UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

JASON GRANT, ALLISON TAGGART, LISA PETERSON, and SAMANTHA LYONS, Plaintiffs, v. TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS, BEVERLY J. CANNONE, in her official capacity as Justice of the Superior Court, GEOFFREY NOBLE, as Superintendent of the Massachusetts State Police; MICHAEL d'ENTREMONT, in his official capacity as Chief of the Police Department of the Town of Dedham, Massachusetts, and MICHAEL W. MORRISSEY, in his official capacity as the Norfolk County District Attorney, Defendants.	Civil Action No. 1:25-cv-10770-MJJ **PLAINTIFFS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL**

NOW COME Plaintiffs Jason Grant, Allison Taggart, Lisa Peterson, and Samantha Lyons, and, pursuant to Fed. R. Civ. P. 62(d) & Fed. R. App. P. 8(a)(1) hereby move this Honorable Court, on an emergency basis, for an injunction of Judge Cannone's Order of March 25, 2025, establishing a "buffer zone" in connection with the Karen Read trial, and the enforcement thereof, pending the appeal of the Orders of April 11, 2025 (ECF Nos. 38 & 40) denying Plaintiffs' request for preliminary injunction as to the same.

This Motion is brought on an emergency basis, because every day of the First Amendment being unlawfully suppressed in Dedham, Massachusetts is irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable harm"). Hearing a motion in the ordinary course would be futile and delay the ability of the Plaintiffs to seek an injunction pending appeal from the First Circuit.

In support hereof, Plaintiff refers to the accompanying memorandum, incorporated by reference herein. Pursuant to Local Rule 7.1(a)(2), undersigned counsel hereby certify that they attempted in good faith to confer with Defendants to narrow the issues in this motion prior to filing, but were unable to do so.

WHEREFORE Plaintiffs respectfully request this Honorable Court enjoin the state court order and the enforcement thereof pending appeal.

Dated: April 17, 2025.

Respectfully Submitted,

/s/ Marc J. Randazza
Marc J. Randazza, BBO# 651477
mjr@randazza.com, ecf@randazza.com
Jay M. Wolman, BBO# 666053
jmw@randazza.com
RANDAZZA LEGAL GROUP, PLLC
30 Western Avenue
Gloucester, MA 01930
Tel: (978) 801-1776

Mark. Trammell
(*Pro Hac Vice*)
Center for American Liberty
P.O. Box 200942
Pittsburgh, PA 15251
Tel: (703) 687-6200
MTrammell@libertyCenter.org

Attorneys for Plaintiffs.

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JASON GRANT, ALLISON TAGGART, LISA PETERSON, and SAMANTHA LYONS, Plaintiffs, v. TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS, BEVERLY J. CANNONE, in her official capacity as Justice of the Superior Court, GEOFFREY NOBLE, as Superintendent of the Massachusetts State Police; MICHAEL d'ENTREMONT, in his official capacity as Chief of the Police Department of the Town of Dedham, Massachusetts, and MICHAEL W. MORRISSEY, in his official capacity as the Norfolk County District Attorney, Defendants.	Civil Action No. 1:25-cv-10770-MJJ **MEMORANDUM IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL**

Plaintiffs move this Court for an injunction pending appeal pursuant to Fed. R. Civ. P. 62(d) & Fed. R. App. P. 8(a)(1).[1] This Motion is brought on an emergency basis, because every day of the First Amendment being unlawfully suppressed in Dedham, Massachusetts is irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable harm"). Hearing a motion in the ordinary course would be futile and delay the ability of the Plaintiffs to seek an injunction pending appeal from the First Circuit.

Given the factual exigency—jury selection has concluded and opening remarks begin April 21—and the fact that the Court's analysis of the Buffer Zone Order was incomplete and reversible,

[1] Plaintiffs originally sought such in the alternative when they filed their motion for temporary restraining order and for preliminary injunction (ECF No. 2), but the Court did not adjudicate that part of the request.

an injunction pending appeal will be requested from the First Circuit unless this Honorable Court decides to grant it now, as it should.

1.0 Legal Standard

An injunction pending appeal is proper if the movant makes "a strong showing that they are likely to succeed on the merits, that they will be irreparably injured absent emergency relief, that the balance of the equities favors them, and that an injunction is in the public interest." *Together Emples v. Mass Gen. Brigham Inc*., 19 F.4th 1, 7 (1st Cir. 2021). The test is nearly identical to the standard test for a preliminary injunction. *See Winter v. NRDC, Inc*., 555 U.S. 7, 20 (2008). Just as Plaintiffs believe the Court should have granted the preliminary injunction, an injunction pending appeal is warranted.

2.0 Analysis

Plaintiffs respectfully differ with the Court regarding the sufficiency of its First Amendment analysis,[2] however that is not the glaringly clear issue that makes it nearly certain that the Order will be reversed on appeal: That is found in the Court's Fourteenth Amendment Due Process analysis which ignored a key issue. That issue, "where does Judge Cannone derive the power to impact the First Amendment outside her courthouse?," was clearly raised by Plaintiffs in their briefing. *See* ECF No. 3 at 15. The government simply ignored it, waiving opposition. *See, e.g., Muniz v. Rovira,* 373 F.3d 1, 4 (1st Cir. 2004), quoting *Nat'l Ass'n of Soc. Workers v. Harwood,* 69 F.3d 622, 627 (1st Cir. 1995) (holding that it is "transparently clear that the raise-or-waive rule can neither be ignored nor brushed aside as 'a pettifogging technicality or a trap for the indolent'").

[2] Plaintiffs will also challenge the First Amendment analysis on appeal, focusing primarily on the lack of narrow tailoring. However, they do not waive any of their First Amendment arguments and incorporate their motion for preliminary injunction by reference.

A judge can certainly control her own courtroom. She can almost certainly balance the requirements of the Sixth Amendment and the First Amendment in the hallways of the courthouse and on the courthouse steps. However, few analyses of First Amendment violations start with "what authority did the censor have at all?" Due process requires a court to have general or specific jurisdiction over a defendant to avoid "offend[ing] traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. State of Wash.*, 326 U.S. 310, 316 (1945) (citations omitted). Similarly, jurisdiction typically does not attach until service of a writ or other process. *Chisholm v. Gilmer*, 299 U.S. 99, 102-103 (1936). In fact, there is no reported case in which a judge simply decided that she was the ruler by fiat over any territory, both public and private, and any person outside her courthouse, irrespective of jurisdiction.[3] Does this Court have jurisdiction over nonparties posting signs in the windows of the Envoy Hotel, or over protesters on Sleeper Street or on Seaport Boulevard? If this Court has that power over those places, it is asked to reveal the authority for this power that has escaped being enumerated or defined since the foundation of the Republic. The obvious answer, of course, is: it does not, nor does Judge Cannone.

The Court will recall that the "Compelling Governmental Interest" justifying the imposition of the Buffer Zone was to protect Karen Read's Sixth Amendment right to a fair trial. This claim lacks credibility. Ms. Read did not seek the imposition of a prior restraint (or even a purported content-neutral regulation of speech); the Commonwealth, which is trying to imprison her, did. *See,* ECF No. 1-3, Commonwealth's Motion for Buffer Zone and Order Prohibiting Signs or Clothing in Favor of Either Party or Law Enforcement. Nevertheless, let us take this claim at face value. No matter how compelling of a governmental interest may exist, that does not

[3] To suggest otherwise would mean that Judge Cannone's order is a general warrant that leaves "to the discretion of the executing officials the decision as to which persons should be arrested[,]" an affront to the Fourth Amendment. *Steagald v. United States*, 451 U.S. 204, 220 (1981).

mysteriously nor spontaneously create new powers where none exist. Perhaps if a government authority *with the authority* over the public sidewalks created a regulation that promoted this interest, it could be held to meet the relevant level of scrutiny. The Town of Dedham, for example, can lawfully require parade permits for the use of its streets. But the Fourteenth Amendment at least requires that the government official, no matter which branch of government she inhabits, have the power to do what Judge Cannone did. There is no such power here, and the First Circuit will not likely skip over this key question.

The Court also erred in its Due Process analysis that the Fourteenth Amendment right to notice and an opportunity to be heard had been satisfied where Judge Cannone considered an unsolicited email from unnamed individuals, complaining about everything *except* the right to a fair trial. *See* ECF No. 1-4, Memorandum of Decision and Order on Commonwealth's Motion for Buffer Zone and Order Prohibiting Signs or Clothing in Favor of Either Party or Law Enforcement, at 2 n. 2; ECF No. 22, Affidavit of Assistant D.A. Caleb J. Schillinger, at 58-59; ECF No. 38, Memorandum and Order on Plaintiffs' Motion for Temporary Restraining Order, at 9-10. This is despite the fact that Judge Cannone had previously determined that protestors had neither the right intervene nor be heard, a position backed up by the Commonwealth. But neither Judge Cannone nor this Court have answered the very first question – from where did Judge Cannone derive the power she is exercising? She has no more power over the sidewalks beyond the courthouse than she has over Bunker Hill, the Berkshires, or the Alps. Therefore, right there due process slams to a grinding halt. However, even glossing over that question, the Fourteenth Amendment weeps at any notion that due process is satisfied by an unsigned, unsworn email of grievances. If so, then all any immigrant caught up in the recent dragnet needs for due process is an email from an anti-immigrant organization calling for their expulsion. Presto! Instant Due Process!

The right to procedural Due Process is a serious thing, and required serious analysis. This right is protected by the Fourteenth Amendment, which reads, in relevant part: "No state shall . . . deprive any person of life, liberty, or property, without due process of law. . . ." The Massachusetts Constitution also protects procedural due process. *Duarte v. Commissioner of Revenue*, 451 Mass. 399, 412 n.20 (2008) (quoting *Pinnick v. Cleary*, 360 Mass. 1, 14 n.8 (1971)) (holding that "Part II, c. 1, § 1, art. 4, of the Massachusetts Constitution, and arts. 1, 10 and 12 of its Declaration of Rights, are the provisions in our Constitution comparable to the due process clause of the Federal Constitution").

In both the U.S. and Massachusetts Constitutions, the "fundamental requirement of due process is notice and the opportunity to be heard at a meaningful time and in a meaningful manner." *Id*. at 412 (quotation marks and citation omitted). "[T]he specific dictates of due process generally require[] consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedure used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also Aime v. Commonwealth*, 414 Mass. 667, 675 (1993) ("the individual interest at stake must be balanced against the nature of the governmental interest and the risk of an erroneous deprivation of liberty or property under the procedures which the State seeks to use").

In this case, Judge Cannone did not provide notice to any of the Plaintiffs regarding her intent to hold a hearing on (a) whether she had the power to decree *anything* over non-parties, (b) whether she had the power to impose a Buffer Zone, (c) where she allegedly obtained that power,

and (d) the interests of the protesters. Judge Cannone might have taken the additional step of inviting participation. After all, the protesters were already standing outside holding signs criticizing her. However, she did not do that. She had previously slammed the courthouse door to anyone who wanted to intervene. Instead, she took the word of the Commonwealth, with no adversarial proceeding at all, and used the hearsay pretext of her hand-selected jury foreman's claims that there was "noise," warranting a wholesale disregard of the First and Fourteenth Amendments. Obeying the Constitution might be inconvenient for courts, but that is why it exists.

Judge Cannone, to quash protests that criticize her, decreed that she should not be forced to bear the indignity of people protesting her where she can see or hear them. She does not have that power, and her attempt to create it for herself is offensive to the U.S. and Massachusetts Constitutions. This Court cannot allow her to usher in a new era of First Amendment jurisprudence – where a judge can simply engage in land use regulation, without authority, *i.e.* without due process. If a judge is permitted to isolate herself from any public criticism, why shouldn't every citizen have the right to declare "I have the right to prohibit any criticism of my actions that I find unwarranted or unpleasant?"

Strangely enough, that is what this Court held was sufficient to satisfy due process – some business owners near the courthouse complaining that they didn't like the protesters. Plaintiffs, the ones affected by the order, were the ones entitled to be heard by a court with jurisdiction over them. This Court erred. Plaintiffs, therefore, request that it grant the instant Motion for injunctive relief pending appeal while they take this issue to the U.S. Court of Appeals for the First Circuit.

Dated: April 17, 2025.

Respectfully Submitted,

/s/ Marc J. Randazza

Marc J. Randazza, BBO# 651477
mjr@randazza.com, ecf@randazza.com
Jay M. Wolman, BBO# 666053
jmw@randazza.com
RANDAZZA LEGAL GROUP, PLLC
30 Western Avenue
Gloucester, MA 01930
Tel: (978) 801-1776

Mark. Trammell
(*Pro Hac Vice)*
Center for American Liberty
P.O. Box 200942
Pittsburgh, PA 15251
Tel: (703) 687-6200
MTrammell@libertyCenter.org

Attorneys for Plaintiffs.