UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 25-cv-10770

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 Police Department of the Town of Dedham, Massachusetts, and MICHAEL W. MORRISEY, in his official capacity as the Norfolk County District Attorney,

Defendants.

STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION

INTRODUCTION

By this action, Plaintiffs seek to have this Court belatedly enjoin the modest expansion of a buffer-zone order issued by a Massachusetts Superior Court judge for the *Commonwealth v. Karen Read* murder trial. The state-court trial judge, Beverly J. Cannone, issued the buffer-zone order on March 25, 2025, following a hearing on the issue in open court. The new buffer-zone order modestly expands a previous buffer-zone order that was issued by Judge Cannone before the first trial, which took place in 2024 and ended in a mistrial. The first buffer-zone order was upheld by the Massachusetts Supreme Judicial Court (SJC) against a First Amendment challenge

in *Spicuzza v. Commonwealth*, 494 Mass. 1005 (2024) (per curiam). For the reasons set forth below, in particular that the likelihood of success on the First Amendment claim is non-existent given that the order is content-neutral nature and does not restrict speech based on its message, that it is narrowly tailored to restrict noise from infringing on the defendant's right to a fair trial, and that it leaves open alternatives given the order's limited scope, this Court should deny Plaintiffs' request for a temporary restraining order or preliminary injunctive relief.

BACKGROUND

In March 2024, during the first state-court trial in *Commonwealth v. Karen Read*, the Commonwealth moved for an order barring demonstrations within a buffer-zone of 500 feet around the Dedham courthouse complex and prohibiting certain items from being worn or displayed inside the courthouse.[1] A group of individuals moved to intervene in the case to oppose the Commonwealth's request.[2] And the American Civil Liberties Union of Massachusetts, Inc. ("ACLUM") sought leave to file an amicus curiae memorandum, essentially opposing the request.[3] Ms. Read took no position on the matter.[4]

Following a hearing, the Superior Court denied the motion to intervene, granted the ACLUM leave to submit its memorandum (which the court noted it had read), and granted the request for a buffer zone but only in part, instead ordering a smaller buffer ordered that:

> No individual may demonstrate in any manner, including carrying signs or placards, within 200 feet of the courthouse complex during trial of this case, unless otherwise ordered by this Court. This complex includes the Norfolk Superior courthouse building and the parking area behind the Norfolk County Registry of Deeds building. Individuals are also prohibited from using audio enhancing devices while protesting . . . [and] . . . no individuals will be permitted to wear or exhibit any buttons, photographs, clothing, or insignia, relating to the

[1] Commonwealth's Motion for Buffer Zone and Order Prohibiting Signs or Clothing in Favor of Either Party or Law Enforcement, at 2 (Dkt. 1-3).
[2] Id.
[3] Id.
[4] Id.

> case pending against the defendant or relating to any trial participant, in the courthouse during the trial. Law enforcement officers who are testifying or are members of the audience are also prohibited from wearing their department issued uniforms or any police emblems in the courthouse.[5]

The individuals who had been denied permission to intervene then filed a petition for extraordinary relief pursuant to Mass. Gen. Laws c. 211, § 3, challenging the trial court's denial of their motion to intervene as well as the buffer zone itself.[6] In addition, an association of individuals who wanted to demonstrate within the buffer zone filed a petition for relief under the same statute.[7] The Commonwealth opposed both petitions, while Ms. Read again took no position.[8]

On April 12, 2024, a single justice of the SJC denied both petitions.[9] Characterizing the Superior Court's decision on the motion to intervene as "an ordinary procedural ruling," he concluded that it did not warrant the exercise of the SJC's extraordinary power of superintendence and denied relief as to that aspect of the first petition.[10] Moving to the merits and noting "that the petitioners ha[d] standing to challenge the buffer zone order pursuant to G. L. c. 211, § 3, where they allege[d] that the buffer zone order infringes their First Amendment rights," the single justice determined that the buffer zone was a content-neutral and reasonable time-place-and-manner restriction that was narrowly tailored to a significant government interest and that left open ample alternative avenues for communication.[11]

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[5] Id. at 2 (quoting the first buffer-zone order).
[6] Id. Chapter 211, section 3 of the Massachusetts General Laws confers upon the Supreme Judicial Court "a general superintendence power that permits, among other things, review of interlocutory matters in criminal cases only when substantial claims of irremediable error are presented and only in exceptional circumstances, where it becomes necessary to protect substantive rights." *Read v. Norfolk Cnty. Superior Ct.*, No. 25-1257, -- F.4th --, 2025 WL 926289, at *1 (1st Cir. Mar. 27, 2025) (quotations and ellipses omitted).
[7] Dkt. No. 1-3, at 2-3.
[8] Id. at 3.
[9] Id. at 3; Affidavit of Assistant District Attorney Caleb Schillinger ("Schillinger Aff."), Ex. 1, which is filed in support of this Opposition.
[10] Id.
[11] Id.

The petitioners then appealed the single justice's rulings to the full SJC.[12] Again, the Commonwealth opposed relief, and Ms. Read took no position.[13] On April 26, 2024, the SJC issued an order affirming the single justice's judgment, and it issued an explanatory opinion on May 2, 2024.[14] 494 Mass. 1005 (2024)(per curiam). The SJC held that the single justice did not commit an error of law or abuse his discretion in deciding that the intervention request did not warrant the exercise of the court's extraordinary superintendence power.[15] And as to the petitioners' constitutional arguments, the SJC concluded that the buffer zone was content-neutral, not a prior restraint, narrowly tailored to serve a significant government interest, and permitted adequate alternative means of communication.[16]

The SJC having upheld the buffer zone, Ms. Read's trial continued, "spanning eight weeks of evidence, [and] involving seventy-four witnesses and 657 exhibits."[17] The 200-foot buffer zone adequately prevented any demonstrations on the southern, eastern, and northern sides of the courthouse complex from interfering with the proceedings inside the courthouse.[18] The western side of the courthouse, however, was different. On that side, there are larger open spaces that extend beyond 200 feet from the courthouse.[19] Groups of demonstrators gathered in those areas and engaged in coordinated shouting and chanting, which shouts and chants could be heard inside the courthouse.[20] In addition, despite the 200-foot buffer zone, individuals were able to position themselves close enough to nearby streets such that they were able to encourage

[12] Dkt. No. 1-3, at 3.
[13] Id.
[14] Id.
[15] Id.
[16] Id.
[17] *Read v. Commonwealth*, 495 Mass. 312, 313 (2025)(affirming trial court's denial of defendant's motion to dismiss after court declared a mistrial).
[18] Dkt. No. 1-3, at 5.
[19] Id.
[20] Id. at 6.

passenger and commercial vehicles to honk their horns as a form of demonstration.[21] The honking, especially from the airhorns of commercial vehicles, could easily be heard inside the courthouse.[22] The Massachusetts State Police issued more than two dozen citations for horn violations and other motor-vehicle offenses in connection with the trial.[23]

At the conclusion of the evidence, the jury deliberated for five days.[24] They could hear the protesters yelling and screaming during deliberations.[25] They sent progressively insistent notes to the judge about their inability to reach a unanimous verdict.[26] In their third and final note, "the jury stated that 'some members firmly believed that the evidence surpasses the burden of proof establishing the elements of the charges,' while others did not."[27] "They described their views as rooted in 'sincere adherence to their individual principles and moral convictions,' and stated that further deliberation would be 'futile' and would 'force them to compromise these deeply held beliefs.'"[28] After receiving the final note, the judge declared a mistrial.[29] The Commonwealth then elected to re-try Ms. Read on the charges.

In advance of Ms. Read's retrial, on March 17, 2025, the Commonwealth filed a motion asking the court to impose a buffer zone and prohibit individuals from wearing or exhibiting in the courthouse any buttons, photographs, clothing, or insignia relating to the case or to any trial participant.[30] The Commonwealth proposed that the buffer zone include the same 200-foot area

[21] Id.
[22] Id.
[23] Id.
[24] *Read*, 495 Mass. at 313.
[25] Dkt. No. 1-3, at 6.
[26] *Read*, 495 Mass. at 313.
[27] Id. (brackets and ellipsis omitted).
[28] Id. (brackets omitted).
[29] Id.
[30] Dkt. No. 1-3, at 1.

around the courthouse complex that was in place during the first trial, as well as an area encompassed within four streets on the western side of the courthouse.[31]

On March 25, 2025, after a hearing, the court granted the Commonwealth's motion.[32] The court found that a buffer zone was appropriate because, among other reasons, when proceedings in the case are taking place, "individuals line the sidewalks outside the courthouse, loudly chanting and voicing their opinions about witnesses, attorneys, and the strength of the Commonwealth's case."[33] These individuals, the court found, also "display matters which may be in evidence during the trial or share their viewpoints as to the guilt or innocence of [Ms. Read] on their clothing or signage."[34] If prospective or sitting jurors were exposed to such protesters or messages, the court concluded that Ms. Read's "right to a fair trial will be jeopardized."[35] Further, the court determined that a modest expansion of the buffer zone was necessary. It noted that during the first trial, demonstrators outside the 200-foot buffer on the western side of the courthouse "could be clearly heard inside the courthouse."[36] The court also acknowledged the Commonwealth's concern about the honking from passing vehicles that could "be heard frequently during the first trial."[37] Additionally, the court cited the facts that a deliberating juror reported being able to hear protesters "screaming and yelling" during deliberations, and that a "group of local business owners and organizations" had sent to the court a "list of concerns" that arose from "issues" they had experienced during the first trial.[38]

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[31] Id.
[32] Dkt. No. 1-4, at 4; https://www.youtube.com/watch?v=yIhOMpltXE8 at 1:10:44 (last accessed on Apr. 3, 2025).
[33] Dkt. No. 1-4. at 3.
[34] Id.
[35] Id.
[36] Id.
[37] Id.
[38] Id.

The retrial began in the Superior Court on April 1, 2025. Plaintiffs filed the instant civil action and their motion for a temporary restraining order and preliminary injunction on the same day.[39]

ARGUMENT

A preliminary injunction is "a drastic and extraordinary remedy," *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010), "never awarded as of right." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "To obtain a preliminary injunction, the plaintiffs bear the burden of demonstrating (1) a substantial likelihood of success on the merits, (2) a significant risk of irreparable harm if the injunction is withheld, (3) a favorable balance of hardships, and (4) a fit (or lack of friction) between the injunction and the public interest." *Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 120 (1st Cir. 2003). The last two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The first factor—likelihood of success on the merits—is the "*sine qua non* of a preliminary injunction. If the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity." *Arborjet, Inc. v. Rainbow Treecare Sci. Advancements, Inc.*, 794 F.3d 168, 173 (1st Cir. 2015) (Souter, J.) (citations omitted). "[T]he movant, by a clear showing, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). Because Plaintiffs fail all of these elements for entitlement to a preliminary injunction, the Motion must be denied.[40]

[39] Dkt. Nos. 1, 2, 3.

[40] "The standard for issuing a [temporary restraining order] is the same as for a preliminary injunction." *Orkin v. Albert*, 557 F. Supp. 3d 252, 256 (D. Mass. 2021) (quotation omitted).

I. PLAINTIFFS HAVE NO LIKELIHOOD OF SUCCESS ON THE MERITS.

A. Plaintiffs' First Amendment Claim Fails Because the Buffer Zone is a Content-Neutral Time, Place, and Manner Regulation That Survives the Applicable Level of Scrutiny.

In a public forum, the regulation of the time, place, and manner of speech is permissible if it is (1) content-neutral, (2) narrowly tailored to serve a significant government interest, and (3) leaves open adequate alternatives for communication. *New England Reg'l Council of Carpenters v. Kinton*, 284 F.3d 9, 27 (1st Cir. 2002) (citing *Thomas v. Chicago Park Dist.*, 534 U.S. 316, 323 n.3 (2002)). For the reasons that follow, Plaintiffs fail to meet their burden to show that any of these elements are not satisfied. *See Mazurek*, 250 U.S. at 972.

1. Content Neutral

Plaintiffs cannot show that the government adopted "a regulation of speech because of disagreement with the message it conveys." *See Ward v. Rock Against Racism,* 491 U.S. 781, 791 (1989). The buffer-zone order restricts any individual from "demonstrat[ing] in any manner, including carrying signs or placards within 200 feet of the courthouse complex during trial of this case, unless otherwise ordered by this Court." Dkt. 1-4 (Pl. Exhibit C), at 3. This restriction is not based on any particular message the speech conveys. *See Coalition to Protest Democratic Nat'l Convention v. City of Boston*, 327 F. Supp. 2d 61, 70 (D. Mass. 2004) (holding restriction against parades in specific zone, which "applie[d] to all parades, regardless of content, let alone viewpoint" was content-neutral). Regardless of whether a demonstrator wants to convey a message in support of Ms. Read or in support of the Commonwealth, their speech is equally restricted. This is the very definition of content-neutral. *See Ward*, 491 U.S. at 791 (regulation is content-neutral if it is "justified without reference to the content of the regulated speech").[41]

[41] Additionally, as the Supreme Court observed in *Cox v. State of Louisiana*, 379 U.S. 559, 562 (1965):

A determination that the second buffer-zone order is content-neutral would be consistent with the SJC's decision upholding the first buffer-zone order entered prior to Ms. Read's first trial. Specifically, the SJC held that because any protesters in support of Ms. Read or in support of the Commonwealth would be equally subject to restrictions of the buffer zone, the order was "'justified without reference to the content of the regulated speech.'" *Spicuzza*, 494 Mass. at 1007 (quoting *Ward*, 491 U.S. at 791). Moreover, in response to the argument that the buffer zone was not content-neutral because commercial speech was still allowed, the SJC noted that it is permissible for a regulation to have an incidental effect on some speakers and not others. *See Spicuzza*, 494 Mass. at 1007 (quoting *Ward*, 491 U.S. at 791). On these grounds, the SJC concluded that the first buffer-zone order was content-neutral, just as this Court should conclude with respect to the second buffer-zone order.

In addition, the Supreme Court has said that a law is content-based if "applies to particular speech because of the topic discussed or the idea or message expressed," which "requires a court to consider whether a regulation of speech 'on its face' draws distinctions based on the message a speaker conveys." *Reed v. City of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015).

> There can be no question that a State has a legitimate interest in protecting its judicial system from the pressures which picketing near a courthouse might create. Since we are committed to a government of laws and not of men, it is of the utmost importance that the administration of justice be absolutely fair and orderly. This Court has recognized that the unhindered and untrammeled functioning of our courts is part of the very foundation of our constitutional democracy. *See Wood v. Georgia*, 370 U.S. 375, 383 (1962). The constitutional safeguards relating to the integrity of the criminal process attend every stage of a criminal proceeding, starting with arrest and culminating with a trial 'in a courtroom presided over by a judge.' *Rideau v. Louisiana*, 373 U.S. 723, 727 (1963). There can be no doubt that they embrace the fundamental conception of a fair trial, and that they exclude influence or domination by either a hostile or friendly mob. There is no room at any stage of judicial proceedings for such intervention; mob law is the very antithesis of due process. *See Frank v. Mangum*, 237 U.S. 309, 347 (1915) (Holmes, J., dissenting). A State may adopt safeguards necessary and appropriate to assure that the administration of justice at all stages is free from outside control and influence. A narrowly drawn statute such as the one under review is obviously a safeguard both necessary and appropriate to vindicate the State's interest in assuring justice under law.

"Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose." *Id.* The buffer-zone order does not violate any of these principles. As noted, it bars all demonstrations within 200 feet of the courthouse regardless of whether the demonstrator conveys a message in support of Ms. Read, or against her. The order makes no distinction based on the "topic discussed or the idea or message expressed." *Id.* Anyone demonstrating not only regarding the Read trial, but also on any other topic—*i.e.*, without regard to the topic or message—may not do so within the buffer zone. And it does not regulate speech with respect to its "function or purpose." Regardless of the function or purpose of the speech, any form of protesting around the courthouse is subject to the buffer zone. *Contrast id.* at 164 (municipal ordinance was content-based where it subjected different kinds of signs—those "directing the public to church or some other 'qualifying event'"; signs "designed to influence the outcome of an election"; and "ideological signs" that "communicate [certain] message[s] or ideas"—to different form of regulations depending on which category it fell into).

In the event the Court disagrees, however, and concludes that the buffer zone is content based, then the buffer zone also satisfies strict scrutiny, in that it is narrowly tailored to satisfy the compelling governmental interest in protecting Ms. Read's constitutional right to a fair trial by guarding against witness intimidation and, most importantly, protecting the jury from receiving extraneous inputs as they hear the case and, later, deliberate about the evidence to reach a verdict. *See Reed*, 576 U.S. at 171-72 (discussing compelling interest and narrow tailoring requirements of strict scrutinty). In the event that the Court concludes strict scrutiny applies, then the State Defendants request leave to submit additional briefing on why the buffer

zone satisfies strict scrutiny, given the short amount of time they have had to prepare this initial response.

2. Narrow Tailoring

The requirement for narrow tailoring is met if "the means chosen are not substantially broader than necessary to achieve the government's interest." *Coalition to Protest Democratic Nat'l Convention*, 327 F. Supp. at 70 (quoting *Ward*, 491 U.S. at 800). For time, place, and manner regulations, the government's method need not be the least restrictive means of serving the government interest. *Id*. Instead, the "essence of narrow tailoring" is that it "must 'focus on the source of the evils the [government] seeks to eliminate . . . and eliminate them without at the same time banning or significantly restricting a substantial quantity of speech that does not create the same evils." *Id.* (quoting *Ward*, 491 U.S. at 800 n.7).

Here, the trial judge entered the order "[t]o ensure the defendant's right to a fair trial" and an impartial jury. Dkt. 1-4 (Pl. Exhibit C), at 1-2. "No right ranks higher than the right of the accused to a fair trial." *Press-Enterprise Co. v. Superior Court of California, Riverside County*, 464 U.S. 501, 508 (1984). The "right to a fair criminal trial by an impartial jury whose considerations are based solely on record evidence is a compelling state interest." *In re Morrissey*, 168 F.3d 134, 140 (4th Cir. 1999) (citing *Gentile* v. *State Bar of Nevada*, 501 U.S. 1030, 1075 (1991)). Public fora "frequently require regulations to ensure that free speech activities do not unreasonably interfere with their functions." *Int'l Soc. for Krishna Consciousness, Inc. v. City of New York*, 484 F. Supp. 966, 971 (S.D.N.Y. 1979) (quotation omitted). *See also*, *e.g.*, U.S. Supreme Court Building Regulations, Regulations Six and Seven

(regulating the use of signs, and barring "demonstration," within the Supreme Court "building and grounds" as defined in 40 U.S.C. § 6101).[42]

It is essential that jurors remain free of extraneous influences that could render them partial in deliberations. *See Duncan v. Louisiana*, 391 U.S. 145, 149 (1968) (Sixth Amendment guarantees the right to trial "by an impartial jury"); *United States v. Wood*, 299 U.S. 123, 133 (1936) (biased jurors prohibited from serving on criminal juries). Here, the State Trooper's affidavit details how the buffer zone was sufficient to prevent disturbances from three of the four sides of the courthouse but not the west side. (Schillinger Aff., Ex. 1 attaching Trooper Affidavit, at 1-2). He explains how he was able to hear the demonstrators within the courthouse from its west side. (Schillinger Aff., Ex. 1 attaching Trooper Affidavit, at 3). Furthermore, due to the layout of the courthouse, the demonstrators' signs caused passing vehicles to honk their horns, which the trooper explains "could be easily heard inside the courthouse" throughout trial. (Schillinger Aff., Ex. 1 attaching Trooper Affidavit, at 3). Perhaps most concerning, an anonymous juror detailed how he "could hear protesters outside screaming and yelling" throughout jury deliberations. (Schillinger Aff., Ex. 2 attaching Juror Affidavit, at 2).

The judge's order is a moderate increase of the prior buffer zone approved by the SJC. It does not extend the buffer zone on three of the four sides of the courthouse. Instead, the order extends only the zone on the western side of the courthouse complex where "there is a large open space" and "the collective voices of groups of demonstrators gathering outside the buffer zone could be clearly heard inside the courthouse." Dkt. 1-4 (Pl. Exhibit C), at 2. Extending the buffer zone in this limited fashion focuses narrowly on the important interest the judge identified here—protecting Ms. Read's right to a fair trial and an impartial jury by preventing noise that

[42] Available at https://www.supremecourt.gov/about/buildingregulations.pdf.

could interfere with court proceedings, including jury deliberations. *See Coalition to Protest Democratic Nat'l Convention*, 327 F. Supp. at 70. This is especially underscored by the fact that the prior arrangements did not prevent demonstrations from infringing not only upon the trial itself but also upon the jury deliberation process. *See, e.g., Mahoney v. Vondergritt*, 938 F.2d 1490, 1491 (1st Cir. 1991) (noting "longstanding rule that courts must protect jurors and their verdicts from unwarranted intrusions" (quotation marks and citation omitted)); *Alegjo Jimenez v. Heyliger*, 792 F. Supp. 910, 914-915 (D.P.R. 1992) (presence of security officer, even if he did not initiate conversation, "may still have affected the deliberations if just through his presence he intimidated jurors from speaking frankly amongst themselves"). It is part of the essential function of a courthouse to provide a trial free from these potential extraneous influences. *See Int'l Soc. for Krishna Consciousness, Inc.*, 484 F. Supp. at 971.

Lastly, this conclusion is consistent with the SJC's decision on the earlier buffer-zone order. The SJC held that given the significant government interests of ensuring (1) a safe path for jurors, witnesses, and other individuals who go to the courthouse and (2) a fair and unbiased jury, the order was narrowly tailored. *Spicuzza*, 494 Mass. at 1008. "The buffer zone does not preclude the petitioners, or anyone else, from engaging in the same forms of protest they have previously done; it simply constrains them from doing so within a limited zone tied to court house property." *Id.* This Court should similarly conclude that the instant buffer-zone order is narrowly tailored.

3. Adequacy of Alternatives

Where plaintiffs have access to numerous speech alternatives, they are unlikely to succeed on the merits. *Sullivan v. City of Augusta*, 511 F.3d 16, 44 (1st Cir. 2007) (noting court has upheld "alternative means of communication despite diminution in the quantity of speech, a

ban on a preferred method of communication, and a reduction in the potential audience"). Here, demonstrators are not prevented from gathering near the courthouse but simply from gathering in the narrow range where the sound of demonstrations could affect the proceedings inside the courthouse. *See Citizens for Peace in Space v. City of Colorado Springs*, 477 F.3d 1212, 1225 (10th Cir. 2007) (plaintiffs "were sufficiently able to communicate their message even though they had no close, physical interaction with their intended audience"). As the SJC noted in its decision on the earlier buffer-zone order, the limited nature of the buffer zone leaves open "ample alternative channels for communication of the information." *Spicuzza*, 494 Mass. at 1008 (quotation marks omitted).

In conclusion, the buffer-zone order is content-neutral because it does not restrict speech based on the demonstrators' message. The new order is also narrowly tailored only to preventing noise that might interfere with Ms. Read's right to a fair trial and impartial jury and the public's concomitant interest in a fair trial and impartial jury. Lastly, the order leaves open alternatives, such as the ability of demonstrators to convey their message in any area other than the limited area proscribed by the order. Because the order is content-neutral and narrowly tailored, and because it leaves open alternatives, the Plaintiffs cannot demonstrate that they are likely to succeed on the merits.

B. Plaintiffs' Due Process Claim Fails.

There is also no merit to Plaintiffs' Fourteenth Amendment Due Process Clause claim. Plaintiffs' claim is based on the flawed factual premise that they were not granted an opportunity to be heard by the Superior Court. In fact, the Superior Court held a public hearing on the Commonwealth's buffer-zone Motion. https://www.youtube.com/watch?v=yIhOMpltXE8 at 1:10:44 (last accessed on Apr. 3, 2025). Other members of the public submitted concerns to the

Superior Court which were considered by the Court. *Id.* Plaintiffs point to no evidence that they tried to raise their concerns with the Superior Court and were denied a hearing. Accordingly, they have no likelihood of success on the merits of their due process claim.

II. PLAINTIFFS HAVE NOT DEMONSTRATED THAT THEY WILL SUFFER IRREPARBLE HARM.

Plaintiffs' claims of irreparable harm requiring an immediate injunction are undermined by having waited almost two weeks after the Commonwealth first moved for the entry of the buffer zone and a week after the issuance of the state court order on March 25, 2025. "Preliminary injunctions are generally granted under the theory that there is an urgent need for speedy action to protect the plaintiffs' rights." *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985) (vacating preliminary injunction, where 10-week delay by plaintiff in seeking injunction after learning of defendant's alleged wrongdoing undermined claim of irreparable harm). As a result, "the failure to act sooner undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury." *Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc.*, 645 F.3d 26, 35 (1st Cir. 2011). Here, Plaintiffs fail to convincingly explain their delay in seeking relief until *after* jury selection has begun. This delay undermines Plaintiffs' claim of irreparable harm. *See Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004) (plaintiffs' "cries of urgency are sharply undercut by [their] own rather leisurely approach to the question of preliminary injunctive relief").

III. THE BALANCE OF THE EQUITIES DO NOT TIP IN PLAINTIFFS' FAVOR.

Here, the balance of the equities favor maintaining the buffer-zone order. First, Plaintiffs' delay in seeking relief cuts against them. Although the Commonwealth moved for entry of the renewed buffer zone on March 17, 2025, and the Superior Court held a public

hearing on the motion before it issued the buffer-zone order on March 25, 2025, Plaintiffs apparently made no attempt to raise their concerns about the buffer zone directly with the Superior Court.[43] Rather, they waited until April 1, 2025, a week after the Superior Court entered the buffer-zone order and more than two weeks after the Commonwealth moved for the renewed entry of the buffer-zone order, to file their challenge in this Court. Moreover, jury selection in the case began on April 1, 2025. The trial is now under way.

Second, as outlined in the Commonwealth's motion papers and as set forth in the Superior Court's order of March 25, 2025, there are substantial fair-trial concerns that tip overwhelmingly in favor of the State Defendants. Among these equitable concerns are the real-world disruptive impact of noise on the jury emanating from individuals outside the buffer zone as well as vehicle horns and similar noises coming from vehicles on nearby roads whose drivers are expressing support for one side or the other by way of horn-honking and similar noises audible to the jurors inside the courthouse.

IV. AN INJUNCTION HERE WOULD HARM THE PUBLIC INTEREST.

In addition to failing to demonstrate a substantial likelihood of success on the merits, a significant risk of irreparable harm, or that the balance of the equities tips in their favor, Plaintiffs also have not met their burden of showing "a fit (or lack of friction) between the injunction and the public interest." *Nieves-Marquez*, 353 F.3d at 120. Plaintiffs' failure to carry that burden may be because, contrary to Plaintiffs' argument, the buffer-zone order supports the public's interest in ensuring a fair trial by protecting the jury from extraneous influences.

[43] Had Plaintiffs raised their objections with the Superior Court they likely would have been considered by the Court. During the hearing on the Commonwealth's motion concerning the buffer zone, the Superior Court noted that it had received emails from other interested persons concerning the scope of the buffer zone and that it would read and consider those emails before ruling on the Commonwealth's motion. https://www.youtube.com/watch?v=yIhOMpltXE8 at 1:10:44 through 1:14:39 (last accessed on Apr. 3, 2025). In fact, the buffer-zone order acknowledges the concerns raised by nonparties. Dkt. 1-4 (Pl. Exhibit C), at 2 n.2.

Plaintiffs' failure to carry that burden is yet another reason why this Court should deny Plaintiffs' request for a temporary restraining order or preliminary injunctive relief.

Again, the judge entered the buffer-zone order "[t]o ensure the defendant's right to a fair trial." Dkt. 1-4 (Exhibit C), at 1-2. The Commonwealth, and by extension the public, also "has the right to, and an interest in the defendant receiving, a fair trial." *Commonwealth v. Underwood*, 358 Mass. 506, 511 (1978). And part of ensuring a defendant's right to, and the public's interest in, a fair trial is preventing exposure of the jury to extraneous influence. *See Duncan*, 391 U.S. at 149; *Wood*, 299 U.S. at 133. As described above, the buffer zone ordered during the first trial did not prevent the sound of demonstrations from the west side of the courthouse, and the honking of horns in response to those demonstrations, from being heard inside the courthouse. (Schillinger Aff., Ex. 1 attaching Trooper Affidavit, at 3). Additionally, an anonymous juror from the first trial attested that he "could hear protesters outside screaming and yelling" as the jury deliberated. (Schillinger Aff., Ex. 2 attaching Juror Affidavit, 2). Thus, denial of Plaintiffs' motion and the resulting maintenance of the buffer-zone order would protect the public interest by preventing the sound of demonstrations from becoming an extraneous influence on the jury.

Such a conclusion regarding the public's interest in maintenance of the buffer-zone order would be consistent with the SJC's decision on the earlier buffer-zone order and how that order protected Ms. Read's and the Commonwealth's right to a fair trial. As held by the SJC with respect to the earlier buffer-zone order, the buffer zone "will help ensure a fair trial" "by physically clearing the path for jurors, witnesses, and other individuals to come and go from the court house complex without obstruction or interference by protestors or demonstrators and any concomitant intimidation or harassment." *Spicuzza*, 494 Mass. at 1008. The order "helps protect

the jurors . . . from extraneous influence that might result from, for example, viewing pictures of putative evidence directly in their path." *Id.*

Thus, for at least those reasons, the buffer-zone order is consonant with the public interest. At the very least, Plaintiffs failed to demonstrate, as they must, that the equitable relief that they seek would serve the public interest. That failure, along with Plaintiffs' other shortcomings described above, should result in this Court denying plaintiffs' motion for a temporary restraining order or preliminary injunction.

V. PRINCIPLES OF COMITY CAUTION AGAINST INJUNCTIVE RELIEF HERE.

Here, the preliminary-injunction record shows that the entry of the Superior Court's buffer-zone order occurred only after the judge carefully and cautiously considered the relevant facts. The buffer zone has been modestly expanded on the west side of the courthouse based only on the real-life experience of the first trial and the shortcomings of the first buffer-zone order, all of which were in the factual record before the judge. Additionally, the judge's order is informed by her own experience in the courtroom and courthouse where the trial is now unfolding. The state-court judge is in the better position to assess the facts on the ground. Plaintiffs have available state-court avenues for seeking judicial review of the buffer-zone order. And in fact, other plaintiffs seeking similar relief did so in challenging the first buffer-zone order, bringing a petition before a single justice of the SJC and then the full SJC panel. Here, the doctrine of comity cautions against this Court enjoining the state court order. *See generally Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010) (discussing the comity doctrine). Accordingly, this Court should defer to the Superior Court's analysis of the relevant facts and not disturb the Superior Court's order.

CONCLUSION

For the reasons set forth above, this Court should deny Plaintiffs' Motion for injunctive relief.

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Dated: April 4, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have today, April 4, 2025, served this Opposition by ECF.

/s/ John R. Hitt
Assistant Attorney General
Massachusetts Attorney General's Office