COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

NORFOLK SUPERIOR COURT
No. 2282CR0117

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

No. SJ-2024-0122

TRACEY ANNE SPICUZZA, LORENA JENKINSON, DANA STEWART LEONARD, AND PAUL CRISTOFORO

v.

COMMONWEALTH OF MASSACHUSETTS, KAREN READ, AND SUPERIOR COURT OF NORFOLK COUNTY

No. SJ-2024-0123

FREEDOM TO PROTEST COALITION, NICHOLAS ROCCO, AND JON SILVERIA

v.

COMONWEALTH OF MASSACHUSETTS, KAREN READ, AND SUPERIOR COURT OF NORFOLK COUNTY

Petitioners' Consolidated Reply in Support of Emergency Motions to Stay Order of Norfolk Superior Court and Petitions for Relief Under G.L. c. 211, § 3

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The Norfolk Superior Court issued an order banning the public from engaging in First Amendment-protected activity. Yet, the Commonwealth says these members of the public lack standing to contest that order. What a terrifying prospect for liberty, due process, and separation of powers.

The demonstrators, including the four individuals who attempted to intervene, the Freedom to Protest Coalition, and Messrs. Rocco & Silveiro, are the ones who have something to lose—they're the ones who would putatively be found in contempt and they're the ones whose speech is chilled. If they don't have standing, and Defendant Read does not devote her resources to defending the First Amendment, then judges can legislate from the bench and deprive the public of their rights without due process.[1]

1.0 Petitioners Have Standing

The Commonwealth attempts to differentiate the petitioners in the two matters, but they both have the right to challenge the Prior

[1] While the ACLU of Massachusetts filed an amicus brief with the trial court, that is not a substitute for individuals asserting their own rights. "An amicus is not a party to the litigation, but rather participates for the benefit of the court only." A.R. v. Dudek, No. 13-61576-CIV, 2014 U.S. Dist. LEXIS 193669, at *12 (S.D. Fla. Apr. 4, 2014). Thus, for example, an *amicus curie* has no standing to appeal an adverse ruling.

Restraint Zone under G.L. c. 211, § 3. The only difference is that the four intervenors first attempted to prevent the issuance of that order. Having made such an attempt would not deprive them of the independent ability to seek review of the order as the Freedom to Protest Coalition members. The Commonwealth cites to nothing that would suggest as much. In fact, if they had no right to intervene, then they have no status different from the other petitioners.

However, the Court should take this opportunity to explicitly create a right to intervene in a criminal case where the judge is being asked to issue an order not as to the defendant, but directly affecting non-parties. Non-parties are able to functionally, if not explicitly, intervene to oppose sealing of courtrooms and impoundment of records. And, they should have a mechanism to do so when a judge is asked to dictate what citizens can do on the sidewalks, on the streets, in nearby offices and cafes, and in their own homes.[2] This, of course, presumes that this Court establishes a new rule of law that a trial judge has legislative authority over the sidewalks, streets, and private property.

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[2] The Prior Restraint Zone extends into such private properties.

All petitioners have standing under G.L. c. 211, § 3, to seek this Court's superintendence. This was the mechanism used by the *Boston Globe* successfully in Globe Newspaper v. Superior Court, 457 U.S. 596 (1982). The public has no lesser First Amendment rights than the *Globe*. As the Commonwealth notes, "Parties seeking the application of G.L. c. 211, §3 must show a substantial claim of violation of substantive rights and error that cannot be remedied under the ordinary review process." (Opp. at 3). If they cannot intervene, then they cannot take an appeal from the Prior Restraint Zone order, and there is no remedy under the ordinary review process. The Commonwealth cannot have it both ways. "From an early day it has been an established principle in this Commonwealth that only persons who have themselves suffered, *or who are in danger of suffering, legal harm* can compel the courts to assume the difficult and delicate duty [of adjudicating disputes or particular issues]." (emphasis supplied). Doe v. The Governor, 381 Mass. 702, 704 (1980), quoting Kaplan v. Bowker, 333 Mass. 455, 459 (1956). Here, it is petitioners, not Defendant Read, who are in danger of being harmed by the Prior Restraint Zone order.

A trial court judge can legislate a Prior Restraint Zone, and there is no legal recourse to resist that? Nothing? If this is the Commonwealth's position, the Commonwealth must be mistaken.

2.0 The Order is Unconstitutional

The Prior Restraint Zone is an unconstitutional infringement on Petitioners' First Amendment rights. Members of the Freedom to Protest Coalition ("FPC") are not a group of Karen Read supporters—some are, but not all. This is a hotly contested and high-profile murder trial which the media and the public are closely watching—as a result, it also creates an opportunity for individuals to gain an audience, not unlike politicians who advertise outside a football game (or during the broadcast thereof). Think of the iconic sports fan who holds up a sign that says "John 3:16." It has nothing to do with the football game, but the fan knows that the cameras will be there, and her message will be amplified by proximity to crowds and media.

FPC member Suzanne Arundale wants to protest against antisemitism. FPC member Kristin Craddock wants to protest for the pro-choice/womens' rights position. FPC member Colleen Glynn Smith wants to protest against windfarms hurting wildlife. FPC member Lauren Colon wants to protest against Gov. Healy. FPC

member Beth Grunzweig wants to protest against police brutality. Some FPC members, in a meta-protest, want to protest against the creation of the Prior Restraint Zone. The Superior Court has decreed that the First Amendment is so suspended that the public cannot even protest against the suspension of the First Amendment. If this stands, this will bring such dishonor upon this Commonwealth that it should be compelled to remove "*The Spirit of America*" from its license plates.

The Superior Court made insufficient findings to justify such a restriction. Demonstrators are outside courthouses all the time, yet most judges respect their rights. No findings were made as to why a Prior Restraint Zone is needed here. While the judge made a finding (without any evidence) that "protestors have shouted at witnesses and confronted family members of the victim," that speaks nothing to the ability of Ms. Read to obtain a fair trial in the absence of the Prior Restraint Zone. Further, assume *arguendo* that this actually happened (nothing in the record supports that conclusion) then why is the entire public restrained because of some bad apples? We are now going to let the government create a prior restraint zone justified by a "heckler's veto?" We do not know who these people were, what they were protesting, nor whether this even bothered anyone. This is not a

"finding," it is a personal opinion, at best. That is not a "finding." Moreover, it creates a mechanism for the government, or anyone else, to create a speech-free zone by planting agitators. That cannot be allowed. However, proper fact-finding would have been able to at least address this issue. That is why we need fact finding, not just decrees.

Moreover, the Superior Court qualified its concerns as to potential jurors being exposed to demonstrators prior to receiving instruction from the Court—if so, then the Superior Court can give such an instruction first thing upon arrival and no further restriction would be needed. Nor did the Superior Court make any finding as to why this case merits a prior restraint on speech when thousands of other cases do not, and plenty of alternate means exist, as explained fully in the Petitions, but as completely ignored by the Commonwealth.

The Commonwealth relies on the fact that there are statutes in place that limit rights. Petitioners do not contest that the legislative process *might* create a zone that *might* itself be upheld. However, at least then the public had some input. The legislators who pass it are subject to political pressure, the public can comment before it is passed, there is debate. Here, this is not a *statute*, this is merely a *decree*.

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While Ms. Read undoubtedly has the right to a fair trial, the trial is indoors.[3] The tailoring proposed by the petitioners would protect Ms. Read's rights and the Commonwealth's legitimate exercise of power. The Commonwealth has not shown why the excesses of the Norfolk Superior Court, beyond what Petitioners propose, is insufficient. Why 200 feet? How does intruding into nearby law offices, pilates studios, and houses further Ms. Read's right to a fair trial? How do protests against animal cruelty and windfarms infringe that right? Moreover, the Commonwealth is converting the judge into a witness as to "parameters and acoustics" without any opportunity for Petitioners to challenge these concerns. Is the building and grounds of the Norfolk Superior Court that much different from any other courthouse where protests can and do occur? And, the Commonwealth has not shown that the order is even clear—is it gavel-to-gavel per day or is it from 12:01 a.m. the day empanelment starts until 11:59 p.m. the day of acquittal or sentencing?

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[3] The family and friends of Officer O'Keefe have no rights *vis a vis* the trial. Moreover, it is quite possible Ms. Read did not commit murder, so what interest would they even have in avoiding an acquittal of an innocent person?

While the Commonwealth analogizes to restrictions on electioneering, those restrictions do not limit *all speech* as the Prior Restraint Zone does. Similarly, one can protest a criminal prosecution without violating G.L. c. 268, § 13A – and if Section 13A extends to anywhere within mere *sight* of a courthouse, including inside businesses, houses, and public sidewalks across the street, then it is grossly overbroad and should be ruled unconstitutional on its face. With a wave of the hand, the Commonwealth says that the circumstances here are dissimilar from regulations regarding abortion protests, with no explanation. Further, the Commonwealth has G.L. c. 268, §§ 13A and 13B to rely upon, *if the requisite mens rea and actus reus exist*. Why does the Commonwealth need to quash all dissent, all protest, and all use of the First Amendment? The Commonwealth over-reached and the trial court erred in giving it what it wanted.

The Commonwealth is wrong that there are alternate channels of communication. As noted, this is a high profile case receiving media attention. The demonstrators, whether demonstrating about the case or otherwise, do not have the similar opportunities to attract public and media attention to their causes. And, the Commonwealth points to no actual alternate channels. If the Court can create a Prior Restraint Zone

of 200 feet from "the courthouse complex" (whatever that means) then why not 200 miles? Where does its power end? Could it ban all protest in the entire Commonwealth, and simply say "you can always protest in New Hampshire?" Simply put, the order of the Superior Court grossly infringed upon the First Amendment.

WHEREFORE, the motions for a stay of the Prior Restraint Zone order, and the petitions, should be granted and the Prior Restraint Zone Order vacated.

Respectfully submitted,

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By their attorneys,

/s/ Marc J. Randazza

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CERTIFICATE OF SERVICE

I, Marc J. Randazza, hereby certify that a true and correct copy of the foregoing document was served upon all *pro se* parties and all attorneys of record via first-class mail, postage prepaid, and electronic mail, on April 12, 2024, as follows:

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And that a true and correct copy has also been served and filed in the office of the clerk of the trial court from which the matter arose, via

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_/s/ Marc J. Randazza___
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