That’s the Ticket: Arguing for a Narrower Interpretation of the Exceptions Clause in the Driver’s Privacy Protection Act

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INTRODUCTION

In 1994, Congress enacted the Driver’s Privacy Protection Act (DPPA, or the Act) out of concern that states were disclosing personal information contained in motor vehicle records to parties who often used it for illegal and harmful purposes. Specifically, the highly publicized murder of a young actress by an obsessed fan who obtained her unlisted address this way, and other incidents of stalking and harassment, provided the impetus for the legislation.

DPPA prohibits state departments of motor vehicles from selling or otherwise “disclosing” certain personal information—including name, address, social security or driver’s license number, and various

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3 Id.
other “identifying” information—without the individual’s express consent. However, the Act contains a fairly expansive list of exceptions which pertain mainly to safety, government functions, and litigation. Disagreement over what is permissible under these exceptions, contained in subsection (b) of the Act, has been the source of recent litigation, including Senne v. Village of Palatine, considered by the Seventh Circuit in 2011. In Senne, the plaintiff brought a putative class-action against a police department alleging that its practice of including detailed personal information, including name and address, on parking tickets placed on motorists’ vehicles on public streets violated his rights under the Act. In the since-vacated decision, the majority ruled this was a “permissible use” under the statute’s exceptions. The full court heard oral arguments in the case en banc in February 2012.

The congressional record makes clear that the purpose of DPPA was to prevent the tragic consequences that can occur when sensitive

4 18 U.S.C.A. § 2721(a), 2725(3).
5 Id. at § 2721(b).
6 § 2724(a) of DPPA allows for a private cause of action.
7 Senne v. Village of Palatine, 645 F.3d 919, vacated, reh’g en banc granted (7th Cir. Sept. 13, 2011).
8 Id.
9 Id. In an opinion issued Aug. 6, 2012, the full court reversed the district court’s dismissal of Senne’s case and the three-judge panel decision affirming it. See Senne v. Village of Palatine, No. 10-3243, Aug. 6, 2012. Writing for the majority, Judge Ripple, who had dissented from the earlier decision, held that the plaintiff had alleged sufficient facts that Palatine’s disclosure of his information “exceeded that permitted by [DPPA].” Remanding the case to the lower court, the majority concluded that “…the text of the statute limits the content of authorized disclosures of protected information in motor vehicle records through its requirement, clear on its face, that any such disclosure be made ‘[f]or use’ in effecting a particular purpose exempted by the Act” — and Palatine had yet to show how it used all of the disclosed information toward that end. Id. at 19.
personal information gets into the wrong hands.\textsuperscript{11} However, the Seventh Circuit and other federal courts have generally construed the Act’s language in favor of public and private entities that claim to be disclosing and using private information pursuant to the enumerated exceptions, and against the drivers whose privacy and safety the Act was created to protect. These courts have broadly interpreted the exceptions clause and given wide latitude to would-be “disclosers” and “users” in a way that frustrates the purpose of the Act.\textsuperscript{12} To date, no cases have been brought alleging serious crime or violence resulting from a “permissible” disclosure under the Act, but the litigation indicates the exceptions are being exploited to provide some private and state actors a loophole to circumvent the law’s restrictions and to use individuals’ personal information in ways Congress never intended.

Even areas of the statute that would seem to be unambiguous—for example, distinguishing between the original “disclosing” (presumably done by the state) and subsequent “redisclosures” by recipients of the information and setting forth different requirements for both\textsuperscript{13}—do not appear to be helping plaintiffs in trying to assert their rights under the law. In fact, the Seventh Circuit majority entirely overlooked this distinction in \textit{Senne}.\textsuperscript{14}

This Comment proposes that the plain language of the subsection (b) exceptions clause in DPPA is ambiguous. Therefore, courts should adopt a much narrower interpretation of what disclosures and uses of private information are permissible under the subsection consistent with congressional intent. For instance, the \textit{Senne} three-judge and \textit{en banc} panels divided over the question of whether the exception


\textsuperscript{12} For example, the 11th Circuit held that a law firm fell under the “investigation in anticipation of litigation” permissible-use exception when it obtained personal information on more than 200,000 drivers from the Florida motor vehicle department in order to contact some of them as “possible witnesses” in its fraud action against several auto dealerships. \textit{See} Thomas v. George, 525 F.3d 1107 (11th Cir. 2008).

\textsuperscript{13} 18 U.S.C.A. § 2721(c).

\textsuperscript{14} \textit{Senne}, 645 F.3d at 924-25.
providing: “for use in connection with any . . . criminal [or] administrative . . . proceeding . . . including service of process.”\(^\text{15}\) meant that a law enforcement agency may use personal information from state motor vehicle records only to identify and contact (i.e., serve or arrest) an individual, or whether the agency may “use” this information in any conceivable way it chooses so long as its ultimate purpose is service of process.\(^\text{16}\) As Judge Diane Wood suggested at the \textit{en banc} hearing, does the latter interpretation mean the agency can even post it on the Internet?\(^\text{17}\) This would seem to not only frustrate the purpose of DPPA, but to interpret the language of the Act in a way that leads to an absurd result.

This Comment argues that, consistent with congressional goals in enacting DPPA, protecting drivers’ privacy and safety is not incompatible with efficient government administration and that courts should employ a more restrictive interpretation of the terms “use” and “disclose” as contained in the Act. Part I of this Comment reviews DPPA’s legislative purpose and history as set forth in the congressional record, federal case law interpreting the subsection (b) exceptions, and a recent district court opinion calling for a narrow construction. Part II returns to the Seventh Circuit’s analysis of subsection (b) in the since-vacated \textit{Senne v. Village of Palatine}—including a powerful dissenting opinion by Judge Ripple that this Comment argues should control—and the February 2012 \textit{en banc} rehearing. Part III ties together court opinions addressing informational privacy, the “plain meaning” rule of statutory interpretation, and Seventh Circuit precedent to support a narrower interpretation. This Comment concludes by proposing that until the United States Supreme Court recognizes a constitutional privacy interest in personal information or until Congress revisits and amends DPPA, courts should read the plain language of the exceptions clause in the context of the statute’s purpose.

\footnotesize{\textsuperscript{15} 18 U.S.C.A. § 2721(b).\textsuperscript{16} \textit{Senne}, 645 F.3d 919 \textit{et seq.}; \textit{en banc} hearing, \textit{supra} note 10.\textsuperscript{17} \textit{En banc} hearing, \textit{supra} note 10.}
I. BACKGROUND

A. Senne v. Village of Palatine

The case that the Seventh Circuit was asked to review in early 2011 began with a routine parking ticket issued the previous summer. In August 2010, Jason Senne received a twenty-dollar citation for parking in a restricted area overnight in the Village of Palatine, Illinois. Compounding the consternation provoked by such an unpleasant discovery, Senne realized that, per the Village’s policy, detailed personal information including his name, home address, driver’s license number, date of birth, and even his height and weight were electronically printed on the ticket that had been sitting on his windshield for nearly six hours. Palatine’s attorney later conceded that the Village is alone among Illinois jurisdictions in printing this extent of personal information on parking tickets, although some jurisdictions include the registered vehicle owner’s name and home address.

Senne filed a putative class-action complaint against the Village in federal district court alleging that this practice violated his privacy rights under the Driver’s Privacy Protection Act (DPPA), and that it did not fall under any of the statute’s exceptions. Moreover, Senne maintained, the citation that the personal information is printed on doubles as a return envelope for the payment, forcing individuals to “unwittingly” disclose it once more to others who come into contact

18 Senne, 645 F.3d at 920.
19 Id.
20 Id. at 921.
21 En banc hearing, supra note 10 (counsel for Village explained that ten other northern Illinois municipalities include a registered owner’s name on a parking ticket, six include name and address, and one other also includes driver’s license number). See also Saukstelis v. City of Chicago, 932 F.2d 1171, 1174 (7th Cir. 1991) (most jurisdictions, including the city of Chicago, identify the vehicle owner on a ticket only by tag number).
with it once it is sent by mail.\textsuperscript{23} He accused the Village of “facilitating the potential for crime” by publicly displaying his personal information.\textsuperscript{24}

District Court Judge Matthew F. Kennelly granted Palatine’s motion to dismiss, holding that the parking ticket was not even a “disclosure” under the Act, and if it were, it was permissible under the exception allowing use by a law enforcement agency in carrying out its functions.\textsuperscript{25} The Seventh Circuit reversed the lower court’s disclosure determination but still found Palatine’s policy a permissible use, instead under the exception for service of process in an administrative proceeding.\textsuperscript{26}

\textbf{B. Driver’s Privacy Protection Act}

Prior to DPPA’s enactment in 1994, motor vehicle departments in roughly 34 states routinely sold private information of licensed drivers to marketers and other businesses, as well as to any member of the public who requested it, for a nominal fee.\textsuperscript{27} Indeed, some states had garnered substantial revenue from such disclosures.\textsuperscript{28} By the early 1990s, it was recognized that this practice resulted not only in an invasion of personal privacy, but occasionally in criminal acts.\textsuperscript{29} The passage of DPPA was inspired by several tragic incidents in which individuals were harassed or killed by people who obtained their

\begin{itemize}
  \item \textsuperscript{23} Id. at 5.
  \item \textsuperscript{24} Id. at 6.
  \item \textsuperscript{25} Senne, 645 F.3d at 921; also see 18 U.S.C. § 2721(b)(1).
  \item \textsuperscript{26} Senne, 645 F.3d at 923-24; see also 18 U.S.C. § 2721(b)(4).
  \item \textsuperscript{27} 139 CONG. REC. S14381 (Oct. 26, 1993) (statement of Sen. Warner: “Citizens who wish to operate a motor vehicle have no choice but to register with the Department of Motor Vehicles and they should do so with full confidence that the information they provide will not be disclosed indiscriminately.”); Rep. Moran statement, supra note 2: “[V]ery few Americans realize that by registering their car or obtaining a driver's license through the DMV, they are surrendering their personal and private information to anyone who wants to obtain it.”).
  \item \textsuperscript{28} Reno v. Condon, 528 U.S. 141, 143-44 (2000).
  \item \textsuperscript{29} Rep. Moran statement, supra note 2; Sen. Boxer statement, supra note 2.
\end{itemize}
personal information from state motor vehicle departments.\(^{30}\) Most famously, the television actress Rebecca Schaeffer was shot and killed by an obsessed fan outside her Los Angeles apartment after he used her motor vehicle records to find her.\(^{31}\) Lesser-known crimes were also cited by congressional sponsors. An Arizona woman was murdered by a man who acquired her address the same way.\(^{32}\) In Iowa, teenagers wrote down license tag numbers of expensive cars, obtained the owners’ home addresses from the state, and burglarized the homes.\(^{33}\) A California man sent threatening letters to five young women whose addresses he located through the DMV.\(^{34}\)

DPPA was a bipartisan effort included in omnibus crime legislation passed in 1993 as the “Violent Crime Control and Law Enforcement Act.”\(^{35}\) It was sponsored in the U.S. House of Representatives by Rep. Moran and in the U.S. Senate by Democratic Senator Barbara Boxer (Cal.) and Republican Senator John Warner (Va.).\(^{36}\) Its stated purpose was “to protect the personal privacy and safety of licensed drivers consistent with the legitimate needs of business and government.”\(^{37}\)

1. Devil is in The Details

The Act, codified as 18 U.S.C. § 2721 et seq., provides in pertinent part:

\(^{30}\) Id.
\(^{31}\) Id.
\(^{32}\) Sen. Boxer statement, supra note 2.
\(^{33}\) Id.; Rep. Moran statement, supra note 2.
\(^{34}\) Sen. Boxer statement, supra note 2.
\(^{36}\) 139 CONG. REC. S15745, supra note 2 (statement of Sen. Warner); Rep. Moran statement, supra note 2.
\(^{37}\) 139 CONG. REC. S15764 (Nov. 16, 1993) (emphasis added).
Prohibition on release and use of certain personal information from State motor vehicle records
(a) In general.—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:
   (1) personal information, as defined in 18 U.S.C. § 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section.\(^\text{38}\)

“Personal information” is defined as “information that identifies an individual, including . . . photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.”\(^\text{39}\)

After describing permitted disclosures for safety and theft purposes, motor vehicle emissions, and product recalls and advisories, the Act enumerates fourteen specific exceptions permitting disclosure, with (b)(1) and (b)(4) being the subject of most of the private action against government actors, including Senne:

(b) Permissible uses.—Personal information referred to in subsection (a) . . . may be disclosed as follows:
   (1) For use by any government agency, including any court or law 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.
   (4) 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

\(^\text{38}\) 18 U.S.C.A. § 2721(a)(1).
\(^\text{39}\) 18 U.S.C.A. § 2725(3).
of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.40

The remaining exceptions include use related to research activities, insurance claims investigation and underwriting, providing notice to the owners of towed or impounded vehicles, commercial driver’s licenses, operating toll facilities, and several others requiring the express consent of the driver, including bulk distribution for surveys, marketing or solicitations by businesses.41

Subsection (c) of the Act pertains to resale and redisclosure by “authorized recipients” who have acquired the information from a state without express consent:

(c) Resale or redisclosure.—Any authorized recipient . . . that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used . . .42

These common-sense exceptions were an acknowledgement by Congress that there are many legitimate purposes for state disclosure of personal identifying information without the owner’s express consent, particularly to other government entities. But the language in subsection (b) is open to broad and varying interpretation. For instance, (b)(1): “for use by a government agency [such as law enforcement] in carrying out its functions”43 may be interpreted as disclosure by the state to an agency so it can simply locate or communicate with an individual for a specific reason, such as conducting an investigation or issuing a summons. But some interpret

40 18 U.S.C.A. § 2721(b).
41 Id.
42 Id. § 2721(c).
43 Id. § 2721(b).
“for use by” as any use at all the agency chooses to make, regardless of whether the use exceeds that which is necessary or even reasonable to effectuate the agency’s purpose.\footnote{44}{See Senne, 645 F.3d at 923-24.}

Any person who knowingly violates DPPA may be subject to a criminal fine.\footnote{45}{18 U.S.C.A. § 2723(a).} Section 2724(a) of the Act allows for a private right of civil action by persons whose information is improperly disclosed against one who “knowingly obtains, discloses, or uses personal information … for a purpose not permitted under this chapter.”\footnote{46}{18 U.S.C.A. § 2724(a).} In addition to actual damages, the Act allows for punitive damages “upon proof of willful or reckless disregard of the law.”\footnote{47}{Id. § 2724(a)(b)(2).}

States themselves are excluded from the definition of “person” for purposes of civil actions, but municipalities and law enforcement agencies are not.\footnote{48}{Id. § 2725(2).} Individual state actors also are “persons” who may be sued.\footnote{49}{Id.} Courts have held that to “knowingly” disclose means only that the discloser knew he was disclosing private information, not that he knew he was disclosing it for an impermissible use.\footnote{50}{Senne, 645 F.3d at 923; Pichler v. Unite, 542 F.3d 380, 397 (3rd Cir. 2008).}\footnote{51}{See Thomas v. George et. al., 525 F.3d 1107, 1112 (11th Cir. 2008) (holding that permissible use under DPPA is not an affirmative defense). Impermissible use is often difficult if not impossible for a plaintiff to prove, especially in cases such as Thomas, where defendants often solely possess knowledge of their true intentions, and where a defendant claims attorney-client privilege or some other privilege preventing disclosure of crucial documents.}

\footnote{44}{See Senne, 645 F.3d at 923-24.} \footnote{45}{18 U.S.C.A. § 2723(a).} \footnote{46}{18 U.S.C.A. § 2724(a).} \footnote{47}{Id. § 2724(a)(b)(2).} \footnote{48}{Id. § 2725(2).} \footnote{49}{Id.} \footnote{50}{Senne, 645 F.3d at 923; Pichler v. Unite, 542 F.3d 380, 397 (3rd Cir. 2008).} \footnote{51}{See Thomas v. George et. al., 525 F.3d 1107, 1112 (11th Cir. 2008) (holding that permissible use under DPPA is not an affirmative defense). Impermissible use is often difficult if not impossible for a plaintiff to prove, especially in cases such as Thomas, where defendants often solely possess knowledge of their true intentions, and where a defendant claims attorney-client privilege or some other privilege preventing disclosure of crucial documents.}
C. **DPPA Case Law**

In *Reno v. Condon*, the United States Supreme Court held DPPA constitutional under a Tenth Amendment challenge.\(^{52}\) *Condon* and many of the cases brought in the years shortly after passage of the Act centered on federalism challenges by various states as to whether Congress could even impose such a restriction on them.\(^{53}\) Besides *Condon*, there are only a handful of DPPA cases that have been decided above the district court level, including several by the Seventh Circuit.\(^{54}\) However, over the last decade, individuals claiming violations of their rights under the Act have increasingly brought private actions to enforce those rights.

In *Pichler v. Unite*, the Third Circuit held that union organizing was not a permissible use under the b(4) “investigation in anticipation of litigation” exception when a labor union contacted potential recruits whose license tag numbers it had collected from cars in a parking lot.\(^{55}\) However, the Eleventh Circuit found the same exception to apply to a law firm that obtained information on 284,000 licensed Florida drivers because some might be “potential witnesses” in its lawsuit against an automotive dealership, even though it would never contact a large number of them.\(^{56}\) In *Thomas*, the law firm claimed it needed the records in order to obtain evidence of custom and practice in its unfair


\(^{54}\) See, e.g., *Travis v. Reno*, 163 F.3d 1000 (7th Cir. 1998) (holding that DPPA’s restrictions on access to information in public records does not violate the First Amendment (distinguishing from the Freedom of Information Act) and that it also does not implicate the 11th Amendment because it excludes states from being sued by private parties). The Seventh Circuit also held that DPPA affords a private right of action to individuals whose information is improperly disclosed, but not to those who seek disclosure. *See McCready v. White*, 417 F.3d 700 (7th Cir. 2005) (plaintiff was in the business of buying cars auctioned to satisfy mechanics’ liens and wished to obtain information on the vehicles’ owners).

\(^{55}\) *Pichler v. Unite*, 542 F.3d 380, 395-96 (3rd Cir. 2007).

\(^{56}\) *Thomas*, 525 F.3d at 1114-15.
trade practices claim. The court concluded that it did not matter that the defendant actually used only a small number of the records it acquired. (In contrast, Wemhoff v. District of Columbia held that the litigation exception did not apply to an attorney who tried to obtain the identities of motorists caught by red-light cameras in order to bring a class-action lawsuit against the city.)

1. Bulk Distribution

Some of the most troubling DPPA permissible-use interpretations have involved the bulk sale of information to private businesses that resell it. In Russell v. Choicepoint Services, Inc., a Louisiana district court held that DPPA permitted an electronic database owner to obtain records from state DMVs in order to resell them to third parties that have a “permissible use,” even if it had no such use itself. Similarly, in Young v. West Publishing Corp., a Florida district court held that DPPA does not require a commercial entity to have an independent permissible use for information in order to qualify as an “authorized recipient”; it can resell or redisclose information for purposes of legal research.

In Welch v. Jones, another Florida district court decision, the court held that DPPA allowed the state to sell drivers’ personal information in bulk to a company that sold it on the Internet, because the company’s subscribers had to identify themselves and swear under penalty of perjury they would use the information for one of the fourteen statutory exceptions. The company, Public Data, had

57 Id.
58 Id. at 1115.
62 Welch v. Jones, 770 F.Supp.2d 1253, 1259 (N.D. Fla. 2011). In a remarkable display of faith in business and personal ethics, the court scoffed at the plaintiff’s argument that a Public Data subscribing customer might falsely claim a permissible use because: (1) a subscriber would not likely pay a “substantial sum” for the records
purchased drivers’ information from the state of Florida to resell to its customers. In a startlingly broad reading of the exceptions clause, the court found Public Data had properly obtained the information pursuant to the §2721(b)(3) exception “for use ... by a legitimate business” to verify a customer’s identity, even if it may never need the information and even if the people whose information was obtained never actually became “customers.” The court reasoned that its interpretation was a “more comfortable” reading of the “for use” language in the exceptions clause, “especially in a statute imposing civil liabilities and fines,” and concluded that if it led to improper use of information, it was up to Congress to correct it.

2. Privacy in Public Information: Fifth Circuit Gets It Wrong

In support of its holding, the Welch court cited Taylor v. Acxiom, a 2010 Fifth Circuit decision that also broadly interpreted the Act to allow the bulk disclosure of information to commercial entities that resell it without making permissible use of the information themselves. The court held that such “bulk obtainment” did not

63 Id. at 1255.
64 See 18 U.S.C.A. § 2721(b)(3) (allowing disclosure “for use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only (A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and (B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.”).
65 Welch, 770 F.Supp.2d at 1259 (“Had Congress intended §2721(b) to require actual use—rather than only a purpose to use when appropriate—it could have said so. And had Congress intended information to be disclosed only for an individual transaction, rather than in bulk, it could have said that, too. But it did not.”) (emphasis added).
66 Id. at 1260-61.
67 Id. at 1259; Taylor v. Acxiom, 612 F.3d 325, 335 (5th Cir. 2010).
violate DPPA and justified its holding by misinterpreting the §2721(b)(11) requirement of express consent for bulk disclosure of information for marketing purposes as therefore allowing bulk disclosure *without* express consent for any of the other permissible purposes a purchaser may have. The court described the Act as a “crime-fighting measure” and cited the legislative record to support its conclusion that DPPA was aimed only at preventing victimization from crime: “The totality of the legislative history clearly reflects that Congress did not intend to suppress legitimate business uses of motor vehicle records” (emphasis in original).

However, the record indicates that in passing DPPA, Congress was concerned not only with physical safety but with personal privacy, apart from violent or threatening criminal acts. Indeed, the very name of the Act, the Driver’s Privacy Protection Act, demonstrates

68 See 18 U.S.C.A. § 2721(b)(12) (“for bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains”).

69 Taylor, 612 F.3d at 335 (“Of the fourteen expressly listed permissible uses, only once does Congress limit a permissible use to *individual* motor records. And of these … only once does Congress limit a permissible use to *bulk* distribution. For the remaining twelve permissible uses, the statute seems to have more than one reasonable interpretation: individual release, bulk release, or both” (internal citations omitted; emphasis in original)).

70 Id. at 336. The court noted that the purpose of the statute supports the conclusion that Congress intended bulk distribution. However, the court’s reasoning seems to overlook the possibility that the information could be improperly obtained by someone posing as a legitimate purchaser in order to commit a crime.

71 See, e.g., Sen. Moran statement, supra note 2: “By enacting this legislation, Congress will reaffirm that privacy is not a Democratic or Republican issue, but a basic human right to which every person is entitled”; Sen. Warner statement, supra note 27: “In today’s world, both personal privacy and personal safety are disappearing and this legislation would help to protect both. The bill incorporates the intentions of the 1974 Privacy Act, which addresses the collection of personal information by Federal agencies. The bill also includes the recommendations of the 1977 Privacy Protection Study Commission report.”). See also 139 Cong. Rec. S15764, supra note 37: “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” (emphasis added).
that the intent of Congress was not only preventing crime. A further
sign of this is that in 1999, Congress amended DPPA to prohibit direct
marketers from obtaining personal information from motor vehicle
records without a person’s express consent.\footnote{Driver’s Privacy Protection Act, Pub.L. No. 106-69, 113 Stat. 1025 (1994) (amended 1999).} Previously, a person had
to actively opt out of this type of disclosure when applying for a
license.\footnote{See Maureen Maginnis, Maintaining the Privacy of Personal Information: The DPPA and the Right of Privacy. 51 S.C.L. REV. 807, 811 (2000).} This amendment has been viewed as a legislative recognition
that individuals have an expectation of privacy in information they
voluntarily disclose to the government that supersedes the interests of
business, and they even retain the right to control its use after that
disclosure.\footnote{Id. at n.33.}

3. \textit{Wiles v. Worldwide:} Call for a Narrow Interpretation of
Permissible Uses

At least one federal court has called for a narrower interpretation
accused the Fifth Circuit of misapplying the \textit{expressio unius maxim}\footnote{Expressio unius est exclusio alterius: “The expression of one thing is the exclusion of another.” BARRON’S LAW DICTIONARY 176 (3d ed. 1991).} in \textit{Taylor v. Axiom} and criticized the reasoning in that case and in \textit{Russell v. Choicepoint}.\footnote{Wiles, 809 F.Supp.2d at1069-1072.} The \textit{Wiles} case also dealt with a state’s sale
of its entire driver’s license database to a reseller that did not itself use
the information.\footnote{Id. at 1063-64 (a customer of the reseller could then obtain the entire license database so long as it claimed a permissible purpose to access just one of the names in it).} The decision appears to be the first to hold that
under DPPA, nondisclosure of personal information is the default rule

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and not the exception. Writing for the majority, Judge Nanette K. Laughrey observed: “[N]owhere does the DPPA enumerate any ‘prohibited purposes’ or ‘prohibited uses.’ Rather, the statute generally prohibits all but the fourteen permissible uses enumerated in section 2721(b).” As such, the judge concluded, a recipient should have to show a specific permissible use before obtaining information on any individual, which a reseller, such as the defendant, could not do.

Judge Laughrey observed that the court’s holding deviated from the majority of federal courts that have considered the issue: “The majority of courts reason that so long as the private information is not actually used in a ‘prohibited’ manner there is no violation of DPPA . . . [y]et the DPPA never explicitly lists any prohibited uses; rather it generally prohibits all but . . . fourteen . . . uses.” To illustrate the irony of this reasoning, Judge Laughrey proposed that a tow truck operator could obtain an entire license database, including social security numbers, because one day it might need to tow the car of an individual in the database.

Judge Laughrey’s opinion also seems to be one of the few to consider DPPA’s legislative purpose and history and not just its plain language. Having reviewed both, she concluded that “Congress did not intend the DPPA to authorize this widespread dissemination of private information untethered from the very uses that Congress listed

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79 Id. at 1066.
80 Id. at 1073.
81 Id. (reasoning that the §2721(c) language limiting redisclosure by “authorized recipients” could only mean Congress intended these recipients to be individuals or entities qualified themselves to receive information under one of the fourteen exceptions; to read the section otherwise leads to the absurd result “that resellers could obtain all of the personal information in the database simply by calling themselves resellers, while everyone else—including law enforcement—would have to justify their receipt . . . under the 2721(b) exception applicable to them.” Congress could not have intended such a “gaping hole” in the statute).
82 Id. at 1061, 1063.
83 Id. at 1063.
84 See id. at 1065 (“the [c]ourt interprets the DPPA in accordance with its plain language and legislative purpose”); see also id. at 1066-68.
in the DPPA.\textsuperscript{85} Judge Laughrey concluded that the “overriding purpose” of the statute was to protect drivers’ privacy, made plain by its title: the Driver’s Privacy Protection Act.\textsuperscript{86} As such, Congress could not have intended greater latitude for an authorized recipient to disclose upon resale or redisclosure than the state has upon initial disclosure: “Congress, like its constituents, feared that private information widely circulated in vast databases would be intentionally or inadvertently leaked . . . [n]or would there be a viable way to know whether unscrupulous individuals within recipient organizations were secretly trolling through drivers’ personal information to learn about a neighbor or ex-girlfriend.”\textsuperscript{87}

Finally, the Wiles opinion advanced a conclusion that can be applied to most cases alleging violations of DPPA by any recipient, government or private: “The interpretation most consistent with Congressional intent requires that disclosure of personal information be narrowly tailored to a specific permissible purpose.”\textsuperscript{88}

II. SEVENTH CIRCUIT ANALYSIS OF DPPA EXCEPTIONS CLAUSE

In most of the litigation surrounding DPPA, the courts have addressed federalism issues and disclosure of personal information to private parties, but the issue of disclosure to or use by public entities has seldom arisen.\textsuperscript{89} While the district court in Senne found Palatine’s ticketing policy permissible under the subsection (b)(1) “government agency function” exception,\textsuperscript{90} the Seventh Circuit majority instead found for the Village under (b)(4): “service of process” in an administrative proceeding.\textsuperscript{91} On appeal the plaintiff had argued that

\textsuperscript{85} Id. at 1063.
\textsuperscript{86} Id. at 1068.
\textsuperscript{87} Id. at 1068-69.
\textsuperscript{88} Id. at 1076.
\textsuperscript{89} See generally Buckman, supra note 53.
\textsuperscript{90} Senne, 645 F.3d at 921.
\textsuperscript{91} Id. at 923-24.
the Village’s public display of his information was “not inextricably tied to its ability to issue, serve, or enforce parking citations.” In affirming dismissal of the complaint, the Seventh Circuit majority concluded that subsection (b)(4) does not dictate “best practices” to government agencies, but instead gives them carte blanche to use the information any way they choose, even if that use is not reasonable or necessary.

A. Plaintiff’s Case: The Meaning of “Use” in DPPA

The crux of Senne’s argument centered around the meaning of “use” and “disclose” as provided in subsection (b). He argued that publicly posting his private information on a parking ticket was not among the “uses” contemplated by Congress when it drafted the exceptions clause; specifically, Palatine’s disclosure to a stranger was not the same as a “use” by Palatine in carrying out a law enforcement function. He contended that Palatine violated DPPA by disclosing his information “to persons or entities outside its law enforcement agency.” Senne further argued that Palatine’s disclosure was more dangerous than those that facilitated the notorious incidents preceding DPPA, because an individual did not have to take any steps to obtain his information—the Village made it “immediately available” on a public street, thus “facilitating criminal activity.” The ticketing policy “is priceless to identity thieves” who get “a treasure trove of

93 Senne, 645 F.3d at 924.
95 Id. at 6-7 (arguing that “obtain,” “use,” and “disclose” as defined in the law were distinct acts that each required a permissible use independent of each other).
96 Id. at 6.
97 Id. at 8.
98 Id. at 19.
free information” from the Village,99 made all the more eye-catching by the bright yellow form of the citation.100

Senne also argued that the Village was making a redisclosure of his information as defined under the Act, which is further restricted by subsection (c):101 “Does Palatine have any greater right to disclose ‘personal information’ it receives from ‘motor vehicle records’ than the [states] that collect the information have themselves?” he asked.102 He argued that if someone made a direct in-person request to the Village, it would never release to them the same information which it knowingly prints on a parking citation and “slap[s] . . . on the windshield,” viewable by any passerby.103 “Palatine’s actions are a clear violation of the letter and spirit of DPPA and the core . . . principles [on] which all privacy laws are based.”104

In its reply, Palatine argued that the only person alleged to have actually seen the ticket was Senne himself, and that it did not “knowingly” place the ticket on his windshield for third parties to use.105 Palatine argued the ticket was an administrative complaint.106 Noting that the Illinois Supreme Court has recognized parking tickets as complaints,107 it defended its practice: “the relevant inquiry [under DPPA] is not whether a defendant used the information permissibly, but whether he had a permissible purpose.”108 But does the law so distinguish between use and purpose? Only the Third Circuit seems to

99 Id. at 9 (noting that in the United States, a driver’s license is the primary source of identification).
100 Id. at 12-13.
102 Brief of Plaintiff-Appellant, supra note 94 at 15 (also arguing “if the Illinois secretary of state can’t post personal information from motor vehicles, neither can Palatine.” Id. at 18).
103 Id. at 19.
104 Id. at 27.
106 Id. at 15-19.
107 Id. at 16.
108 Id. at 20.
have distinguished “permissible use” from “permissible purpose,” finding the fact that a party seeking information may have a permissible purpose in doing so does not make any use it then makes of the information permissible.109

B. Majority’s Analysis

The three-judge panel of Easterbrook, Ripple, and Flaum unanimously reversed the district court’s finding that the parking ticket was not a disclosure as defined in the Act, but split over whether it was permitted by the statute.110 Writing for himself and Judge Easterbrook, Judge Joel M. Flaum explained that in examining the plain language of the statute to discern legislative intent, the court had to look at the words and their meaning in the context of the statutory scheme.111 However, this was not borne out by the reasoning that followed. Significantly, nowhere in the opinion did the majority discuss the policy or purpose behind DPPA.112

After citing the subsection (b)(4) exception “for use in connection with . . . service of process,” Judge Flaum noted that a parking citation constitutes service of legal process under both Illinois law and Palatine

109 Pilcher, 542 F.3d at 395. Does the assumption that a person has violated the law (by getting a parking citation) make it more acceptable for a governmental entity to “use” the information in ways it could not otherwise? Palatine in its answer brief referred to the plaintiff as a “ticket scofflaw” who was looking to skirt his fine and get a “payday.” Brief of Defendant-Appellee, supra note 105 at 5. (This was factually erroneous as: (1) plaintiff claimed he did pay his fine, and (2) a scofflaw is generally defined not as a person who receives a fine, but who fails to pay one; See Dictionary.com: “a person who flouts the law, especially one who fails to pay fines owed,” http://dictionary.reference.com/browse/scofflaw?=t. Plaintiff claimed he was not aware he was parking illegally. Reply Brief of Plaintiff-Appellant, supra note 92 at 6.) The implication is that plaintiff deserved the public shaming for parking where he was not supposed to, and therefore had no right to complain about a violation of privacy.

110 Senne, 645 F.3d at 925 (Ripple, J., dissenting).
111 Id. at 922.
112 Id., et seq.
municipal ordinance. “Because affixing the parking citation to Senne’s vehicle constituted service of process, disclosing personal information in the citation did not violate the DPPA,” he concluded. Judge Flaum rejected the idea that the language in subsection (b) is ambiguous and noted the irony that as the Act is written, a permissible use could constitute an unlawful disclosure of otherwise protected information. He also rejected Senne’s arguments about the recklessness and senselessness of Palatine’s policy: “The statute does not ask whether the service of process reveals no more information than necessary to effect service, and so neither do we.”

The majority similarly rejected Senne’s redisclosure argument, stating that even if the act of putting the citation in the mail amounted to a redisclosure, it would be Senne himself doing the redisclosing and not the Village. This analysis fails to consider the idea that the initial disclosure of the information was made by the state to Palatine as an “authorized recipient,” and Palatine’s act of placing the information in a public place was not also a disclosure, but a redisclosure that should be subject to the Act’s restrictions on redisclosures.

C. Judge Ripple’s Dissent

In an impassioned dissent, Judge Kenneth Ripple accused the majority of “significantly frustrating” the intent and purpose of Congress. Calling Palatine’s disclosure “excessive,” he asserted that

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113 Id. at 923, citing 625 ILL. COMP. STAT. 5/11 208.3(b)(3) and Village of Palatine Ordinance 2-707(b)(3).
114 Id. at 924.
115 Id.
116 Id.
117 Id. at 924-25.
118 See 18 U.S.C.A. §2721(c) (requiring that redisclosure also be for one of the fourteen permitted purposes and that the rediscloser keep records of whom the information was released to for five years. Of course, it would be impossible for Palatine to accomplish this in the context of a parking ticket, which further supports the idea that it effects an impermissible redisclosure).
119 Senne, 645 F.3d at 926 (Ripple, J., dissenting).
its use of Senne’s information was not protected by either the (b)(1)
law enforcement function or (b)(4) service of process exceptions, as
such information is “of no consequence” for the purpose of issuing a
ticket.\(^{120}\) He accused the majority of “largely ignor[ing] … the very
problem that Congress sought to address.”\(^{121}\) In adding the exceptions
to the statute, Judge Ripple argued, Congress had attempted to strike a
balance between an individual’s privacy and security interests and the
legitimate operational needs of government, which the majority had
misconstrued as “administrative convenience.”\(^{122}\) He argued that
Congress had contemplated disclosures that were “reasonable” in
effecting a permitted use, and to conclude otherwise would infer that it
deliberately intended to frustrate the purpose of the statute.\(^{123}\) The
information disclosed on Senne’s ticket bore “no reasonable
relationship to the purpose” of the ticket, which is to notify a vehicle
owner that he is financially liable for a violation: \(^{124}\) “Congress did not
intend that the statutory exceptions be divorced, logically or
practically, from the purpose of the statute . . . [w]e should not ascribe
to Congress the intent to sanction the publication of \textit{any and all}
personal information through the invocation of an exception”\(^ {125}\)
(emphasis in original).

To support his position, Judge Ripple quoted Sen. Harkin on the
subject of excessive disclosure:

\begin{quote}
In appropriate circumstances, law enforcement agencies may
\textit{reasonably} determine that disclosure of this private
information . . . will assist in carrying out the function of the
\end{quote}

\(^{120}\) \textit{Id.} at 925.
\(^{121}\) \textit{Id.} at 926.
\(^{122}\) \textit{Id.} at 927.
\(^{123}\) \textit{Id.} at 926-27.
\(^{124}\) \textit{Id.} at 926. In response, Judge Flaum’s opinion faulted the dissent for not
providing a “textual foundation for its interpretation of the statute, which Congress
of course remains at liberty to amend.” \textit{Id.} at n.1.
\(^{125}\) \textit{Id.} (citing the Seventh Circuit’s previous holding in \textit{Saukstelis v. City of Chicago}, at 1174 that a license plate number alone uniquely identifies a person).
\(^{126}\) \textit{Id.}
agency . . . However, this exception is not a gaping loophole in the law.\textsuperscript{127}

Scathing in his criticism, Judge Ripple warned that the consequences of the majority’s decision were not theoretical: “An individual seeking to stalk or rape can go down a street where overnight parking is banned and collect the home address and personal information of women whose vehicles have been tagged … [t]he police, in derogation of the explicit intent of Congress, effectively [have] done his work for him in identifying potential victims.”\textsuperscript{128} He added that the revealing of home addresses was the most egregious form of unreasonable disclosure, as it was the exact thing Congress had sought to prevent.\textsuperscript{129} Moreover, the majority’s decision had given “shelter” to “less sophisticated police departments, more prone to bureaucratic convenience . . . consequently, their communities will incur horrendous crimes of violence that would not otherwise have occurred.”\textsuperscript{130}

Judge Ripple did not address in his dissent the disclosure/redisclosure argument raised by Senne, nor the plain meaning of “use,” but focused almost entirely on the intent and purpose of Congress.

\subsection*{D. En Banc Rehearing}

On September 13, 2011, the Seventh Circuit granted Senne’s petition for a rehearing \textit{en banc} and vacated the panel decision.\textsuperscript{131} The \textit{en banc} rehearing was held on February 9, 2012.\textsuperscript{132} In his petition,\textsuperscript{133}

\begin{itemize}
  \item \textsuperscript{127} \textit{Id.} at 926, n.2 \textit{(quoting 139 Cong. Rec. S15958 (daily ed. Nov. 17, 1993) (statement of Sen. Harkin)).}
  \item \textsuperscript{128} \textit{Id.} at 927.
  \item \textsuperscript{129} \textit{Id.} at 928.
  \item \textsuperscript{130} \textit{Id.}
  \item \textsuperscript{131} Order, Senne v. Village of Palatine (7th Cir. Sept. 13, 2011) (No. 10-3243).
  \item \textsuperscript{132} En Banc Reh’g Oral Arguments, Senne v. Village of Palatine, No. 10-3243 (Feb. 9, 2012), Seventh Circuit Website: http://www.ca7.uscourts.gov/tmp/HA1FG9EH.mp3 (audio).
\end{itemize}
Senne argued that the court’s holding that Palatine’s practice was legal under state and local law characterizing parking citations as service of process was in conflict with the U.S. Supreme Court in *Reno v. Condon* and the Seventh Circuit in *Travis v. Reno*. Those cases held that DPPA pre-empts conflicting state law. He reiterated his argument that the “for use” language in the DPPA exceptions clause was in itself limiting language that requires disclosures to be “reasonably necessary” to effect a permissible purpose, and that to allow Palatine’s practice under DPPA leads to “an absurd result.”

At the rehearing, the full court appeared split on whether Palatine’s practice met the requirements for permissible use. Judge Richard Posner accused Senne of asking the court to create a “gigantic jurisprudence” in connection with DPPA and suggested the law should instead be modified by Congress. Judge Posner expressed skepticism that members of the public would actually misuse the information printed on parking tickets. He and Judge Diane Sykes seemed to come down on the side of what Judge Ripple’s dissent had called “administrative convenience” and defended the practice as an identification tool for the court. If law enforcement can identify an offender in a charging document, Judge Sykes argued, then a parking ticket is no different from any charging document that initiates the court process. Municipal practices “vary from place to place,” she

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133 Petition of Plaintiff-Appellant for Reh’g at 1, Senne v. Village of Palatine, (7th Cir. July 25, 2011) (No. 10-3243 ), (arguing that the majority in any event had misapplied the state statute it relied upon, in that the statute does not actually equate a parking ticket with an administrative complaint or service of process. *Id.* at 8.).
134 *Id.* at 4-5.
135 *Id.* at 11.
136 En banc reh’g, *supra* note 132.
137 *Id.*
138 *Id.* (asking Senne’s counsel “Have you noticed people wandering around and peeking under parking tickets?” and adding “your imagination is running wild.”).
139 *Id.; Senne*, 645 F.3d at 927 (Ripple, J., dissenting).
140 En banc reh’g, *supra* note 132.
added. Judge Ilana Rovner noted the absence of language in the Act requiring the use of only “necessary” information. Other judges said there are varying views of what is “reasonable.”

On the other hand, some of the judges raised the specter of the crimes that precipitated the Act’s passage and others such as identity theft. Judge Diane Wood was the harshest critic of the Village’s position. She allowed that name and address “might be pertinent” to a parking ticket, but not height, weight, sex or eye color, which “does not further service of process.” “Are there any limitations on how the information is used?” she demanded of Palatine. “Can you publish a person’s information in legal notices in a newspaper or on a website? I don’t see why most of this information is necessary for serving process. I would think the way to read the statute is that [disclosing] each one of these [pieces of information] needs to be justified under the (b)(4) exemptions.” Palatine’s counsel argued that much of the personal information in question is publicly available for purchase anyway on such websites as Whitepages.com and Westlaw. However, Judge John Tinder noted that Illinois does not require such information to be included on a summons, and Judge David Hamilton asked about the “for use” phrase in (b)(4), expressing doubt about the usefulness of disclosing height, weight, and other personal information.

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141 Id.
142 Id.
143 Id.
144 Id. Judge Wood in particular hammered away on this point, invoking an “identity theft crisis.”
145 Id.
146 Id.
147 Id.
148 Id. Judge Wood suggested that a 12(b)(6) motion to dismiss was not the proper stage of litigation to address the issues raised by both plaintiff and defendant, asking Palatine’s counsel “which is worse, an influx of litigation or an influx of violence?”
149 Id.
150 Id.
III. SUPPORT FOR A NARROWER INTERPRETATION OF SUBSECTION 2721(B)

A narrower interpretation of §2721(b), one that would allow relief for Jason Senne and the plaintiffs in the bulk distribution cases, is supported by court opinions and accepted canons of statutory construction. It is also supported by the Seventh Circuit’s own prior interpretations of DPPA and the powers of a law enforcement agency in enforcing motor vehicle laws.

A. Privacy Interests in Personal Identifying Information

In Reno v. Condon, the only case in which the United States Supreme Court has considered DPPA, the Court did not address informational privacy issues.\(^\text{151}\) The Court has recognized an individual privacy interest in avoiding disclosure of certain personal matters,\(^\text{152}\) but not in one’s name, address, phone number or the other types of information typically contained in state motor vehicle records.\(^\text{153}\) However, the proliferation of technology to collect and disseminate information and its ramifications on privacy have caused concern to Congress and the courts.\(^\text{154}\) In Walls v. City of St. Petersburg, the Fourth Circuit cautioned that:

\(^{151}\) See Maginnis, supra note 71 at 820.

\(^{152}\) Whalen v. Roe, 429 U.S. 589, 598-600 (1977) (recognizing a privacy interest in medical information).

\(^{153}\) See Condon v. Reno, 155 F.3d 453 (4th Cir. 1998); Walls v. City of St. Petersburg, 895 F.2d 188 (4th Cir. 1990) (finding a privacy interest in financial information, but not in information contained in public records, since there can be no expectation of privacy in it).

technological advances have provided society with the ability to collect, store, organize, and recall vast amounts of information about individuals in sophisticated computer files. Although some of this information can be useful and even necessary to maintain order and provide communication and convenience in a complex society, we need to be ever diligent to guard against misuse. Some information still needs to be private, disclosed to the public only if the person voluntarily chooses to disclose it.

In *Whalen v. Roe*, the Supreme Court warned of “the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files . . . much of which is personal in character and potentially embarrassing or harmful if disclosed.” In dicta that has particular significance to the issues raised with DPPA, the Court reasoned that the right to collect and use such data for public purposes is typically accompanied by “a concomitant statutory or regulatory duty to avoid unwarranted disclosures . . . recognizing that in some circumstances that duty arguably has its roots in the Constitution.” Here, it can be argued that although Palatine had the right to obtain and use Senne’s data to enforce its parking laws, it also had a statutory duty under DPPA to avoid unwarranted disclosure of his information.

Writing for the majority in *United States Department of Justice v. Reporters Committee for Freedom of the Press*, Justice John Paul Stevens expanded on the dicta of *Whalen*: “The compilation of otherwise hard-to-obtain information alters the privacy interest

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155 *Id.*

156 *Whalen*, 429 U.S. at 605. *Also see* Maginnis, *supra* note 73 at 817 (arguing that a compilation of information about an individual—such as name, address, social security number, etc.—is more dangerous in the wrong hands than a single piece of information, since someone can more easily use a collection of information to impersonate an individual or do other harm).

157 *Id.* (emphasis added). *See also id.* at 607 (Brennan, J., concurring) (“The central storage and easy accessibility of computerized data vastly increase the potential for abuse of that information . . .”).
implicated by disclosure of that information … [in Whalen we held] only that the Federal Constitution does not prohibit such a compilation.” Justice Stevens noted that even though “in an organized society, there are few facts that are not at one time or another divulged to another,” the Court has recognized “the privacy interest in keeping personal facts away from the public eye,” including “the nondisclosure of certain information even where [it] may have been at one time public.”

In Wolfe v. Schaefer, the Seventh Circuit interpreted Whalen to recognize a “constitutional right to the privacy of medical, sexual, financial, and perhaps other categories of highly personal information . . . that most people are reluctant to disclose to strangers,” which is “defeasible only upon proof of a strong public interest in access to or dissemination of the information.” However, that case dealt mainly with a plaintiff’s personal reputation. In Best v. Berard, a 2011 DPPA case also before Judge Kennelly of the Northern District, the defendants, producers of a reality police television show, argued that the plaintiff, who was filmed being pulled over and arrested, had no right of privacy in her driver’s license number because it is publicly available information. The plaintiff countered that the Supreme Court “foreclosed” this argument in Reporters Committee because of its reasoning that a “compilation of otherwise hard-to-obtain information” may be entitled to heightened privacy protection even though it consists only of “public records that might be found after a diligent search.” Judge Kennelly, however, observed that Reporters Committee was limited to interpreting the Freedom of Information Act and therefore did not address an expectation of privacy under the

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158 Reporters Comm., 489 U.S. at 770.
159 Id. at 763, 767, 769.
160 Wolfe v. Schaefer, 619 F.3d 782, 785 (7th Cir. 2010).
161 Id.
162 Best v. Berard, 2011 U.S. Dist. LEXIS 131572, 1-3 (N.D. Ill. Nov. 15, 2011). The court did not address the right of privacy under DPPA because the defendants argued they did not knowingly disclose under the Act, an argument the court rejected.
163 Id. at 10 (quoting Reporters Comm., 489 U.S. at 767).
Constitution.\textsuperscript{164} “[The plaintiff] does not . . . identify any other basis for a contention that she has a constitutionally protected privacy interest in [her drivers license number].”\textsuperscript{165} The plaintiff’s citing of the Seventh Circuit’s \textit{Wolfe v. Schaefer} reasoning also failed to convince the judge, who concluded: “The categories of information that the Seventh Circuit has deemed protected by the constitutional privacy right have been far more personal, such that their disclosure would lead to greater potential for embarrassment or abuse.”\textsuperscript{166}

\textbf{B. Statutory Interpretation: Plain Meaning and the “Whole Statute” Rule}

With no express recognition of a privacy interest in personal information contained in public records from either the Supreme Court or Seventh Circuit, any protection of that right must be statutory. Congress likely enacted DPPA to protect these interests partly because constitutional law, at present, does not. This section analyzes how various constructions of DPPA can support a finding for Jason Senne and hold Palatine’s policy violative of his rights under the Act.

1. Literal Interpretation

DPPA’s congressional supporters made clear that privacy and safety concerns were the driving force behind the legislation.\textsuperscript{167}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{164} Id. (quoting United States v. Cuevas–Perez, 640 F.3d 272, 284 (7th Cir. 2011) (Flaum, J., concurring)).
\item \textsuperscript{165} Id. at 11.
\item \textsuperscript{166} Id. at 9 (citing cases involving HIV infection and use of prescription drugs).
\item \textsuperscript{167} See Rep. Moran statement, \textit{supra} note 2; Sen. Boxer statement, \textit{supra} note 2; \textit{See also} 140 CONG. REC. H2527 (daily ed. Apr. 20, 1994) (statement of Rep. Goss): “[T]he intent of this bill is simple and straightforward: We want to stop stalkers from obtaining the name and address of their prey before another tragedy occurs . . . The [DPPA] balances the legitimate public and business interests in keeping these records available with an individual driver's right to privacy”; and statement of Rep. Morella: “Allowing a government agency to aid stalkers in locating those they are harassing is untenable.”
\end{itemize}
\end{footnotesize}
Although Judge Ripple accused the Senne majority of frustrating the purpose and intent of Congress through a rigid reading of “for use in … service of process,” a pure textual reading still supports a finding for Senne. 168 “The plain language of the statute [is] the best indication of Congressional intent” 169 and in this endeavor the court looks to a word or phrase’s “common, ordinary and accepted meaning,” sometimes consulting dictionary definitions and general word usage. 170 Black’s Law Dictionary defines “for use” as “for the benefit or advantage of another.” 171 Merriam-Webster defines “use” as a verb: “(a) to put into action or service; avail oneself of (employ); (b) to carry out a purpose or action by means of”; and as a noun: “the act or practice of employing something.” 172 Palatine’s act of placing drivers’ private information on vehicles does not put that information “into action or service” in collecting parking fines, nor is Palatine “employing” it to collect fines, nor does it “benefit or advantage” Palatine in collecting fines. The Village can accomplish that by communicating directly with the offender privately. Further, even if the plain meaning of “use” were so all-encompassing as to allow for Palatine’s actions, it would run afoul of the accepted judicial axiom that a statute should be applied according to its plain meaning except when it produces absurd results. 173

A plain language reading of subsection (c) of the Act, along with Senne’s holding that Palatine’s ticket policy amounts to a “disclosure,” justifies the conclusion that Palatine, as an “authorized recipient,” is

168 See Caminetti v. U.S., 242 U.S. 470 (1917) (if text is clear, court won’t look at legislative history); See also 2A Sutherland Statutory Construction § 47:1 (7th ed.) (“the starting point in statutory construction is to read and examine the text of the act and draw inferences concerning the meaning from its composition and structure.”).
170 Sutherland, supra note 168 at § 46:1.
173 Sutherland, supra note 168 at § 46:1.
actually redisclosing the information to the public, which it may not do to parties with no permissible use themselves.\textsuperscript{174}

2. The ‘Whole Statute’ Rule

A more appropriate reading of the DPPA exceptions clause would be under the “whole statute rule,” which provides that “[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent,” therefore “each part should be construed in connection with every other part to produce a harmonious whole.”\textsuperscript{175} Thus, interpretation should not be confined to the one section to be construed (as the courts have done with §2721(b)), because “a statutory subsection may not be considered in a vacuum.”\textsuperscript{176} The Supreme Court expressed this “cardinal rule” in\textit{King v. St. Vincent’s Hospital}: “[A] statute is to be read as a whole, since the meaning of statutory language, plain or not, depends on context.”\textsuperscript{177} Under “whole statute” construction it is impossible to consider the legislative scheme of DPPA and interpret “for use” in the manner the Seventh Circuit did in\textit{Senne} and other recent federal court decisions have interpreted it.

In the 1943 case\textit{SEC v. C.M. Joiner Leasing Corp.}, the U.S. Supreme Court held that ultimately, “courts will construe the details of an act in conformity with its dominating general purpose, will read text in the light of context and will interpret the text so far as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed legislative policy.”\textsuperscript{178}

\textsuperscript{174} See 18. U.S.C.A. §2721(c); \textit{Senne}, 645 F.3d at 923.
\textsuperscript{175} Sutherland, \textit{supra} note 168 at § 46:5. \textit{See also} U.S. Nat’l. Bank of Oregon v. Indep. Ins. Agents of Am., Inc., 508 U.S. 439, 455 (1993): “Over and over we have stressed that ‘in expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.’”
\textsuperscript{176} Sutherland, \textit{supra} note 168 at § 46:5.
\textsuperscript{178} \textit{SEC v. C.M. Joiner Leasing Corp.}, 320 U.S. 344, 350–351 (1943).
3. Ambiguity in Subsection (b) and Absurd Results

An argument may also be made that the “for use in” language in subsection (b) is in fact ambiguous, given the disparity in how different courts, and dissenting opinions within those courts, have interpreted its meaning. A statute is considered ambiguous when it is susceptible to differing interpretations. When a statute’s language is ambiguous and applying it according to its plain meaning would lead to an absurd result, or there is clear evidence of contrary legislative intent, the court will “look to the legislative history of the statute to guide our interpretation.”

The legislative history of DPPA as contained in congressional statements discussed supra points to an absurd result in recent federal appeals court applications. Moreover, the freedom of municipal agencies in initiating proceedings against individuals, as championed by the Senne majority and several judges at the en banc hearing, is not threatened by limiting those agencies’ use of personal information to what is objectively reasonable. Rep. Porter Goss, a supporter of DPPA, addressed this “balancing” of interests at a House debate: “[The Act] does not prohibit legitimate business, law enforcement and governmental access to such information. The flow of information would only be denied to a narrow group of people that lack legitimate business.”

The Seventh Circuit has already stated that it would not employ a literal interpretation of DPPA in a way that leads to an absurd result. In Lake v. Neal, a 2009 DPPA case before the court, Judge Evans wrote for the majority: “Finally, we would not accept [plaintiff’s] argument even if a literal interpretation of the DPPA would seem to

179 See Sutherland, supra note 172.
180 Id.; Kelly v. Wauconda Park Dist., 801 F.2d 269, 270 (7th Cir. 1986).
182 Lake v. Neal, 585 F.3d 1059, 1060-61 (7th Cir. 2009).
compel it because that would ‘lead to an absurd result.’”

In the same opinion, the court acknowledged the Act’s legislative history: “Congress passed the DPPA in response to safety and privacy concerns stemming from the ready availability of personal information contained in state motor vehicle records.”

Displaying a person’s name, address, date of birth, and driver’s license number in a way that the information may be viewed by strangers who have no legitimate interest in it can be interpreted as an absurd result in light of the statute’s expressed purpose.

1. **Saukstelis v. City of Chicago**

The Seventh Circuit—in an opinion by Judge Easterbrook, who was in the Senne majority—has already found that a license plate number alone is sufficient to identify an offender for authorities. In *Saukstelis v. City of Chicago*, the plaintiffs challenged the city’s practice of applying the Denver boot to vehicles that had accumulated a certain number of parking tickets. They argued that because the citations included their vehicle tag numbers but not their names, they were not given proper notice. Rejecting this argument, the court found that a tag number was sufficient in itself to identify a vehicle’s owner without name:

Parking tickets effectively say: ‘Chicago, Plaintiff, versus Owner of the vehicle with License No. xxxx, Defendant.’ That identifies the parties to the suit even better than a name does. Only one person matches a given license plate, while there are many “John Smiths.” … A license number uniquely

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183 *Id.* (Plaintiffs claimed violation of DPPA because information contained in their voter registration records had been disclosed; the court held they could not rely on DPPA just because plaintiffs had registered to vote at the DMV at the time they applied for their drivers licenses.)

184 *Id.* (emphasis added).

185 *Saukstelis v. City of Chicago*, 932 F.2d 1171, 1174 (7th Cir. 1991).

186 *Id.* at 1172-73.

187 *Id.* at 1174.
identifies the person. And Chicago mails notices directly to that person, in his own name.\textsuperscript{188}

Given that the Seventh Circuit has expressed an intent not to interpret DPPA so as to produce an absurd result, has acknowledged its legislative purpose, and has concluded that a parking offender can be properly identified through his license plate number, it could easily interpret “for use in serving process” in such a way as to find Palatine’s policy impermissible under §2721(b).

\textbf{C. Wiles v. Worldwide, Judge Ripple’s Dissent, and the Risk of Identity Theft}

One of Palatine’s arguments at the February 9, 2012, \textit{en banc} hearing was that DPPA was enacted before Internet use became widespread, and that the easy access to information about people on the World Wide Web has made the nondisclosure provisions of DPPA largely irrelevant.\textsuperscript{189} Even accepting this argument, one generally still must be looking for a particular individual on the Internet, and one must already know at a minimum the person’s name, and sometimes more. Under Palatine’s parking citation policy, a stalker could follow an attractive woman until she receives a ticket, copy the information on it, and learn who she is, where she lives, and how old she is. If he went directly to the state licensing authority, even if he somehow learned her name, his request for more information about her would be denied. An identity thief could copy information from a parking ticket on any luxury car, assume that it belongs to an affluent individual, and possess enough information to open a credit account in that person’s name.

\textsuperscript{188} \textit{Id.}
\textsuperscript{189} \textit{En banc reh’g, supra} note 132.
According to the Federal Trade Commission, up to nine million Americans have their identities stolen each year.\textsuperscript{190} Common methods employed by identity thieves are rummaging through dumpsters to find discarded bills and other documents with personal identifying information, and stealing wallets.\textsuperscript{191} They then use the information to open credit card accounts, bank accounts, and utility accounts in the unsuspecting victim’s name, sometimes even fraudulently filing bankruptcy.\textsuperscript{192} The information revealed to a potential identity thief on Palatine’s parking ticket is the same information the thief would find on a person’s driver’s license retrieved from a wallet. There is also the possibility that a person’s vehicle could be stolen and receive a parking ticket while in the thief’s possession, giving the thief a windfall of private information.

The narrow interpretation of the DPPA exceptions proposed by the Missouri district court in \textit{Wiles v. Worldwide} and in Judge Ripple’s dissent in \textit{Senne} should be adopted by the Seventh Circuit and other federal courts in determining what disclosures and uses are permissible under DPPA.\textsuperscript{193} This approach reasons that “the interpretation most consistent with congressional intent requires that disclosure of personal information be narrowly tailored to a specific permissible purpose.”\textsuperscript{194} Under this view, the “for use” language in the exceptions clause would be interpreted as a use reasonable in carrying out the user’s purpose. It would not prevent any law enforcement or other municipal agency from obtaining a registered vehicle owner’s identity from a state, only require that they limit their use to that necessary to their purpose. They should not redisclose the information to another—whether identified or, in the case of \textit{Senne}, unidentified—unless the new recipient also has a permissible purpose under

\begin{itemize}
\item[\textsuperscript{191}] Id.
\item[\textsuperscript{192}] Id.
\item[\textsuperscript{193}] See \textit{Wiles}, 809 F.Supp.2d 1059 et seq.; \textit{Senne}, 645 F.3d at 926 (Ripple, J., dissenting).
\item[\textsuperscript{194}] \textit{Wiles}, 809 F.Supp.2d at 1076.
\end{itemize}
§2721(b).\textsuperscript{195} This approach would balance the personal privacy and safety concerns behind the Act’s passage with the legitimate needs of government. A more restrictive reading of what uses should be allowed under the exceptions in DPPA would be in keeping with the spirit of the law while doing no violence to the text of the statute.

CONCLUSION

With recent federal interpretation of DPPA—from the Seventh Circuit in \textit{Senne}, the Fifth Circuit in \textit{Taylor}, the Eleventh Circuit in \textit{Thomas}, along with lower court rulings—DPPA’s exceptions clause threatens to weaken and even devour the protections Congress intended to give drivers in the Act. However, legislative history, minority judicial DPPA interpretations, long-established canons of statutory construction, and Supreme Court dicta on informational privacy point to an alternative application that courts should follow if the safeguards in the Driver’s Privacy Protection Act are not to become meaningless.

\textsuperscript{195} See §2721(c) on redisclosure.