative history. Congress enacted the DPPA to prevent crimes resulting from criminals obtaining DMV information for a fee, not to punish municipalities for providing safe thoroughfares in their communities. The purpose of this statute was to balance the need for privacy protection and the legitimate need for access to this information. In addition, the plain meaning of the statute does not contain any language limiting municipalities' use of this information in performing their governmental functions or in serving process. Therefore, the judiciary should be careful not to limit the scope of the exceptions under the DPPA and cross over into the realm of legislating.

DEBBIE J. SLUYS∗

APPENDIX

Appendix A: Jason Senne's ticket issued by the Village of Palatine[238]

---

238. Complaint-Class Action for Damages and Other Relief Under the Driver's Privacy Protection Act, *supra* note 122, at Ex. 1.