

No. 23-2062

In the
UNITED STATES COURT OF APPEALS
for the
FIRST CIRCUIT

MEREDITH O'NEIL, JESSICA SVEDINE,
DEANNA CORBY, AND ROBERTO SILVA,

Plaintiffs-Appellants,

v.

CANTON POLICE DEPARTMENT, THE TOWN OF CANTON,
MASSACHUSETTS, HELENA RAFFERTY, AS CHIEF OF THE CANTON
POLICE DEPARTMENT AND IN HER PERSONAL CAPACITY, AND OFFICER
ROBERT ZEPF, OFFICER MICHAEL CHIN, OFFICER ANTHONY
PASCARELLI, AND SARGEANT JOSEPH SILVASY, IN THEIR
OFFICIAL CAPACITIES,

Defendants-Appellees.

*On Appeal from the United States District Court
for the District of Massachusetts
No. 1:23-cv-12685-DJC
The Honorable Denise J. Casper*

APPELLANTS' APPENDIX

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TABLE OF CONTENTS

<u>Date Filed</u>	<u>Description</u>	<u>Page</u>
11/07/2023	Plaintiffs' Verified Complaint [Dkt. No. 1]	AA001
11/07/2023	Exhibit –Boston Magazine Article [Dkt. No. 1-1]	AA021
11/07/2023	Exhibit – Email From Deputy Chief [Dkt. No. 1-2]	AA033
11/08/2023	Emergency Motion for a Temporary Restraining Order and for a Preliminary Injunction [Dkt. No. 4]	AA035
11/08/2023	Memorandum in Support of Motion for a Temporary Restraining Order and for a Preliminary Injunction [Dkt. No. 5]	AA037
11/08/2023	Proposed Order Granting Motion for a Temporary Restraining Order and for a Preliminary Injunction [Dkt. No. 5-1]	AA052
11/08/2023	Notice of Constitutional Question [Dkt. No. 6]	AA054
11/08/2023	Notice of Informal Service [Dkt. No. 7]	AA057
11/09/2023	Order Requiring Response to Motion [Dkt. No. 11]	AA059
11/09/2023	Response in Opposition to Motion for a Temporary Restraining Order and for a Preliminary Injunction [Dkt. No. 12]	AA060
11/30/2023	Answer to Complaint [Dkt. No. 14]	AA071
-	Docket Sheet	AA080

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MEREDITH O’NEIL, JESSICA
SVEDINE, DEANNA CORBY, NICK
ROCCO, JENNA ROCCO, and ROBERTO
SILVA,

Plaintiffs,

v.

CANTON POLICE DEPARTMENT, the
TOWN OF CANTON,
MASSACHUSETTS, HELENA
RAFFERTY, as Chief of the Canton Police
Department and in her personal capacity,
and OFFICER ROBERT ZEPF, OFFICER
MICHAEL CHIN, OFFICER ANTHONY
PASCARELLI, and SERGEANT JOSEPH
SILVASY, in their official and individual
capacities,

Defendants.

Civil Action No. _____

**VERIFIED 42 U.S.C. § 1983 COMPLAINT
FOR DECLARATORY, INJUNCTIVE
RELIEF, AND DAMAGES**

JURY TRIAL DEMANDED

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This is a Civil Action brought by Plaintiffs Meredith O’Neil, Jessica Svedine, Deanna Corby, Nick Rocco, Jenna Rocco, and Roberto Silva, against Defendants Canton Police Department, the Town of Canton, and Helena Rafferty, as Chief of the Canton Police Department, and certain Canton police officers, Officer Robert Zepf, Michael Chin, Anthony Pascarelli, and Sgt. Joseph Silvasy. Plaintiffs bring claims under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution. In support of these claims, and in greater detail, Plaintiffs allege as follows:

INTRODUCTION

Karen Read is accused of killing John O’Keefe, a police officer. A significant number of people believe that Read is innocent; instead, they believe she is being framed for the murder by

Massachusetts State Trooper Michael Proctor and his accomplices, including Brian Albert (also a police officer) and Colin Albert (Brian Albert’s nephew).

Chris Albert, a member of the Canton Board of Selectmen and the owner of a D&E Pizza in Canton, Massachusetts, is a focal point of this controversy. He is Colin Albert’s father, a close friend of Michael Proctor, and has a checkered past — including a jail sentence in 1994 for killing a man in a hit and run accident. Many believe that Chris Albert intends to offer false testimony to support the story that Karen Read murdered O’Keefe, and that he is doing so to shield his brother and his son from justice.

To protest against perceived perjury and a resulting injustice, Plaintiffs and other members of the public gathered on Sunday, November 5, 2023, across the street from Chris Albert’s business, D&E Pizza. They held signs that had inoffensive slogans like “Free Karen Reed” and “Justice.” Defendants Officers Robert Zepf, Michael Chin, and Anthony Pascarelli, and Sgt. Joseph Silvasy, members of the Canton Police Department, presumably at the behest of Chief Helena Rafferty, drove by the protest several times, attempting to intimidate the protesters into leaving. When this intimidation tactic proved unsuccessful, they then stopped and informed the protesters that they were not permitted to protest there, because if the protest could be seen by Chris Albert, they would deem it to be “witness intimidation” and Plaintiffs would be arrested. They were handed a copy of Mass. Gen. Laws, ch. 268, § 13A.

This is not an idle threat. Prosecutors in Norfolk County have already arrested and charged Aidan Kearney, a well-known journalist, for reporting about perjury and official misconduct related to the murder investigation and charges. Kearney was charged with “witness intimidation” under the related statute, Mass. Gen. Laws. ch. 268, § 13B, and one of the terms of his pretrial release is that he is not permitted to engage in First Amendment protected activity pertaining to

the story. Thus, the police threat of arrest, coupled with Kearney’s prosecution, has placed Plaintiffs in a heightened state of reasonable concern that they will be arrested and charged with witness intimidation for actions that any reasonable officer should understand are protected by the First Amendment.

Plaintiffs had intended to return regularly to continue to protest across the street and near to D&E Pizza, without any plan to impede access to the business. They have a large, organized protest planned for Sunday, November 12, and periodically thereafter. However, they have a reasonable fear that the Canton Police, acting at the behest of prosecutors in the Karen Read case, will violate their First Amendment rights and arrest them. They need this Court to act to protect their rights, else they will have no choice but to cancel the protests for fear of unlawful arrest.

THE PARTIES

1. Plaintiffs Meredith O’Neil, Jessica Svedine, Deanna Corby, Nick Rocco, Jenna Rocco, and Roberto Silva are Massachusetts residents who believe that Karen Read is being framed. They have protested peacefully and wish to continue to do so.

2. Defendant Canton Police Department (“CPD”) is a police department established pursuant to Mass. Gen. Laws, ch. 41, § 97, is located in Canton, Massachusetts, and is a political subdivision of the Town of Canton, Massachusetts.

3. Defendant Town of Canton (“Canton”) is a Massachusetts municipality that established and exercised control over Defendant CPD.

4. Defendant Helena Rafferty is the Chief of the CPD and is sued in her personal and official capacities.

5. Defendants Officers Robert Zepf, Michael Chin, and Anthony Pascarelli, and Sargaent Joseph Silvasy are members of the CPD who threatened Plaintiffs with arrest for witness intimidation and are sued in their personal and official capacities.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this civil action per 28 U.S.C. § 1331 as this is a civil action arising under 42 U.S.C. § 1983 and the First Amendment to the U.S. Constitution.

7. This Court has personal jurisdiction over all defendants as they are all citizens of the Commonwealth of Massachusetts, and the defendants committed the acts complained of within the said Commonwealth.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) & (2) as all defendants reside in this District and/or all events giving rise to the claim occurred in this District.

FACTS COMMON TO ALL COUNTS

The Framing of Karen Read and the Aftermath

9. Except where otherwise indicated, the background facts as set forth in this section are drawn from the September 27, 2023, article in Boston Magazine by Gretchen Voss, entitled “The Karen Read Case in Canton: The Killing that Tore a Town Apart”,¹ attached hereto as **Exhibit A**. They are recited for context purposes only and Plaintiffs are not attesting to the accuracy thereof.

10. John O’Keefe was a member of the Boston Police Department who, at the time of his death, lived in Canton, Massachusetts.

11. Karen Read was romantically involved with O’Keefe prior to his death.

¹ <https://www.bostonmagazine.com/news/2023/09/27/canton-karen-read/>

12. On Friday, January 28, 2022, O’Keefe and Read were at the Waterfall Bar & Grille, in Canton, Massachusetts, and had drinks there with Chris Albert (a Town of Canton Selectman), Brian Albert (a Boston police officer and Chris Albert’s brother), and Jennifer McCabe (Brian Albert’s sister-in-law).

13. When the bar was closing, Brian Albert invited O’Keefe, Read, and his relations back to his house, and O’Keefe and Read drove to Brian Albert’s house.

14. The following morning, on January 29, 2022, Read, McCabe, and O’Keefe’s friend, Kerry Roberts, found O’Keefe in the snow outside Brian Albert’s house.

15. O’Keefe was pronounced dead by physicians at Good Samaritan Medical Center in Brockton, Massachusetts, later that morning.

16. Read was, thereafter, charged with manslaughter, having allegedly hit O’Keefe with her automobile.

17. Subsequent to her arrest, Read’s lawyer was given a tip that Brian Albert and his nephew, Colin Albert (who had an acrimonious relationship with O’Keefe), had beaten up O’Keefe that night, to the point of unconsciousness, and that Brian Albert and Brian Higgins (a special agent with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives), who had been at Brian Albert’s house, dumped O’Keefe’s body on Brian Albert’s lawn.

18. Read thereafter learned that State Trooper Michael Proctor, a Canton resident and lead detective into the investigation of O’Keefe’s death, was apparently a friend to the Albert family—Colin Albert, for example, had been the ring bearer at Proctor’s sister’s wedding.

19. As a result, Read believed that, to protect the Alberts, Proctor framed Read for O’Keefe’s death.

20. However, Proctor, on June 9, 2022, arrested Read again, following a grand jury indictment against Read for second-degree murder.²

21. On April 12, 2023, Read’s defense team filed a 92-page affidavit in her case outlining their theory of how Read had been framed.

22. On April 18, 2023, Aidan Kearney, published his first article about the alleged framing of Read.³

23. Kearney’s reporting brought public support to Read, and public demonstrations in support of her followed.

24. There is widespread public interest in the prosecution of Read—*Dateline* has been filing Read for a show and Netflix and others have approached Kearney relative to a documentary.

25. At an August 8, 2023, meeting of the Canton Select Board, residents voiced their concerns about Selectman Chris Albert and the Canton Police Department *vis a vis* the O’Keefe death.

26. During that Meeting, Defendant Rafferty referred to an event:

“that made residents of our community feel disrespected, targeted, and intimidated, an event that I believe, under statute 268 13A could most possibly be deemed a criminal act. Additionally, we have an elected library trustee who, as of noon today, was still listed as a co-administrator on a social site that is allowing residents of our community to also be disrespected and dehumanized within innuendos, outright falsehoods, half-truths, and bullying comments, comments, I might add, that if it were made in a school environment, would and should have every resident in this town in an uproar. Yesterday, I received an email from a concerned citizen related to the, and I quote, ‘horrendous, threatening posts’ on this site, asking me to address the issue, as she is worried about how it might-may incite people to act moving forward. Let me make one thing as crystal clear as possible to-as I continue with my comments to the residents: I embrace the fact that we live in a country where people can have different viewpoints. I respect everyone’s right to voice those viewpoints under the First Amendment. I can appreciate that some people have

² The prosecution is pending in the Norfolk County Superior Court, styled *Commonwealth v. Karen Read*, Docket No. 2282CR0117.

³ <https://tbdailynews.com/corrupt-state-trooper-helps-boston-cop-coverup-murder-of-fellow-officer-frame-innocent-girlfriend/>

questions on the O’Keefe case, based on the limited information they have seen thus far. However, what I cannot accept is witnesses, let me repeat that, witnesses—these are residents who have not been charged with any crimes—being bullied in their homes, at their children’s games, or on vacation, all under the guise of the First Amendment. This is a really slippery slope that, if allowed to continue, will cause a rapid decline in the amount of people who would ever step forward to be a witness in a case and, quite possibly, the slow erosion of the criminal justice system.”⁴

27. On October 11, 2023, Kearney was charged with six counts of intimidation under Mass. Gen. Laws, ch. 268, § 13B, and one count of conspiracy to do so. *See Commonwealth v. Aiden Kearney*, Docket Nos. 2355CR001150, 2355CR001151, 2355CR001152, 2355CR001154, 2355CR001155, 2355CR001156, and 2355CR001157, in the Stoughton District Court.

Plaintiffs’ Lawful Protests and the Threats of Unlawful Arrest

28. As set forth above, Plaintiffs Meredith O’Neil, Jessica Svedine, Deanna Corby, Nick Rocco, Jenna Rocco, and Roberto Silva believe that Karen Read is being framed – and they are far from alone in this belief.

29. To protest against what appears to be perjury to them, Plaintiffs and other members of the public gathered on Sunday, November 5, 2023, across the street from Chris Albert’s business, D&E Pizza.

30. At that protest, Plaintiffs held signs that had inoffensive slogans like “Free Karen Reed” and “Justice.”

31. Defendants Officers Robert Zepf, Michael Chin, and Anthony Pascarelli, and Sgt. Joseph Silvasy, members of the Canton Police Department, drove by the protest several times, attempting to intimidate the protesters into leaving.

⁴ <https://cantonmaselectboard.podbean.com/e/select-board-of-august-9-2023/>, beginning at approximately 18:00.

32. At all relevant times herein, Officers Robert Zepf, Michael Chin, and Anthony Pascarelli, and Sgt. Joseph Silvasy acted in furtherance of the August 8, 2023, policy announced by Defendant Rafferty, that the Canton Police Department “cannot accept” those engaged in First Amendment-protected activities *vis a vis* witnesses in the Read prosecution.

33. At all relevant times herein, Officers Robert Zepf, Michael Chin, and Anthony Pascarelli, and Sgt. Joseph Silvasy were acting under the supervision and at the direction of Defendant Rafferty.

34. When Defendants’ intimidation tactic proved unsuccessful, Officers Robert Zepf, Michael Chin, and Anthony Pascarelli, and Sgt. Joseph Silvasy stopped and informed the protesters that they were not permitted to protest there, because if the protest could be seen by Chris Albert, they would deem it to be “witness intimidation” and Plaintiffs would be arrested.

35. The officers specifically handed Plaintiffs a copy of Mass. Gen. Laws, ch. 268, § 13A, they statute under which they threatened Plaintiffs.

36. As set forth in a communication from Defendant Canton Police Department, in response to a request under the Massachusetts Public Records Law, Defendants have an open investigation into Plaintiffs’ November 5, 2023, protest, meaning they still face potential unlawful arrest and prosecution. *See* **Exhibit B** (Email from Deputy Chief Patricia Sherrill to Jenna Rocco, Nov. 7, 2023).

37. The threat of arrest by Defendants for further protest is credible—Aiden Kearney has already been arrested and charged under the related witness intimidation statute, Mass. Gen. Laws, ch. 268, § 13B.

38. Defendants’ threat of arrest placed Plaintiffs in fear for their safety and liberty.

39. As a result of Defendants’ threat of arrest, Plaintiffs’ speech is chilled.

40. As a result of Defendants’ threat of arrest, Plaintiffs have determined to not move forward with a November 12, 2023, planned protest in support of Read and other similar such protests.

CAUSE OF ACTION

Count I

Violation of the First Amendment to the United States Constitution: Retaliation

(42 U.S.C. 1983 – First Amendment)

41. Plaintiffs hereby repeat and reallege each and every allegation in the preceding paragraphs as if set forth fully herein.

42. Defendants’ conduct of threatening Plaintiffs with arrest on account of their November 5, 2023, constitutionally protected speech is unconstitutional and violates their First Amendment rights to freedom of speech and expression, and freedom of petition.

43. Defendants’ conduct of enforcing Mass. Gen. Laws, ch. 268, §§ 13A and/or 13B, is unconstitutional and violates their First Amendment rights to freedom of speech and expression, and freedom of petition.

44. Defendants retaliated against Plaintiffs for exercising their First Amendment right to freedom of speech and expression, and freedom of petition.

45. It is clearly established that there is a First Amendment right to petition the government and its officials, such as Selectman Chris Albert.

46. Defendants’ restriction on Plaintiffs’ speech is content-based and viewpoint discriminatory and is in violation of the Free Speech Clause of the First Amendment and the Right to Petition the Government of the First Amendment.

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47. For example, had Plaintiffs’ signs said “Thank you, Chris Albert, for ensuring Karen Read is jailed for life”, rather than encouraging him to, in their opinion, testify truthfully, Plaintiffs would not have been threatened with arrest.

48. The deprivation of First Amendment rights, even for a moment, is an irreparable injury.

49. The violation of Plaintiffs’ First Amendment rights has caused them damage, including mental and emotional injury.

50. Plaintiffs have been injured, or reasonably fear imminent injury, by these constitutional violations, and Plaintiffs are entitled to relief, including, but not limited to, compensatory damages and injunctive and declaratory relief.

Count II

**Violation of the First Amendment to the United States Constitution
Declaratory Judgment & Injunctive Relief**

(42 U.S.C. 1983 – First Amendment)

51. Plaintiffs hereby repeat and reallege each and every allegation in the preceding paragraphs as if set forth fully herein.

52. Massachusetts General Laws, chapter 268, section 13A (hereinafter “Section 13A”) states, in relevant part:

Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any ... witness..., in the discharge of his duty, pickets or parades ... in or near a building or residence occupied or used by such ... witness, ... shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

53. Section 13A is facially unconstitutional. It is a content-based regulation of protected speech in a public forum that cannot withstand strict scrutiny. While the Supreme Court has upheld a similar statute relating to picketing or parading near courthouses, it has not approved

of such a statute *vis a vis* any building at all in which a witness may be found. *Contrast Cox v. Louisiana*, 379 U.S. 559 (1965). It is overinclusive—in a case like the Tsarnaev prosecution, it would ban speech throughout an entire city. And, it is underinclusive, as it does not regulate other forms of speech directed at witnesses.

54. Section 13A is unconstitutionally vague. Plaintiffs cannot ascertain how “near” is too near. Plaintiffs cannot ascertain whether it prohibits their speech if the intended recipient is only in the building for a fleeting moment, or even if the recipient must actually be in the building at the time of the speech.

55. Section 13A is unconstitutional as applied. Defendants have been purposely targeting people, like Plaintiffs, who speak in favor of Karen Read, and there is nothing that suggests they would threaten anyone siding with the prosecution.

56. Massachusetts General Laws, chapter 268, section 13B(b) (hereinafter “Section 13B”) states, in relevant part:

Whoever willfully, either directly or indirectly: ... (iii) misleads, intimidates or harasses another person who is a: (A) witness or potential witness ... with the intent to or with reckless disregard for the fact that it may; (1) impede, obstruct, delay, prevent or otherwise interfere with: ... a trial or other criminal proceeding of any type ... shall be punished by imprisonment in the state prison for not more than 10 years or by imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not less than \$1,000 or more than \$5,000 or by both such fine and imprisonment. If the proceeding in which the misconduct is directed at is the investigation or prosecution of a crime punishable by life imprisonment or the parole of a person convicted of a crime punishable by life imprisonment, such person shall be punished by imprisonment in the state prison for not more than 20 years or by imprisonment in the house of corrections for not more than 2 1/2 years or by a fine of not more than \$10,000 or by both such fine and imprisonment.

57. Section 13B is facially unconstitutional. The overbroad terms “misleads, intimidates or harasses” can mean anything the police or a prosecutor may disapprove of. It can and has been used pretextually and inconsistently.

58. In *Commonwealth v. Welch*, 44 Mass. 80 (2005), the Massachusetts criminal harassment. Mass. Gen. Laws, ch. 265, § 43A, statute was determined to be constitutional only because it was narrowly construed to only encompass constitutionally-unprotected speech. Similarly, in *O’Brien v. Borowski*, 461 Mass. 451 (2012), the civil harassment statute, Mass. Gen. Laws, ch. 258E, was construed to only apply to unprotected speech of fighting words and true threats. In contrast, the Massachusetts Supreme Judicial Court has not narrowed Section 13B solely to unprotected speech.

59. Section 13B is otherwise unconstitutionally void for vagueness as it is unclear what speech would be deemed misleading, intimidating, and/or harassing. It may outlaw a priest encouraging a penitent to confess his sins to the police. It may outlaw a political candidate accusing her opponent of wrongdoing. It may outlaw a parent talking to their child regarding a false accusation made by that child as part of a custody battle.

60. Section 13B was unconstitutionally applied to Plaintiffs as they are singled out because of the viewpoint and content of their speech. Had they protested against Karen Read, which is consistent with Chris Albert’s expected testimony, rather than in her favor, they would have no fear of arrest or prosecution under Section 13B.

61. Therefore, Plaintiffs are entitled to a declaration that Section 13B is unconstitutional and they are entitled to an injunction on Section 13B’s enforcement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Court:

- A. For a declaration that the threat of arrest issued by Defendants is unconstitutional under the First and Fourteenth Amendments of the United States Constitution;

B. For a declaration that Defendants' actions in enforcing Section 13A and Section 13B is unconstitutional under the First and Fourteenth Amendments of the United States Constitution;

C. For a preliminary and permanent injunction enjoining each Defendant from interfering with Plaintiff's right to lawfully engage in constitutionally protected expression and activity;

D. For a declaration that Section 13A and Section 13B are unconstitutional;

E. For a declaration that Section 13A and Section 13B was unconstitutionally applied to Plaintiffs;

F. For a preliminary and permanent injunction enjoining the enforcement of Section 13A and Section 13B;

G. To award Plaintiffs damages for the violation of their constitutional rights;

H. To award Plaintiffs their reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and any other applicable law; and

I. To award such other relief as this Honorable Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury on each claim asserted or hereafter asserted in the Complaint, and on each defense asserted or hereafter asserted by the Defendant.

Dated: November 7, 2023.

Respectfully Submitted,

/s/ Marc J. Randazza

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VERIFICATION OF COMPLAINT

I, Meredith O'Neil, am the Plaintiff in the above-captioned matter. I have reviewed the foregoing allegations in this Verified Complaint, and I hereby declare under the penalty of perjury that the foregoing allegations are true and correct to the best of my knowledge and understanding.

Dated: 11/7/2023

By: Meredith O'Neil
Meredith O'Neil

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VERIFICATION OF COMPLAINT

I, Jessica Svedine, am the Plaintiff in the above-captioned matter. I have reviewed the foregoing allegations in this Verified Complaint, and I hereby declare under the penalty of perjury that the foregoing allegations are true and correct to the best of my knowledge and understanding.

Dated: 11 / 07 / 2023

By: 
Jessica Svedine

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VERIFICATION OF COMPLAINT

I, Deanna Corby, am the Plaintiff in the above-captioned matter. I have reviewed the foregoing allegations in this Verified Complaint, and I hereby declare under the penalty of perjury that the foregoing allegations are true and correct to the best of my knowledge and understanding.

Dated: 11 / 07 / 2023

By: 
Deanna Corby

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VERIFICATION OF COMPLAINT

I, Nick Rocco, am the Plaintiff in the above-captioned matter. I have reviewed the foregoing allegations in this Verified Complaint, and I hereby declare under the penalty of perjury that the foregoing allegations are true and correct to the best of my knowledge and understanding.

Dated: 11 / 07 / 2023

By: 
Nick Rocco

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VERIFICATION OF COMPLAINT

I, Jenna Rocco, am the Plaintiff in the above-captioned matter. I have reviewed the foregoing allegations in this Verified Complaint, and I hereby declare under the penalty of perjury that the foregoing allegations are true and correct to the best of my knowledge and understanding.

Dated: 11 / 07 / 2023

By: *Jenna Rocco*
Jenna Rocco

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VERIFICATION OF COMPLAINT

I, Roberto Silva, am the Plaintiff in the above-captioned matter. I have reviewed the foregoing allegations in this Verified Complaint, and I hereby declare under the penalty of perjury that the foregoing allegations are true and correct to the best of my knowledge and understanding.

Dated: 11 / 07 / 2023

By: 
Roberto Silva

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Exhibit A

Boston Magazine Article
September 27, 2023

CITY LIFE

LONGFORM

The Karen Read Case in Canton: The Killing That Tore a Town Apart

Did a successful South Shore woman really kill her police officer boyfriend? Or, as she claims, did a slew of dirty cops frame her? Inside the simmering tabloid drama dividing this tight-knit Massachusetts suburb.

by **GRETCHEN VOSS** • 9/27/2023, 8:30 a.m.

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Illustration by Jonathan Bartlett

Snow had just started to fall as John O'Keefe and Karen Read stepped into the Waterfall Bar & Grille on Washington Street, Canton's main drag, on a Friday night in late January 2022. At around 11 p.m., it was the couple's second stop of the night after visiting another popular local pub.

O'Keefe, a burly, brown-haired Boston Police Department officer, had been living in Canton since 2014, raising his niece and nephew after his sister died of a brain tumor and her husband succumbed to a heart attack two months later. (The kids affectionately called their "fundle" by the nickname JJ.) For the past two years, he had dated Read, an equity analyst and adjunct professor at Bentley University who lived in Mansfield but spent much of her time at O'Keefe's helping with the kids.

Inside the bar, O'Keefe spotted friends sitting at a high-top near the band and he and Read walked over to join them. At the table sat O'Keefe's neighbor, Chris Albert, town selectman; his brother, Brian Albert—also a BPD officer who leads the Fugitive Apprehension Team and was featured on *TNT's Boston's Finest*—and Brian's sister-in-law, Jennifer McCabe. All had been raised in Canton, a middle-class town of some 24,000 people located about 20 miles south of Boston, where families' lives and social calendars are often dictated by high school and weekend sports.

That night, as the storm rolled into town, parents in the bar had a pretty good hunch they'd get a hall pass from the typical Saturday grind of shuttling kids to sporting events. As the band played, the mood was festive and upbeat. O'Keefe downed beers while Read drank vodka sodas—lots of them.

When the clock ticked to midnight, it was nearly last call. The night wasn't over, though. Brian Albert announced he was headed home to have a beer with his son for his birthday and invited the group to join. O'Keefe wanted to keep the party going. Read—tired, buzzed,

The couple walked over to Read's black Lexus SUV, leaving foot tracks in the white dusting of snow, and climbed inside. Read sat behind the wheel, and O'Keefe plugged the address—34 Fairview Road—into Waze before they drove off. When they arrived at Albert's home, O'Keefe stepped out of the car. Read, though, decided to leave.

Several hours later, around 4:30 a.m., Read says she woke up alone—in the same clothes from the evening before—on the couch at O'Keefe's house. From a living room window, she could see the nor'easter bearing down hard. His niece was asleep upstairs, and his nephew was at a sleepover, but O'Keefe was nowhere to be found.

Read says she thought to call McCabe to ask if she'd seen O'Keefe. Read didn't have her number but knew that O'Keefe's niece, who was close friends with McCabe's daughter, probably did. In a panic, Read woke her up and had her dial McCabe, who said she had no idea where O'Keefe was either. McCabe hung up and called Chris Albert's wife, Julie—who lived just a few doors down from O'Keefe—to ask if he had passed out at their house. Meanwhile, Read called O'Keefe's lifelong friend Kerry Roberts, who also lives in Canton. Neither woman had seen or heard from O'Keefe. *Where was he?* Read says she wondered.

Within an hour, Read, McCabe, and Roberts met up at McCabe's home, and after returning briefly to O'Keefe's house, piled into Roberts's car to look for O'Keefe. In the back seat, Read screamed about her boyfriend being missing as the women drove through the pre-dawn streets of Canton, snow swirling and dancing in the car's headlights. On the dash, the temperature read 18 degrees Fahrenheit.



34 Fairview Road in Canton, MA on February 2, 2022. / Photo by Craig F. Walker/The Boston Globe via Getty Images)

As they approached the house where Read had last seen her boyfriend, she shouted that she spotted him and scrambled out of the car. It was pitch-black outside, but on the left side of the property at 34 Fairview, she saw O'Keefe's body lying covered in snow. Read raced toward him, dropped to her knees beside him, and frantically cleared the snow off his torso. Then she lifted both their shirts and laid on top of him, trying to warm his ice-cold body.

Roberts, who had run over to O'Keefe's body, cleared the snow off his face. Read began giving her boyfriend mouth-to-mouth CPR while Roberts administered chest compressions. Blood ringed his nose and mouth, and his right eye was blackened and swollen. O'Keefe's baseball hat and one of his black Nike sneakers were missing. McCabe rushed over with blankets from the vehicle to warm O'Keefe and dialed 911 at 6:04 a.m.

As they waited for the ambulance, Read repeatedly cried out McCabe's and Roberts's names over and over, her boyfriend's blood smeared on her face. Soon the police arrived, followed by an ambulance that rushed O'Keefe to Good Samaritan Medical Center in Brockton. Doctors pronounced him dead at 7:50 a.m.

Detectives began investigating, and within days, Read was charged with manslaughter on suspicion of hitting O'Keefe with her Lexus. But that wasn't the end of the story—far from it. A year later, the court case would blow up on local news sites and become the focus of conspiracy theories that ignited protests, ruined reputations, ended friendships, and divided the community of Canton, shredding the social fabric of the tight-knit suburban town.



Read being arraigned on second-degree murder charges in the killing of her boyfriend, BPD officer John O'Keefe. / Photo by John Tlumacki/The Boston Globe via Getty Images

For three days after finding O'Keefe dying in the snow, Read lay curled up on her parents' couch in Dighton, shocked and confused. *What had happened to John?* she kept asking herself. She missed him terribly, Read says, and couldn't believe he was gone. She called her doctor and asked for medication to help her sleep. She had also located an attorney, David Yannetti, online and retained his services. When State Police Trooper Michael Proctor, a longtime Canton resident who was in charge of the criminal investigation, and his partner later came knocking, she answered their questions.

The day she returned to her Mansfield home, Read says, she was in her kitchen talking on the phone with a close friend who lived in Florida when she noticed a Chevy Silverado pickup truck parked in front of her house. Soon, she says, about six other vehicles appeared. Then, nearly a dozen police officers converged. At 7:40 p.m., officers handcuffed Read and drove her to the Blue Hills State Police Barracks.

Read spent the night in jail until the morning, when officers took her to a holding cell inside the Stoughton courthouse. Read says that she and Yannetti stood on opposite sides of the jail bars and reviewed the charging documents. The medical examiner had noted several bloody abrasions etched into O'Keefe's right arm, two swollen black eyes, a small cut above his right eye, a cut to the left side of his nose, an approximately 2-inch laceration to the back of the head, and multiple skull fractures that resulted in bleeding of the brain. His pancreas was dark red, indicating hypothermia had contributed to his death.

The rest of the information contained in official reports was even harder for Read to hear: According to witness interviews, Read had told McCabe she had last seen O'Keefe at the Waterfall, that she and O'Keefe had gotten in a fight, and that she didn't remember dropping him off at the post-bar gathering at 34 Fairview. According to Roberts's account in the charging document, Read was so drunk that night that she told Roberts in the morning she didn't remember anything from the night before—though she had wondered if O'Keefe was dead or got hit by a plow—and that Read still seemed drunk that morning. Before Roberts, McCabe, and Read found O'Keefe's body, Roberts told police, Read showed them her cracked right taillight, saying she had no idea how it had happened the night before. When an emergency responder asked Read how O'Keefe had injured his face, the document stated, Read said, "I hit him. I hit him, I hit him, I hit him."

In addition, it stated that Canton police found a broken cocktail glass and multiple patches of blood in the snow near where O'Keefe's body had been located that morning. The Massachusetts Special Emergency Response Team (SERT) also found pieces of plastic—two red and one clear—in the same vicinity as the body, items consistent with the broken taillight on Read's Lexus. The document noted that officials seized the car and found that it had broken glass embedded in the rear bumper, a deep scratch and a dent on the right side of the rear tailgate, and two scratches plus some chipped paint on the right side of the rear bumper. Considering the evidence, police and prosecutors concluded, Read was intoxicated when she backed up and struck her boyfriend and then drove off into the night.

In the holding cell, no sooner had Read and her attorney read the evidence being marshaled against her than a bailiff came for Read. He led her, wide-eyed and terrified, she says, into Stoughton District Court, where O'Keefe's family and dozens of his friends and fellow Boston cops—including uniformed BPD Superintendent in Chief Gregory Long—packed the courtroom. On the other side of the aisle, Read's mother prayed as a judge arraigned her daughter on manslaughter charges. Then Read entered her plea: not guilty.



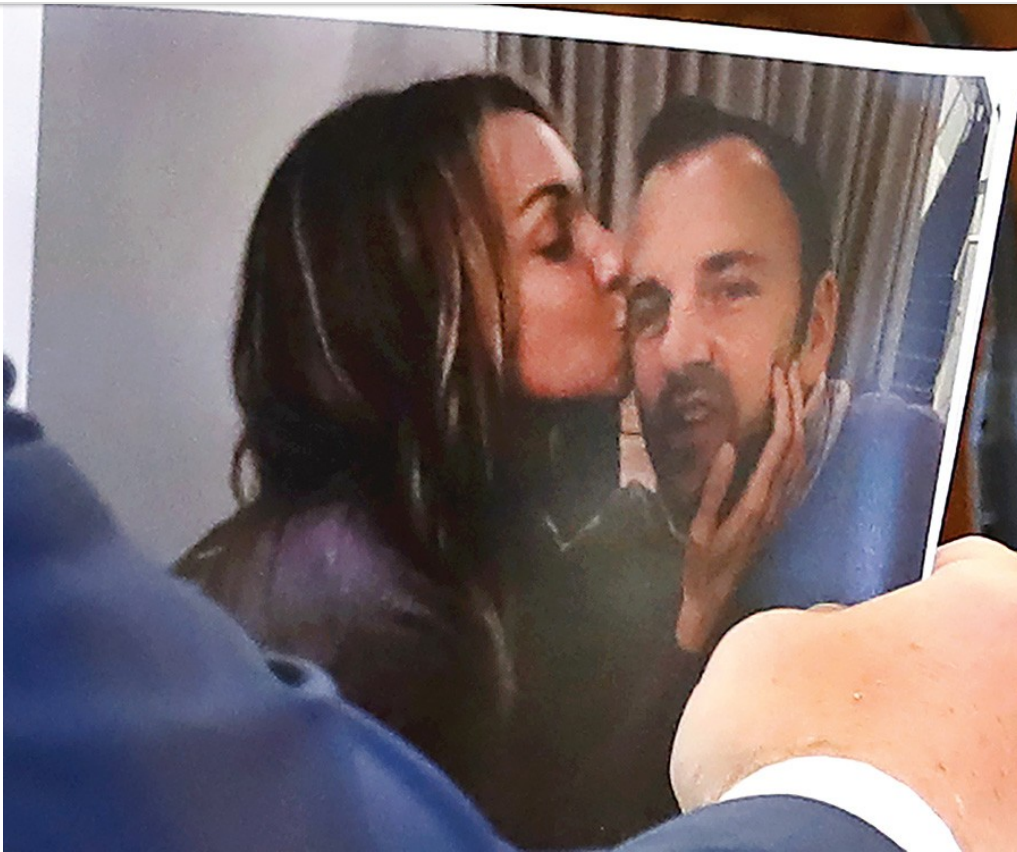
O'Keefe's family and friends at a pretrial hearing. / Photo by John Tlumacki/The Boston Globe via Getty Images

It wasn't long before a far more sinister theory of what happened began to emerge. On his drive home after the arraignment, Yannetti says, he returned a call to a tipster who had previously called his office. A man with a gravelly voice—who initially offered up a fake name—picked up the phone and told Yannetti, he recalls, something to the effect of, “Your client is innocent. John was beaten up by Brian Albert and his nephew. They broke his nose, and when O’Keefe didn’t come to, Brian and a federal agent dumped his body on the front lawn.” (An attorney for the man Yannetti identified as the tipster denies Yannetti’s version.)

Yannetti didn’t know what to think. Was this even plausible? He thought about the people at the after-party that night: Brian Albert, the homeowner, was a prominent Boston cop. There was also a federal law enforcement officer at 34 Fairview that night: Brian Higgins, a special agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, with whom both O’Keefe and Read were friendly.

Given the new information, Yannetti and Read say they began to believe that Read was being framed. They hired a private investigator to knock on doors in Canton. Most people turned the gumshoe away, but Canton resident Tom Beatty—a friend of both O’Keefe and Read—offered up a new tidbit: His daughter, who was friends with Brian Albert’s nephew Colin Albert, said that Colin had been at 34 Fairview Road the night O’Keefe died.

When Read heard this, she says, the news transported her back to a night during the spring of 2020 when O’Keefe’s home-security alarm went off, and he bolted out of bed. She followed him down the stairs and says she remembered seeing Colin Albert and several teens in the front yard. “Go fuck yourself,” Read remembered Colin yelling at O’Keefe. “Get the fuck out of here,” she recalled her boyfriend replied. The next morning, Read says, the couple awoke to a dozen empty Bud Light cans strewn in the bushes. The police were never called, but from then on, she says, there was bad blood between Colin and O’Keefe. In fact, she now adds, Colin was the only person with whom O’Keefe ever had issues.



Read and O'Keefe, in happier times. / Photo by John Tlumacki/The Boston Globe via Getty Images

After hearing that Colin Albert had been present at 34 Fairview, Read says, another apparent clue in the case soon appeared when Read and her father, William, met with Yannetti in his office. For the first time, Read saw police photos of O'Keefe's body. She could barely draw a breath, she recalls, waiting until taking the elevator back down to the lobby to break down in tears. It looked as though someone had "beat the shit" out of him, she says. As she and her father drove home on Route 93, Read called her mother and described the bizarre injuries on O'Keefe's arm. Her mom suggested that they could have been from an animal. Read called Beatty. "Do the Alberts have a dog?" she asked. Yes, he replied, a German shepherd.

Then, three months later, Read says, a couple that Read and O'Keefe had been close to came over to Read's house for dinner. They had just testified before the grand jury in the case, summoned along with others who appeared in Read's call log the morning O'Keefe died. Over Italian takeout at Read's mahogany dining room table, next to a sideboard crowded with pictures of Read and O'Keefe—one with a rosary draped across it—they told Read that State Trooper Michael Proctor, a Canton resident and lead detective on the case, had mentioned that he had known members of the Albert family for years.

To Read, that sounded like a conflict of interest. When her guests left, she went upstairs to her bedroom, pulled out her laptop, propped herself against the pillows on her enormous white bed, and started reading through Proctor's publicly shared Facebook page. That led her to Proctor's sister's account, where Read says she combed through some 1,300 photos. At 4 a.m., she found what she was looking for: a photo taken at Proctor's sister's wedding that showed a young Colin Albert, the ring bearer. Then Read found another photo of Proctor's parents and sister alongside members of Chris Albert's family.

Read was speechless. As she sat there on her bed, she says, the dots in her mind began to connect, forming a theory of who had really killed O'Keefe—a theory that would prove her innocence. The way she saw it, the bad blood with Colin provided the motive for a fight inside the house that night. The Alberts' German shepherd also jumped in, which might explain those mysterious arm injuries. Then the partiers tossed O'Keefe outside to die in the snow. The tipster's information had already helped convince Read that she was being framed, but she'd wondered who was pulling the strings. Now, Read says, she believed she had her answer: Proctor.

Meanwhile, far from coming to the conclusion that someone else killed O'Keefe, prosecutors doubled down on their belief that Read was the killer. After the grand jury reviewed the prosecutor's evidence, it concluded there was sufficient evidence to also charge her with second-degree murder, implying she had intentionally killed O'Keefe. On June 9, Proctor himself—along with several other police officers—walked up to Read's home and once again arrested her.

Read was now facing a potential life sentence in prison. After posting bail set at \$100,000, she went home to take a long, hot shower. *This is getting real*, she thought to herself. The stakes kept getting higher. She knew she needed bigger legal guns to help her.



O'Keefe's body was found outside the home of fellow BPD officer Brian Albert. / Photo by Matthew J. Lee/The Boston Globe via Getty Images

Two months later, Read sat at her laptop, her fingers hovering over the keys. She wanted an eye-grabbing subject line for an email she was about to send to Alan Jackson, a famous criminal defense lawyer in Los Angeles who'd once defended Harvey Weinstein and Kevin Spacey. "Murder of a Boston Cop," she typed out.

It worked. Soon after, Read, her father, and Yannetti all dialed into a conference call with Jackson, who had already received O'Keefe's autopsy over email. As Yannetti summarized the case, Jackson interrupted: "How the fuck are they saying he got these injuries?" Between O'Keefe's swollen, black eyes and the gashes on his arm, Read's boyfriend appeared as though he'd been beaten up before being attacked by a dog, not run over by a car.

Read's lawyers also realized that, according to Proctor's original affidavit in February, six months earlier, the lead detective said he'd arrived at Read's parent's house in Dighton at 4:30 p.m. and towed her car at 5:30 p.m., but the Reads' security footage (as well as the Dighton Police report) showed that those times were wrong, and that Karen's SUV was actually towed closer to 4:12 p.m. That 78-minute discrepancy, Read and her attorneys claim, would have left Proctor alone with the car with plenty of time to break her taillight and plant the pieces at 34 Fairview for the SERT team to find when it arrived at 5:45 p.m.

Jackson officially joined the defense team and began looking for evidence that would back up their alternative theory and exonerate Read. They found suspicious details, such as Brian Albert getting rid of his dog and selling his house in the wake of O'Keefe's death. Still, it wasn't until early March that they found what they considered a bombshell: an incriminating Google search on McCabe's phone, which she had turned over to the prosecution voluntarily. According to the analysis, McCabe appeared to have Googled "hos [sic] long to die in cold" at 2:27 a.m. the night that O'Keefe was killed. That was hours before the three women found O'Keefe in the snow. The same search appeared again at 6:23 a.m. and again at 6:24 a.m., after, McCabe says, Read asked her to search for it.

On April 12 of this year, Jackson submitted a 92-page affidavit to the court, laying out the defense team's theory in detail. Read's attorneys knew it would help their efforts if someone in the media started paying attention to their version of events: that there was more than meets the eye with this case.

Five days later, their wish came true. After multiple news tipsters told him to investigate the O'Keefe murder, Aidan Kearney, a blogger who goes by the name of Turtleboy, sat down in his Holden home surrounded by his young kids' plastic toys and board games, and read through the case filings. (Both Kearney and Read's defense team say they have never been in contact with one another.) Kearney, the controversial figure behind TB Daily News (formerly Turtleboy Sports) says he knew immediately that this was the kind of story his devoted followers would love. Kearney worked on his piece throughout the night, finishing it at 3 a.m. and posting it **under the headline**: "Canton Cover-Up, Part 1: Corrupt State Trooper Helps Boston Cop Coverup Murder of Fellow Officer, Frame Innocent Girlfriend."

Read is a completely innocent woman, wrongly charged by corrupt cops who would see her rot in prison in order to cover up a murder of a fellow officer,” Kearney **concluded**.

Kearney suspected that as soon as he published his article, it would blow up online. He was right. His website nearly crashed under the strain of the traffic, he says. Meanwhile, back in Canton, the coverage was about to rip the town in half.



Nearly every court appearance for Karen Read has become a media frenzy. / Photo by John Tlumacki/The Boston Globe via Getty Images

The next day, news of the possible conspiracy spread like wildfire, from the deli counter at Shaw’s to the links at Brookmeadow Country Club. Before Kearney’s piece, there wasn’t much talk of O’Keefe’s death beyond those immediately involved. Suddenly, it was the topic du jour—and residents started taking sides. In response, the town’s police chief tried to ease tensions by **releasing a press statement asking for patience**: “[We] have heard the same sensational accounts as our townsfolk,” Chief Helena Rafferty wrote. “Unlike defense attorneys, prosecutors and police are ethically constrained to what can be said outside the courtroom.”

Kearney had no such constraints. He **continued to write** about the case, one story after another, as his monthly page views rocketed from about 1.5 million, he says, to as many as 4 million. He began livestreaming “Canton Cover-Up” stories twice weekly on his YouTube channel and says his viewership increased from 3,000 to 20,000 per episode.

By the time Read and her legal team arrived in court two weeks later, it was clear to Read that the tide of public opinion had turned in her favor. A crowd had gathered outside the courthouse. One person shouted, “Go get ‘em, Karen,” while someone else chimed in with, “Stand tall, girl, stand tall,” Jackson recalls. Read turned to her lawyers, astounded. As the courtroom door closed behind them, the crowd applauded.

Jackson rose and presented the defense’s alternative theory, which was essentially what Kearney had posted: The witnesses in the case—those inside the house that night—had hidden evidence of the gruesome events that transpired inside the home, leading to O’Keefe’s death. Then their close friend in law enforcement, Michael Proctor, helped cover it up and frame O’Keefe’s girlfriend. The prosecutors poked holes in the defense’s theory and pushed back with their own evidence against Read.



Read with her attorney Alan Jackson, leaving court. / Photo by Matt Stone/MediaNews Group/Boston Herald via Getty Images

Meanwhile, beyond the walls of the courthouse, the town's residents were at war among themselves. At high school games, parents who once sat side by side cheering now avoided one another's gazes and went silent when someone who disagreed with their take on the case walked by. "My social group is really small right now because of this," says one woman, who, like many Canton residents, asked not to be named for fear of repercussions in her neighborhood. "I only surround myself now with people that I trust." One woman who was born and raised in Canton says, "It's like bringing up Donald Trump at a dinner party. It could just explode. People don't want people to know which side they're on. Because, like politics, they don't want to deal with the fallout."

At the same time, though, the fault lines often seemed to take the same form as old grudges in a town where many families have lived for generations. "The problem with this town is that nobody fucking leaves," says one resident. "Most people in Canton are turning on each other because they don't like the Albert family, or they're pissed that Chris Albert was elected to the Select Board, or they're jealous of Jen from high school, or whatever these stupid bullshit things are. There are these beefs from high school with these people."

Simultaneously, in the actual high school, students turned on one another. "You have to pick one side or another," says one father, who saw one of his daughters kicked out of her friend group, while the other became "borderline suicidal" because he believes Karen and her friends' parents don't.

As the case wore on, Kearney's role in the tabloid drama continued to expand. He became involved in a Facebook group called "Justice for John O'Keefe and Karen Read (Mass corruption)," which has more than 21,000 members who use the space to dissect nuances of the evidence, pick on witnesses, and one-up each other with hyperbolic insults.

In response, the people who were inside the home at 34 Fairview the night O'Keefe died—whom Kearney alleges are truly responsible for his death—and O'Keefe's family members and friends started their own private group, an admin of which is a woman who used to write for Kearney until they fell out with each other several years ago, they both say. The two have been locked in battle, suing each other in court, ever since.

Kearney refers to himself as a journalist, yet he doesn't simply publish articles or videos to make his point. He has also traveled to Canton and beyond, readers in tow, to directly confront the people he says are responsible for O'Keefe's murder. One day, for instance, Kearney attended McCabe's daughter's publicly held high school lacrosse game in Billerica, while he filmed and livestreamed the confrontation for his YouTube followers. "Did you think you could outsmart Karen Read?" he asked McCabe as she sat with her oldest daughter and her friends, trying to ignore him. "Are you worried what's going to happen to your family when you go to jail?" His readers have gone even further, texting and sending McCabe Facebook messages telling McCabe to kill herself.

O'Keefe's family, including his brother, Paul, and his mother, Peg—who has lost two of her three children, John and his sister—arguably received the most pointed vitriol. On his YouTube show, Kearney has said: "With the O'Keefes, enough of the fucking pity party for these fucking people," and, "The only good part about John not being alive is that he doesn't have to be around you useless maggots for a second more. Fuck you. Fuck your high horse. Burn in hell." Kearney says he's offended that they believe the state is prosecuting the right person and is glad he's able to use his platform to shine a light on the case. "The beauty of Turtleboy is that I can do things in an unconventional manner that other journalists are restricted from doing," he says. "I love being the center of attention and being theatrical and performing. This is what I was made to do."

As if to prove his point, on July 22, Kearney and more than 100 people—from old men with bushy beards to infants in car seats—gathered in the parking lot of a Shaw's supermarket in Norwood and passed around markers to write slogans on their cars, including "hos long for justice?" a play on McCabe's mistyped Google search. Then, nearly 50 cars embarked on a rolling rally through the streets of Canton while Turtleboy followers watched the livestream. Over the next two hours, Kearney—who drives a brand-new Lexus—stopped at the homes of Brian Albert, Michael Proctor, and Jennifer McCabe. At each stop, Kearney shouted into a bullhorn, detailing



Hundreds of Boston Police officers and Mayor Michelle Wu attended his wake but it wasn't until a year later that the case received broader attention. / Photo by Matthew J. Lee/The Boston Globe via Getty Images

Days later, two chauffeured, blacked-out SUVs rolled to a dramatic stop in front of the Dedham courthouse, where a hundred or so people had been loudly protesting for nearly two hours under the blazing sun, holding handmade signs emblazoned with “DA Stop Lying” and “Way Beyond Reasonable Doubt.” Kearney was shouting into a bullhorn while wearing a gray “hos long to die in cold” T-shirt, which [he sells on his website for \\$22](#).

The boisterous crowd quieted, just for a moment, as the driver stood by the passenger door, heightening the anticipation. Finally, he opened the door, and Jackson stepped out wearing a crisp suit. He turned and offered his hand to Read, who emerged in a tailored black suit-dress and heels. She took in the people there and beamed before walking through the crowd and up the steps into the courthouse. The onlookers then booed O’Keefe’s parents, who lowered their heads as they walked past people wearing “Free Karen Read” T-shirts.

When the doors to the courtroom upstairs finally opened, the benches on both sides of the gallery filled with spectators. Read’s supporters sat on one side, while O’Keefe’s family and friends, wearing “Justice for JJ” buttons, sat on the other. Assistant District Attorney Adam Lally walked into the room, flushed and balancing a massive stack of folders, as Read and her four lawyers sat coolly at the defense table. After arguing various motions, Lally asked the judge to compel—yet again—Read and her attorneys to allow the prosecution access to the data from Read’s cell phone. Though the state police had taken her phone into custody 18 months earlier, prosecutors had been prohibited from analyzing its contents because it contained privileged communication between Read and her lawyer Yannetti, who she’d called a few hours after O’Keefe died.

The prosecution has obvious reasons for wanting Read’s cell-phone data. After all, it could reveal who she called and texted that night and where she went in the hours before she called McCabe in the morning. This is particularly important because, according to court filings from the prosecution, O’Keefe’s Ring camera system registered 15 events between 6 p.m. the night he died and 6 a.m. the next morning, yet there is no video of Read’s arrival back home that night. Data in her phone could also help explain surveillance footage taken of Read driving toward the Waterfall at 5:11 a.m., away from the Waterfall at 5:15 a.m. and then heading toward 34 Fairview before arriving at McCabe’s that morning. What was she doing there—had she already searched for, and found, O’Keefe’s body? That might explain how she spotted O’Keefe in the dark, given that the police officer who responded to the 911 call had to use a spotlight from his cruiser to see the women crouched over O’Keefe’s body in the darkness.

Even forgoing the missing cell-phone data, though, there are some possible holes in Read’s alternative theory. For starters, the thesis that O’Keefe was assaulted inside 34 Fairview hinges on Colin Albert’s allegedly contentious relationship with O’Keefe. In an exclusive interview, though, Colin Albert told *Boston* that he walked out of the house at 34 Fairview right when Brian Albert was arriving, said hello, and stepped into the car of Jennifer McCabe’s daughter, who then drove him home. According to court documents, no one else, including O’Keefe, had arrived by that point. Text messages, which *Boston* has seen, confirm he was picked up at 12:10 a.m., and his parents say he was home for the rest of the night—all of which counters the theory that his animosity with Colin led to O’Keefe’s death inside the house within minutes of his arrival, and then his friends tossed him onto the lawn in a blizzard to die.

Also problematic for Read’s alternative theory is that, according to multiple people who know O’Keefe and Colin in Canton, it doesn’t seem there was any bad blood between O’Keefe and Colin, as Read claims there was. What’s more, two sources claim the confrontation between O’Keefe and the boisterous beer-drinking teens on his lawn that Read recalled actually involved another teen entirely and not Colin at all. And when it comes to the suspicions raised by Brian Albert getting rid of his dog and selling his house, a source with knowledge of the situation says Albert got rid of the dog after it got in a fight with another dog and that he had already contacted a real estate agent about selling his house prior to the night O’Keefe was killed. (Neither Brian nor Chris Albert agreed to comment for this story.)

supposed evidence of his having had plenty of time to plant evidence—was simply an error that was amended in later filings. Police reports and the DA also confirm that Proctor was never alone with Read's Lexus and never returned to 34 Fairview after it was seized. An even larger problem for Read's defense is evidence that there were microscopic pieces of taillight plastic found on O'Keefe's shirt.

When it comes to the timestamp on McCabe's Google search for how long it takes to die in the cold, the state's own forensic experts say the timestamp of 2:27 a.m. was a result of McCabe typing into the search bar of a tab that had been opened at 2:27 a.m. and left open, meaning it does not prove that she executed the search at that time.



Karen Read supporters as she left the Dedham courthouse on September 15. / Photo by Matt Stone/MediaNews Group/Boston Herald via Getty Images

Meanwhile, forensic evidence calls into question other aspects of Read's defense. According to court documents filed by the prosecutor, the medical examiner testified in front of the grand jury that the injuries O'Keefe suffered were not the result of a fight, and the marks on his arm were abrasions caused by blunt force trauma. In addition, data from Read's Lexus, retrieved by the state, shows that her car went in reverse at a high rate of speed, and then, according to the state's crash reconstruction, struck the victim and continued in reverse before leaving the scene.

Besides the physical evidence, another piece of the puzzle Read's lawyers will have to explain is Read's ever-changing narrative. According to prosecutors, O'Keefe's niece, who Read woke up to call McCabe, says that Read changed her story multiple times when she was on the phone with McCabe that morning. And it continued to vary. Read told Proctor that she dropped O'Keefe off at Fairview and went home because she had a stomachache, and that she never saw him enter the house. During an interview with *Boston*, she said that she saw O'Keefe run up to the house and enter through the door of the breezeway, that she waited some 10 minutes to hear from him that it was "copacetic" for her to join him and his friends, and left when he didn't answer her calls or come back. The theory that Read's team espouses hinges on O'Keefe being inside the house. Yet according to a statement from Norfolk District Attorney Michael Morrissey, cell-phone data from O'Keefe's phone, found on the grass beneath his body, shows the phone never entered the house.

What's more, while Read has insisted that she and O'Keefe were in a loving relationship, evidence from O'Keefe's phone shows she called him some 50 times that night, leaving furious voicemails and screaming that she hated him, according to the prosecution. And there is another potential bombshell buried in the documents concerning ATF Agent Higgins, who was in the Fairview house that night. He was the only person there who has not been the focus of Turtleboy coverage; many people in Canton say he hasn't been heard from since the night O'Keefe died. He voluntarily gave authorities his phone, from which they retrieved some 56 pages of texts between him and Read, some of which a source with knowledge of the messages has characterized as romantic in nature. (Higgins did not respond to requests for comment.)

None of this takes into account the fact that prosecutors have evidence they have yet to publicly share and probably won't release until the trial, which is currently set for March 12, 2024. To accept Read's alternative theory, jurors will have to believe that there was a conspiracy among officers from multiple law enforcement agencies, an emergency responder, several witnesses, a medical examiner, forensic computer experts, O'Keefe's then-14-year-old niece, and his childhood friend, who didn't even know any of the people who the conspiracy is allegedly protecting, in order to frame Read. All they need, though, is reasonable doubt in the defense's case. And Read's freedom might just depend on it.



On Sept. 15, hundreds of Karen Read supporters gathered in front of Dedham's Norfolk County Superior Court before Read's latest court appearance. / Photo by Matt Stone/MediaNews Group/Boston Herald via Getty Images

Still months away from a trial, the case is already making the Hollywood rounds. *Dateline* has been filming Read for a show scheduled for release after the verdict, and Kearney says he has been approached by multiple documentary producers, including a few from Netflix. Meanwhile, in Canton, the community continues to convulse under the weight of the tabloid drama. On August 8, residents packed the second floor of Memorial Hall for the Canton Select Board meeting to voice their concerns about Selectman Chris Albert, the Canton Police Department, and their otherwise quiet and peaceful suburb being portrayed as a national disgrace. Police Chief Rafferty took the microphone and said she could understand people having questions about the O'Keefe case based on the limited information publicly available, but what was unacceptable was witnesses—residents who had not been charged with any crime—being bullied and harassed by either side of the case under the guise of the First Amendment.

Several weeks later, Norfolk DA Morrissey followed up with a recorded video message. Seated in front of a bookshelf of legal tomes, he mentioned evidence that counters much of Read's alternative theory and pleaded with the public to stop harassing the crime witnesses. "We try people in the court and not on the Internet for a reason," he said, adding that this was the first and only time during his dozen-year career he'd felt compelled to record such a message. "The Internet has no rules of evidence. The Internet has no punishment for perjury. And the Internet does not know all the facts."

A couple of weeks after that, at a regularly scheduled town Select Board hearing, a resident speaking into the microphone broke down in tears. "It's been a long 19 months," she said, adding that she wanted to see an independent investigation of the crime to get to the bottom of the incident that has divided her town.

There is one thing that almost everyone in Canton seems to agree upon: O'Keefe was a good man and a selfless person who, after losing his sister, stepped up to raise her children with love and devotion. He was universally liked in a town that has descended into bitter strife over his untimely death. Still, for now at least, people in Canton are so busy fighting over whether Read is a criminal or a victim of police corruption that no one is talking much about O'Keefe.

**Update, Sept. 27, 4 p.m.: Two sentences in this story have been revised, one for clarity, one for accuracy. 1) Court documents state that no one else had arrived at 34 Fairview at the time that Colin Albert left. 2) An earlier version of this story characterized Jennifer McCabe's daughter as Colin Albert's "cousin"—Jennifer McCabe's daughter and Colin Albert are not blood relatives.*

An earlier version of this story was published in the print edition of the October 2023 issue with the headline, "The Killing That Tore a Town Apart."

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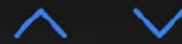
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Exhibit B

Email from Deputy Chief Patricia
Sherrill to Jenna Rocco
November 7, 2023

12:58

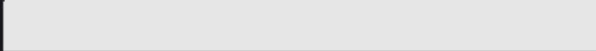
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Patty Sherrill

12:48 PM

To:



Records request

Dear Jenna Rocco:

On Monday, November 6, 2023, we received your request below pursuant to the Massachusetts Public Records Law.

With respect to your request, please be advised that in accordance with M.G.L. c. 4, Sec. 7(26) (f), the information you are requesting is exempt from disclosure at this time as the incident is under investigation. Any and all materials associated with this investigation are to be withheld until the investigation is complete.

Warm regards,

Patricia A. Sherrill
Deputy Chief of Administration
Canton Police Department
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FBI NA 227th



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MEREDITH O’NEIL, JESSICA
SVEDINE, DEANNA CORBY, NICK
ROCCO, JENNA ROCCO, and ROBERTO
SILVA,

Plaintiffs,

v.

CANTON POLICE DEPARTMENT, the
TOWN OF CANTON,
MASSACHUSETTS, HELENA
RAFFERTY, as Chief of the Canton Police
Department and in her personal capacity,
and OFFICER ROBERT ZEPF, OFFICER
MICHAEL CHIN, OFFICER ANTHONY
PASCARELLI, and SERGEANT JOSEPH
SILVASY, in their official and individual
capacities,

Defendants.

Civil Action No. 1:23-cv-12685

**PLAINTIFFS’ EMERGENCY
MOTION FOR A TEMPORARY
RESTRAINING ORDER AND FOR
A PRELIMINARY INJUNCTION**

RANDAZZA | LEGAL GROUP

Plaintiffs in the above-captioned proceeding file this emergency motion for a temporary restraining order and preliminary injunction to enjoin Defendants from interfering with Plaintiffs’ right to lawfully engage in constitutionally protected expression and activity. A temporary restraining order is necessary to permit Plaintiffs to peacefully protest **this upcoming Sunday, November 12, 2023**, and thereafter, until a preliminary injunction may issue. A preliminary injunction is needed to generally avoid the threat of arrest to Plaintiffs for lawfully engaging in constitutionally protected expression and activity during this litigation. Plaintiffs agree they will not engage in blocking, impeding, inhibiting, or in any other manner obstructing or interfering with access to, ingress into and egress from any building or parking lot of the business they plan to protest.

As set forth in the accompanying memorandum, the threat of arrest and enforcement of Mass. Gen. Laws, ch. 268, §§ 13A & 13B, violates the First Amendment and the Fourteenth Amendment. This motion is based on all pleadings and papers on file herein and the attached Memorandum of Points and Authorities, and any further argument and evidence as may be presented at hearing. A proposed temporary restraining order is filed herewith.

REQUEST FOR ORAL ARGUMENT ON PRELIMINARY INJUNCTION ONLY

Pursuant to L.R. 7.1(d), Plaintiffs hereby requests oral argument and evidentiary hearing on the preliminary injunction request; the temporary restraining order to permit the November 12, 2023, protest and preserve the *status quo ex ante*, should be resolved without a hearing—there is no prejudice to Defendants to issuing the temporary restraining order. Hearing may facilitate this Court’s understanding of the factual and legal issues given the exigency of this motion, or other purported evidence in response, but it should not delay issuance of a temporary restraining order.

WHEREFORE, Plaintiffs respectfully request this Honorable Court issue the requested emergency Temporary Restraining Order and Preliminary Injunction.

Dated: November 8, 2023

Respectfully Submitted,

/s/ Jay M. Wolman
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MEREDITH O’NEIL, JESSICA SVEDINE, DEANNA CORBY, NICK ROCCO, JENNA ROCCO, and ROBERTO SILVA,

Plaintiffs,

v.

CANTON POLICE DEPARTMENT, the TOWN OF CANTON, MASSACHUSETTS, HELENA RAFFERTY, as Chief of the Canton Police Department and in her personal capacity, and OFFICER ROBERT ZEPF, OFFICER MICHAEL CHIN, OFFICER ANTHONY PASCARELLI, and SERGEANT JOSEPH SILVASY, in their official and individual capacities,

Defendants.

Civil Action No. 1:23-cv-12685-DJC

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’ EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION

[ORAL ARGUMENT REQUESTED]

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1.0 INTRODUCTION

This case is about a Police Chief and her subordinates abusing their power and threatening Plaintiffs with prosecution for their protest of an injustice. Plaintiffs believe that the Commonwealth of Massachusetts is wrongly framing Karen Read for the alleged murder of John O’Keefe based on a cover-up by crooked police officers. They were threatened with prosecution pursuant to Mass. Gen. Laws, ch. 268, § 13A, during their November 5, 2023, protest. The journalist who brought initial scrutiny to the prosecution of Read has been charged under the related statute of Mass. Gen. Laws, ch. 268, § 13B. Plaintiffs reasonably fear that, if they proceed with their planned November 12, 2023, protest, and other similar such protests, Defendants will arrest and prosecute them for violation of Sections 13A and/or 13B, despite such protests being protected under the First Amendment to the U.S. Constitution. They request a temporary

restraining order to permit a planned November 12, 2023, protest and other future protests to proceed, until such time as the Court can hear and determine their request for a preliminary injunction.

Plaintiffs are not threatening any witness or related person and will not do so. They will not engage in the “blocking, impeding, inhibiting, or in any other manner obstructing or interfering with access to, ingress into and egress from any building or parking lot of the” business they plan to protest. *Compare Madsen v. Women’s Health Ctr.*, 512 U.S. 753 (1994) (upholding such restrictions on protest activities near abortion clinics). Plaintiffs simply wish to engage in constitutionally-protected speech and require this Court’s intervention.

2.0 FACTUAL BACKGROUND

Plaintiffs Meredith O’Neil, Jessica Svedine, Deanna Corby, Nick Rocco, Jenna Rocco, and Roberto Silva are Massachusetts residents who believe that Karen Read is being framed. Verified Complaint (ECF No. 1) at ¶ 1. They have protested peacefully and wish to continue to do so. *Id.*

John O’Keefe was a member of the Boston Police Department who, at the time of his death, lived in Canton, Massachusetts. *Id.* at ¶ 10.¹ Karen Read was romantically involved with O’Keefe prior to his death. *Id.* at ¶ 11. On Friday, January 28, 2022, O’Keefe and Read were at the Waterfall Bar & Grille, in Canton, Massachusetts, and had drinks there with Chris Albert (a Town of Canton Selectman), Brian Albert (a Boston police officer and Chris Albert’s brother), and Jennifer McCabe (Brian Albert’s sister-in-law). *Id.* at ¶ 12. When the bar was closing, Brian Albert invited O’Keefe, Read, and his relations back to his house, and O’Keefe and Read drove to Brian Albert’s

¹ The background on the O’Keefe death and Read prosecution are provided for context purposes relative to Plaintiffs’ protests and, as noted in the Verified Complaint, are drawn from the September 27, 2023, article in Boston Magazine by Gretchen Voss, entitled “The Karen Read Case in Canton: The Killing that Tore a Town Apart” (ECF No. 1 at ¶ 9, citing ECF No. 1-1). Plaintiffs do not have personal knowledge as to these events.

house. *Id.* at ¶ 13. The following morning, on January 29, 2022, Read, McCabe, and O’Keefe’s friend, Kerry Roberts, found O’Keefe in the snow outside Brian Albert’s house. *Id.* at ¶ 14. O’Keefe was pronounced dead by physicians at Good Samaritan Medical Center in Brockton, Massachusetts, later that morning. *Id.* at ¶ 15. Read was, thereafter, charged with manslaughter, having allegedly hit O’Keefe with her automobile. *Id.* at ¶ 16.

Subsequent to her arrest, Read’s lawyer was given a tip that Brian Albert and his nephew, Colin Albert (who had an acrimonious relationship with O’Keefe), had beaten up O’Keefe that night, to the point of unconsciousness, and that Brian Albert and Brian Higgins (a special agent with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives), who had been at Brian Albert’s house, dumped O’Keefe’s body on Brian Albert’s lawn. *Id.* at ¶ 17. Read thereafter learned that State Trooper Michael Proctor, a Canton resident and lead detective into the investigation of O’Keefe’s death, was apparently a friend to the Albert family—Colin Albert, for example, had been the ring bearer at Proctor’s sister’s wedding. *Id.* at ¶ 18. As a result, Read believed that, to protect the Alberts, Proctor framed Read for O’Keefe’s death. *Id.* at ¶ 19. However, Proctor, on June 9, 2022, arrested Read again, following a grand jury indictment against Read for second-degree murder.² *Id.* at ¶ 20.

On April 12, 2023, Read’s defense team filed a 92-page affidavit in her case outlining their theory of how Read had been framed. *Id.* at ¶ 21. Six days later, on April 18, 2023, journalist Aidan Kearney, published his first article about the alleged framing of Read.³ *Id.* at ¶ 22. Kearney’s reporting brought public support to Read, and public demonstrations in support of her

² The prosecution is pending in the Norfolk County Superior Court, styled *Commonwealth v. Karen Read*, Docket No. 2282CR0117.

³ <https://tbdailynews.com/corrupt-state-trooper-helps-boston-cop-coverup-murder-of-fellow-officer-frame-innocent-girlfriend/>

followed. *Id.* at ¶ 23. There is widespread public interest in the prosecution of Read—*Dateline* has been filing Read for a show and Netflix and others have approached Kearney relative to a documentary. *Id.* at ¶ 24.

At an August 8, 2023, meeting of the Canton Select Board, residents voiced their concerns about Selectman Chris Albert and the Canton Police Department *vis a vis* the O’Keefe death. *Id.* at ¶ 25. During that Meeting, Defendant Helena Rafferty, Chief of the Canton Police Department,⁴ referred to an event:

“that made residents of our community feel disrespected, targeted, and intimidated, an event that I believe, under statute 268 13A could most possibly be deemed a criminal act. Additionally, we have an elected library trustee who, as of noon today, was still listed as a co-administrator on a social site that is allowing residents of our community to also be disrespected and dehumanized within innuendos, outright falsehoods, half-truths, and bullying comments, comments, I might add, that if it were made in a school environment, would and should have every resident in this town in an uproar. Yesterday, I received an email from a concerned citizen related to the, and I quote, ‘horrendous, threatening posts’ on this site, asking me to address the issue, as she is worried about how it might-may incite people to act moving forward. Let me make one thing as crystal clear as possible to-as I continue with my comments to the residents: I embrace the fact that we live in a country where people can have different viewpoints. I respect everyone’s right to voice those viewpoints under the First Amendment. I can appreciate that some people have questions on the O’Keefe case, based on the limited information they have seen thus far. However, what I cannot accept is witnesses, let me repeat that, witnesses—these are residents who have not been charged with any crimes—being bullied in their homes, at their children’s games, or on vacation, all under the guise of the First Amendment. This is a really slippery slope that, if allowed to continue, will cause a rapid decline in the amount of people who would ever step forward to be a witness in a case and, quite possibly, the slow erosion of the criminal justice system.”⁵

⁴ Defendant Canton Police Department (“CPD”) is a police department established pursuant to Mass. Gen. Laws, ch. 41, § 97, is located in Canton, Massachusetts, and is a political subdivision of the Defendant Town of Canton, Massachusetts. ECF No. 1 at ¶ 2. To the extent CPD is not capable of being sued, the Town of Canton is named as a Defendant, and they should be treated as a single entity.

⁵ <https://cantonmaselectboard.podbean.com/e/select-board-of-august-9-2023/>, beginning at approximately 18:00.

Id. at ¶ 26. Two months later, on October 11, 2023, Kearney was charged with six counts of intimidation under Mass. Gen. Laws, ch. 268, § 13B, and one count of conspiracy to do so. *See Commonwealth v. Aiden Kearney*, Docket Nos. 2355CR001150, 2355CR001151, 2355CR001152, 2355CR001154, 2355CR001155, 2355CR001156, and 2355CR001157, in the Stoughton District Court.

To protest against what appears to be perjury to them, Plaintiffs and other members of the public gathered on Sunday, November 5, 2023, across the street from Chris Albert’s business, D&E Pizza. ECF No. 1. at ¶ 29; *see also* Chris Albert Campaign Site, “Chris Albert 2023 Select Board Campaign”, available at <https://chrisalbert2023sb.com/> (last accessed Nov. 8, 2023)(“I have been the proud owner of D&E Pizza in downtown Canton for the past 24 years.”) At that protest, Plaintiffs held signs that had inoffensive slogans like “Free Karen Reed” and “Justice.” ECF No. 1 at ¶ 30. Defendants Officers Robert Zepf, Michael Chin, and Anthony Pascarelli, and Sgt. Joseph Silvasy, members of the Canton Police Department, drove by the protest several times, attempting to intimidate the protesters into leaving. *Id.* at ¶ 31. These Defendants are supervised by Defendant Rafferty and necessarily act at her direction. *Id.* at ¶ 33. Such intimidation is consistent with Rafferty’s August 8, 2023, policy that the Defendant Canton Police Department “cannot accept” those engaged in First Amendment-protected activities vis a vis witnesses in the Read prosecution. *Id.* at ¶ 32.

When Defendants’ intimidation tactic proved unsuccessful, Officers Robert Zepf, Michael Chin, and Anthony Pascarelli, and Sgt. Joseph Silvasy stopped and informed the protesters that they were not permitted to protest there, because if the protest could be seen by Chris Albert, they would deem it to be “witness intimidation” and Plaintiffs would be arrested. *Id.* at ¶ 34. The officers specifically handed Plaintiffs a copy of Mass. Gen. Laws, ch. 268, § 13A, they statute

under which they threatened Plaintiffs. *Id.* at ¶ 35. Defendants have an open investigation into Plaintiffs’ November 5, 2023, protest, meaning they still face potential unlawful arrest and prosecution. *See* ECF No. 1-2 (Email from Deputy Chief Patricia Sherrill to Jenna Rocco, Nov. 7, 2023).

The threat of arrest by Defendants for further protest is credible—Aiden Kearney has already been arrested and charged under the related witness intimidation statute, Mass. Gen. Laws, ch. 268, § 13B. *Id.* at ¶ 37. Defendants’ threat of arrest placed Plaintiffs in fear for their safety and liberty. *Id.* at ¶ 38. As a result of Defendants’ threat of arrest, Plaintiffs have chilled their speech and determined to not move forward with a November 12, 2023, planned protest in support of Read and other similar such protests. *Id.* at ¶¶ 39-40.

3.0 LEGAL STANDARD

Rule 65 of the Federal Rules of Civil Procedure provides for temporary restraining orders and preliminary injunctions in federal courts upon notice to the adverse party. *See* Fed. R. Civ. P. 65(a) and (b). A temporary restraining order or preliminary injunction must (1) state the reasons why it issued; (2) state its specific terms; and (3) describe in reasonable detail the act or acts restrained or required. Fed. R. Civ. P. 65(d). Injunctive relief should be issued if: (1) the plaintiff is likely to succeed on the merits; (2) the plaintiff is likely to suffer irreparable harm if the injunction did not issue; (3) the balance of equities tips in plaintiff’s favor; and (4) the injunction is in the public interest. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

“In the First Amendment context, the likelihood of success on the merits is the linchpin of the preliminary injunction analysis.” *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 10 (1st Cir. 2012) (*per curiam*). At this stage, the “court need not conclusively determine the merits of the movant’s claim; it is enough for the court simply to evaluate the likelihood . . .

that the movant ultimately will prevail on the merits.” *Ryan v. U.S. Immigr. & Customs Enf’t*, 974 F.3d 9, 18 (1st Cir. 2020).

4.0 LEGAL ARGUMENT

4.1 Plaintiffs have Standing

In First Amendment cases, there is standing when the plaintiff intends to engage in a Constitutionally protected activity, which has been proscribed by the government, and there is a credible threat of prosecution. *Mangual v. Rotger-Sabat*, 317 F.3d 45, 56-57 (1st Cir. 2003) (standing when a plaintiff “is chilled from exercising her right to free expression or forgoes expression in order to avoid enforcement consequences”).

The harm is readily apparent. Defendants have threatened Plaintiffs with prosecution under Mass. Gen. Laws, ch. 268, § 13A, if they protest at D&E Pizza. Journalist Aidan Kearney is already being prosecuted under the related statute, Mass. Gen. Laws, ch. 268, § 13B, arising from the reporting on the seeming framing of Karen Read, the very thing Plaintiffs are protesting.

Massachusetts General Laws, chapter 268, section 13A (hereinafter “Section 13A”) states, in relevant part:

Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any ... witness..., in the discharge of his duty, pickets or parades ... in or near a building or residence occupied or used by such ... witness, ... shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

Plaintiffs want Chris Albert to testify truthfully, rather than be complicit in the framing of Karen Read. Section 13A, presumably, is intended to ensure witnesses are not coerced into lying, though Plaintiffs seek the exact opposite—the truth. However, they potentially face arrest and prosecution under Section 13A for “influencing” Albert, a prospective witness, if their protest is deemed a “picket” and is considered to be “near” a building used by Albert.

Similarly, Massachusetts General Laws, chapter 268, section 13B(b) (hereinafter “Section 13B”) states, in relevant part:

Whoever willfully, either directly or indirectly: ... (iii) misleads, intimidates or harasses another person who is a: (A) witness or potential witness ... with the intent to or with reckless disregard for the fact that it may; (1) impede, obstruct, delay, prevent or otherwise interfere with: ... a trial or other criminal proceeding of any type ... shall be punished by imprisonment in the state prison for not more than 10 years or by imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not less than \$1,000 or more than \$5,000 or by both such fine and imprisonment. If the proceeding in which the misconduct is directed at is the investigation or prosecution of a crime punishable by life imprisonment or the parole of a person convicted of a crime punishable by life imprisonment, such person shall be punished by imprisonment in the state prison for not more than 20 years or by imprisonment in the house of corrections for not more than 2 1/2 years or by a fine of not more than \$10,000 or by both such fine and imprisonment.

Again, though they have no intent to mislead, intimidate, or harass Albert, or interfere with a criminal proceeding, Defendants seem disinterested in the truth and would rather suborn seeming perjury by Albert and others. Thus, it is likely, as with the Kearney prosecution, they would broadly and wrongly invoke Section 13B, charging Plaintiffs thereunder, should they engage in further planned protests. Thus, Plaintiffs have standing.

4.2 Plaintiffs are Likely to Prevail on the Merits of Their Claims

Plaintiffs bring two counts in their Verified Complaint: 1) for retaliation under 42 U.S.C. § 1983, on account of the direct threat to prosecute Plaintiffs under Section 13A, thereby chilling their speech; and 2) for declaratory and injunctive relief under 42 U.S.C. § 1983 and the First Amendment that Sections 13A and 13B are facially unconstitutional, void for vagueness, and unconstitutional as applied. For purposes of this motion, without prejudice, Plaintiffs do not seek a finding that the statutes are facially unconstitutional or void for vagueness, as such would unduly complicate the immediate and necessary relief sought. It is sufficient that they are likely to prevail on Count I and/or on their as-applied challenge under Count II.

4.2.1 Plaintiffs' First Amendment Rights Were Violated

Defendants violated Plaintiffs' constitutional rights by threatening them with prosecution under Section 13A for their speech protected under the First Amendment of the U.S. Constitution. Because Section 13A infringes on Plaintiffs' First Amendment rights, Defendants must justify their actions. *Comcast of Maine/New Hampshire, Inc. v. Mills*, 435 F. Supp. 228, 233 (D. Me. 2019) (citing *Reilly v. City of Harrisburg*, 858 F.3d 173, 180 (3d Cir. 2017)); *see also Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969) ("In order for the State . . . to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."). They cannot.

Plaintiffs' November 5, 2023, protest was First Amendment-protected. *See Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972) ("Subject to such reasonable regulation, however, peaceful demonstrations in public places are protected by the First Amendment.") Demonstrating is protected by the First Amendment. *See Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 152 (1969) (describing privilege of citizens to assemble, parade, and discuss public questions in streets and parks). The sidewalk is a traditional public forum. *Cornelius v. NAACP Legal Def. & Educ. Fund*, 473 U.S. 788, 817 (1985). Plaintiffs recognize that the government may impose "reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions 'are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.'" *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). However, Defendants are retaliating against Plaintiffs and imposing a restriction on the place of Plaintiffs'

demonstration *with direct reference to the content of their speech*. Defendants would not have threatened Plaintiffs if their signs said “Pineapple Doesn’t Belong on Pizza” or “Vote for Chris Albert”.

In retaliation for Plaintiffs’ First Amendment-protected statements, Defendants abused their position and threatened Plaintiffs with prosecution under Section 13A (and their actions against Kearney threaten them under Section 13B). “The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws abridging the freedom of speech.” *Mass. Coal. For the Homeless v. City of Fall River*, 486 Mass. 437, 440 (2020) (quoting *Reed v. Gilbert*, 576 U.S. 155, 163 (2015)) (quotation marks omitted).

Defendants do not contend Plaintiffs’ speech falls within one of the few “historic and traditional categories of expression long familiar to the bar” for which content-based restrictions on speech are clearly permitted. *United States v. Alvarez*, 567 U.S. 709, 717-18 (2012) (cleaned up). In *Commonwealth v. Welch*, 44 Mass. 80 (2005), the Massachusetts criminal harassment statute, Mass. Gen. Laws, ch. 265, § 43A, was determined to be constitutional only because it was narrowly construed to only encompass constitutionally-unprotected speech. Similarly, in *O’Brien v. Borowski*, 461 Mass. 451 (2012), the civil harassment statute, Mass. Gen. Laws, ch. 258E, was construed to only apply to unprotected speech of fighting words and true threats. In contrast, Defendants are not restricting their explicit and implicit threats under Sections 13A or 13B solely to unprotected speech.

Content-based regulations are subject to strict scrutiny, which requires the government to demonstrate “a compelling interest and . . . narrow[] tailor[ing] to achieve that interest.” *Reed*, 576 U.S. at 155 (quoting *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011)). Narrow tailoring in the strict scrutiny context requires the restriction to be “the least

restrictive means among available, effective alternatives.” *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 666 (2004). Defendants’ actions fail strict scrutiny.

There is no compelling interest in restricting a citizen, let alone Plaintiffs, from protesting a pizza parlor owned by a Selectman, who is believed to be perjuring himself. While the Supreme Court has upheld a similar statute relating to picketing or parading near courthouses, it has not approved of such a statute *vis a vis* any building at all in which a witness may be found. *Contrast Cox v. Louisiana*, 379 U.S. 559 (1965). This is especially where Plaintiffs have and will restrict themselves from engaging in the “blocking, impeding, inhibiting, or in any other manner obstructing or interfering with access to, ingress into and egress from any building or parking lot of the” business they plan to protest. *Compare Madsen v. Women’s Health Ctr.*, 512 U.S. 753 (1994) (upholding such restrictions on protest activities near abortion clinics). “Singing . . . whistling, shouting, [and] yelling” are forms of speech protected by the First Amendment. *Id.* at 772. Listening to citizens seeking redress of grievances is part of a public official’s job. Defendants’ threats are, therefore, unconstitutional.

Section 13A is unconstitutional as applied. Defendants have been purposely targeting people, like Plaintiffs, who speak in favor of Karen Read, and there is nothing that suggests they would threaten anyone siding with the prosecution. Section 13B is unconstitutional, as applied to Plaintiffs, as they would be singled out because of the viewpoint and content of their speech. Had they protested against Karen Read, which is consistent with Chris Albert’s expected testimony, rather than in her favor, they would have no fear of arrest or prosecution under Section 13B.

Plaintiffs have not done anything that would arise to “serious evil” that justifies the restrictions imposed by Defendants. *See United States v. Treasury Employees*, 513 U.S. 454, 475 (1995). It is incumbent on Defendants to justify their conduct. *United States v. Playboy Ent. Grp.*,

Inc., 529 U.S. 803, 816 (2000) (“When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.”). Defendants have no reasonable justification for their actions—they, like Plaintiffs, should be interested in seeing justice done and not suborning perjury. Defendants’ content and viewpoint discriminatory conduct is unconstitutional and the threatened enforcement of Section 13A, and Section 13B by implication, must be enjoined.

4.2.2 The Government’s Actions Constitute a Prior Restraint

Defendants have instituted a *de facto* ban that indefinitely bars them from protesting against Albert’s apparent perjury. Our Constitution rarely, if ever, tolerates a prior restraint. “Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” *Neb. Press Ass’n v. Stuart*, 427 U.S. 530, 559 (1976). “The Supreme Court has roundly rejected prior restraint.” *Kinney v. Barnes*, 443 S.W.3d 87, 91 n.7 (Tex. 2014) (citing Sobchak, W., *The Big Lebowski*, 1998). Prior restraints “bear a heavy presumption against [their] constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963); *In re Providence Journal Co.*, 820 F.2d 1342, 1348 (1st Cir. 1986) (same).

The threatened enforcement of Section 13A, and Section 13B by implication, is a prior restraint. Defendants’ justification lacks constitutional validity. Defendants do not like Plaintiffs criticizing the framing of Karen Read to someone who could help right that wrong. Thus, the prior restraint must be enjoined.

4.3 There is Irreparable Injury and the Injury Will Continue if Not Enjoined

The “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). When a plaintiff seeks injunctive relief for “an alleged violation of First Amendment rights, a plaintiff’s irreparable harm

is inseparably linked to the likelihood of success on the merits of plaintiff’s First Amendment claim.” *WV Assn’n of Club Owners and Fraternal Svcs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009). Thus, if the plaintiff demonstrates a likelihood of success on the merits of its First Amendment claim, they necessarily also establish irreparable harm. *Fortuño*, 699 F.3d at 15.

Defendants deprived Plaintiffs of their First Amendment rights by threatening them with prosecution under Section 13A if they resume their protest at D&E Pizza. They are now chilling their speech, resulting in irreparable harm.

4.4 The Balance of Equities Tips in Plaintiff’s Favor

When the government restricts First Amendment rights, the balance of hardships weighs in a plaintiff’s favor. *See Firecross Ministries v. Municipality of Ponce*, 204 F. supp. 2d 244, 251 (D.P.R. 2002) (holding that “insofar as hardship goes, the balance weighs heavily against Defendants, since they have effectively silenced Plaintiffs’ constitutionally protected speech”).

The balance of equities tips in Plaintiffs’ favor. Failing to grant the injunction will continue to deprive them of their constitutional rights pursuant to the First and Fourteenth Amendments. Defendants will suffer no harm if Plaintiffs granted the requested injunctive relief—at worst, Albert will recognize that he should do the right thing and testify truthfully. Rather, an injunction will merely restore the rights guaranteed by the U.S. Constitution. A temporary restraining order, to be converted into a preliminary injunction must issue.

4.5 Injunctive Relief is in the Public Interest

The public interest “favors protecting First Amendment rights.” *Kelly v. City of Parkersburg*, 978 F. Supp. 2d 624, (S.D. W.V. 2013); *see also Carey v. FEC*, 791 F. Supp. 2d 121, 135-36 (D. D.C. 2011); *Mullin v. Sussex Cnty., Del.*, 861 F. Supp. 2d 411, 428 (D. Del. 2012). The public interest is served by issuing an injunction where “failure to issue the injunction would harm

the public’s interest in protecting First Amendment rights in order to allow the free flow of ideas.” *Magriz v. union do Tronquistas de Puerto Rico, Local 901*, 765 F. Supp. 2d 143, 157 (D.P.R. 2011) (citation omitted). Moreover, the unconstitutional actions here will harm nonparties to the case because it will also limit or infringe upon their rights. *See Wolfe Fin. Inc. v. Rodgers*, 2018 U.S. Dist. LEXIS 64335, at *49 (M.D. N.C. April 17, 2018) (citing *McCarthy v. Fuller*, 810 F.3d 456, 461 (7th Cir. 2015)). Others who would join their protest are similarly dissuaded. And, if Read is being framed, Defendants’ actions serve as a warning against anyone who would come forward in opposition. Thus, the public interest weighs in favor of enjoining Sections 13A and 13B as applied.

4.6 At Most, a Minimal Bond Should Be Required

Rule 65 provides that a court cannot enter injunctive relief unless the moving party “gives security in the amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). In other words, a bond should only be required if the enjoined party will suffer any harm from the issuance of the injunction. *See Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 285 (4th Cir. 2002).

Defendants will suffer no damages if the Court issues the requested injunction, which will simply allow Plaintiffs to protest, necessary to their ability to exercise their constitutional rights. All that the injunction will do is repair the *status quo*. For this reason, Plaintiffs request that the injunction issue with no bond required. If a bond is required, Plaintiffs request that it be a token of \$1.

5.0 CONCLUSION

Defendant Rafferty, as Chief of the Canton Police, issued a zero-tolerance policy as to protests against a frame up. The Defendant-officers, acting pursuant to that policy, threatened Plaintiffs with prosecution under Section 13A, for their protest outside D&E Pizza. The

Fourteenth and First Amendments cannot tolerate this. Plaintiffs cannot be left “at the mercy of political actors and the shifting winds of popular opinion, and without the chance for a fair hearing before a neutral judge. The rule of law begins to bleed into the rule of men.” *Kisor v. Wilkie*, 139 S. Ct. 2400, 2438 (2019) (Roberts, C.J., concurring). Defendants’ unconstitutional acts must be immediately enjoined by temporary restraining order, to be converted to a preliminary injunction following a hearing thereon.

Dated: November 8, 2023

Respectfully Submitted,

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

RANDAZZA | LEGAL GROUP

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MEREDITH O’NEIL, JESSICA
SVEDINE, DEANNA CORBY, NICK
ROCCO, JENNA ROCCO, and ROBERTO
SILVA,

Plaintiffs,

v.

CANTON POLICE DEPARTMENT, the
TOWN OF CANTON,
MASSACHUSETTS, HELENA
RAFFERTY, as Chief of the Canton Police
Department and in her personal capacity,
and OFFICER ROBERT ZEPF, OFFICER
MICHAEL CHIN, OFFICER ANTHONY
PASCARELLI, and SERGEANT JOSEPH
SILVASY, in their official and individual
capacities,

Defendants.

Civil Action No. 1:23-cv-12685-DJC

**[PROPOSED] ORDER GRANTING
PLAINTIFFS’ EMERGENCY
MOTION FOR A TEMPORARY
RESTRAINING ORDER**

Upon consideration of Plaintiffs’ Emergency Motion for a Temporary Restraining Order and for a Preliminary Injunction. the Court makes the following findings:

1. Plaintiffs are likely to succeed on the merits of their claim that Mass. Gen. Laws, ch. 268, §§ 13A & 13B are unconstitutional as applied. The Court makes no finding as to the other claims as Plaintiffs only seek preliminary injunctive relief, at this time, on their as-applied claim.

2. Plaintiffs will suffer irreparable harm if this injunction does not issue as they are otherwise chilled from exercising their First Amendment freedom of speech relative to a planned protest on November 12, 2023, as set forth in the Verified Complaint, and similar future such protests.

3. The balance of equities weighs in Plaintiffs’ favor as their First Amendment rights outweighs any government interest in preventing a demonstration opposing what they believe to be injustice.

4. The public interest favors Plaintiffs as their First Amendment rights are paramount.

5. No bond is necessary to secure the temporary restraining order.

IT IS SO ORDERED that Plaintiffs' Emergency Motion for a Temporary Restraining Order and for a Preliminary Injunction is GRANTED in the interim, without prejudice, such that a temporary restraining order issues until such time as the Court may hear the parties as to the question of whether a preliminary injunction should issue.

IT IS FURTHER ORDERED, until such time, that Defendants are hereby enjoined from enforcing Mass. Gen. Laws, ch. 268, §§ 13A & 13B, to the extent it would interfere with Plaintiffs' protests regarding the Karen Read prosecution based solely on Plaintiffs' otherwise lawful speech, so long as Plaintiffs do not engage in the blocking, impeding, inhibiting, or in any other manner obstructing or interfering with access to, ingress into and egress from any building or parking lot of the business they plan to protest. This order shall not preclude Defendants from otherwise enforcing the statutes based on non-expressive conduct or the unprotected categories of fighting words or true threats, so long as such enforcement is not pretextual and Defendants can make such a showing of unlawful non-expressive conduct, fighting words, and/or true threats beyond a reasonable doubt.

Dated: _____

Denise J. Casper, U.S.D.J.

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MEREDITH O’NEIL, JESSICA SVEDINE, DEANNA CORBY, NICK ROCCO, JENNA ROCCO, and ROBERTO SILVA,

Plaintiffs,

v.

CANTON POLICE DEPARTMENT, the TOWN OF CANTON, MASSACHUSETTS, HELENA RAFFERTY, as Chief of the Canton Police Department and in her personal capacity, and OFFICER ROBERT ZEPF, OFFICER MICHAEL CHIN, OFFICER ANTHONY PASCARELLI, and SERGEANT JOSEPH SILVASY, in their official and individual capacities,

Defendants.

Civil Action No. 1:23-cv-12685

NOTICE OF CONSTITUTIONAL QUESTION

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Pursuant to Fed. R. Civ. P. 5.1(a)(2), Plaintiffs in the above-captioned matter hereby give notice to the Attorney General of the Commonwealth of Massachusetts of a question of the constitutionality of a Massachusetts statute, to wit:

1. On November 7, 2023, Plaintiffs filed a Verified Complaint (ECF No. 1).
2. Such Verified Complaint questions the constitutionality of Mass. Gen. Laws, ch. 268, §§ 13A and 13B under the First Amendment of the U.S. Constitution, as incorporated by the Fourteenth Amendment thereof, both facially, as-applied, and for vagueness.
3. A true and correct copy of Plaintiffs’ Verified Complaint (ECF No. 1) is served herewith upon the Attorney General of the Commonwealth of Massachusetts by certified mail.

WHEREFORE Plaintiffs hereby comply with the notice requirements of Rule 5.1.

Dated: November 8, 2023.

Respectfully Submitted,

/s/ Jay M. Wolman

Marc J. Randazza, BBO# 651477

mjr@randazza.com, ecf@randazza.com

Jay M. Wolman, BBO# 666053

jmw@randazza.com

RANAZZA LEGAL GROUP, PLLC

30 Western Avenue

Gloucester, MA 01930

Tel: (978) 801-1776

Attorneys for Plaintiffs

RANAZZA | LEGAL GROUP

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2023, a true and correct copy of the foregoing document was served with enclosures via certified U.S. Mail upon:

Andrea Joy Campbell
Attorney General
1 Ashburton Place
Boston, Massachusetts 02108

/s/ Jay M. Wolman
Jay M. Wolman

RANDAZZA | LEGAL GROUP

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MEREDITH O’NEIL, JESSICA
SVEDINE, DEANNA CORBY, NICK
ROCCO, JENNA ROCCO, and ROBERTO
SILVA,

Plaintiffs,

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CANTON POLICE DEPARTMENT, the
TOWN OF CANTON,
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RAFFERTY, as Chief of the Canton Police
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MICHAEL CHIN, OFFICER ANTHONY
PASCARELLI, and SERGEANT JOSEPH
SILVASY, in their official and individual
capacities,

Defendants.

Civil Action No. 1:23-cv-12685

NOTICE OF INFORMAL SERVICE

Plaintiffs, through undersigned counsel, hereby certify that a true and correct copy of the following documents were informally served upon Defendants:

- ECF No. 1: Verified Complaint (with attachments ECF Nos. 1-1 – 1-3);
- ECF No. 2: Notice of Appearance;
- ECF No. 3: Electronic Notice;
- ECF No. 4: Emergency Motion for a Temporary Restraining Order and for a Preliminary Injunction;
- ECF No. 5: Memorandum in Support of Motion for a Temporary Restraining Order and for a Preliminary Injunction (with attachments ECF No. 5-1); and
- ECF No. 6: Notice of Constitutional Question.

These documents were transmitted to Defendants on November 8, 2023, as follows:

Town of Canton, Tracy Kenney, Town Clerk: tkenney@town.canton.ma.us;

RANDAZZA | LEGAL GROUP

Helena Rafferty, Chief of Police: hrafferty@town.canton.ma.us; and
Town Counsel: pderensis@BDBoston.com.

Dated: November 8, 2023.

Respectfully Submitted,

/s/ Jay M. Wolman

Marc J. Randazza, BBO# 651477
mjr@randazza.com, ecf@randazza.com
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RANDAZZA | LEGAL GROUP

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was entered on 11/9/2023 at 3:54 PM EST and filed on 11/9/2023

Case Name: O'Neil et al v. Canton Police Department et al

Case Number: [1:23-cv-12685-DJC](#)

Filer:

Document Number: 11(No document attached)

Docket Text:

Judge Denise J. Casper: ELECTRONIC ORDER entered. In light of the Notice of Appearances filed on behalf of the defendants, and the pending Motion for TRO, D. [4], defense counsel to file a response to the pending motion no later than 11/10/23 at 10:00AM. (Currie, Haley)

1:23-cv-12685-DJC Notice has been electronically mailed to:

Douglas I. Louison dlouison@lccplaw.com, tgustus@lccplaw.com

Marc J. Randazza mjr@randazza.com, ecf@randazza.com, ecf-6898@ecf.pacerpro.com

Jay M. Wolman jmw@randazza.com, ecf@randazza.com

Joseph Anthony Mongiardo jmongiardo@lccplaw.com

1:23-cv-12685-DJC Notice will not be electronically mailed to:

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 1:23-CV-12685-DJC

MEREDITH O'NEIL, JESSICA
SVEDINE, DEANNA CORBY, NICK
ROCCO, JENNA ROCCO, AND ROBERTO
SILVA,

Plaintiffs.

v.

CANTON POLICE DEPARTMENT, THE
TOWN OF CANTON, MASSACHUSETTS,
HELENA RAFFERTY, as Chief of the Canton
Police Department and in her personal capacity,
and OFFICER ROBERT ZEPF, OFFICER MICHAEL
CHIN, OFFICER ANTHONY PASCARELLI, and
SARGEANT JOSEPH SILVASY, in their official
Capacities,

Defendants

**OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION**

On November 8, 2023 Plaintiffs filed an emergency motion for a temporary restraining order and preliminary injunction to enjoin Defendants, particularly the 'Canton Police Department', the Canton Police Chief and four named individual Canton police officers from interfering with Plaintiffs' planned protest on Sunday, November 12, 2023. Plaintiffs have moved for oral argument and evidentiary hearing prior to serving summons on the Defendants. Defendants hereby oppose. The Court has ordered the defendants to submit a response by Friday November 10th.

LEGAL STANDARD

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The standard used to consider a request for a temporary restraining order is the same as that used for a preliminary injunction. *Associated Subcontractors of Mass., Inc. v. University of Mass. Bldg. Authority*, 13 Mass. L. Rep. 622 (2001).

To prevail on their motion for a temporary restraining order (TRO), Plaintiffs must demonstrate they have a reasonable likelihood of success on the merits and will suffer irreparable harm if the TRO is not granted. Fed. R. Civ. P. 65; *Westinghouse Broadcasting Co., Inc. v. Dukakis*, 409 F. Supp. 895, 896 (D. Mass 1976). The Plaintiffs shoulder the significant burden of establishing that:

- (1) [they have] suffered an irreparable injury;
- (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;
- (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and
- (4) that the public interest would not be disserved by a permanent injunction.

The Shell Co. (P.R.) Ltd. v. Los Frailes Serv. Station, Inc., 605 F.3d 10, 19 (1st Cir. 2010).

Fed Rules Civ Proc R. 65 states:

(b) Temporary Restraining Order.

(1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) Contents; Expiration. Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was

issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) Expediting the Preliminary-Injunction Hearing. If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(4) Motion to Dissolve. On 2 days' notice to the party who obtained the order without notice—or on shorter notice set by the court—the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

RELEVANT STATUTES

Mass. Gen. Laws, ch. 268, §§ 13A states:

Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the commonwealth, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both. Nothing in this section shall interfere with or prevent the exercise by any court of the commonwealth of its power to punish for contempt.

Mass. Gen. Laws, ch. 268, §§ 13B in relevant part states:

...Whoever willfully, either directly or indirectly: (i) threatens, attempts or causes physical, emotional or economic injury or property damage to; (ii) conveys a gift, offer or promise of anything of value to; or (iii) misleads, intimidates or harasses another person who is a: (A) witness or potential witness; ... or (E) family member of a person described in this section, with the intent to or with reckless disregard for the fact that it may; (1) impede, obstruct, delay, prevent or otherwise interfere with: a criminal investigation at any stage, a grand jury proceeding, a dangerousness

hearing, a motion hearing, a trial or other criminal proceeding of any type or a parole hearing, parole violation proceeding or probation violation proceeding; or an administrative hearing or a probate or family court proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk’s hearing, court-ordered mediation or any other civil proceeding of any type; or (2) punish, harm or otherwise retaliate against any such person described in this section for such person or such person’s family member’s participation in any of the proceedings described in this section, shall be punished by imprisonment in the state prison for not more than 10 years or by imprisonment in the house of correction for not more than 2½ years or by a fine of not less than \$1,000 or more than \$5,000 or by both such fine and imprisonment. If the proceeding in which the misconduct is directed at is the investigation or prosecution of a crime punishable by life imprisonment or the parole of a person convicted of a crime punishable by life imprisonment, such person shall be punished by imprisonment in the state prison for not more than 20 years or by imprisonment in the house of corrections for not more than 2½ years or by a fine of not more than \$10,000 or by both such fine and imprisonment.

Massachusetts General Laws, chapter 268, section 13B(a) defines harassment in the context of the statute:

- (a) “Harass”, to engage in an act directed at a specific person or group of persons that seriously alarms or annoys such person or group of persons and would cause a reasonable person or group of persons to suffer substantial emotional distress including, but not limited to, an act conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, a device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature, transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photo-optical system including, but not limited to, electronic mail, internet communications, instant messages and facsimile communications.

LEGAL ARGUMENT

A. The Canton Police Department is Not a Legal Entity Capable of Suit

As an initial matter, Plaintiffs’ filing against the ‘Canton Police Department’ is not cognizable because the Police Department is not a legal entity that is subject to suit. Here, the Department is an agency of the Town of Canton; it is a non-person and consequently is not subject to suit. *Darsch v. Lynch*, 2016 U.S. Dist. LEXIS 4830 (D. Mass. Jan. 13, 2016). *See*

Johnson v. Rodriguez, 943 F. 2d 104 (1st. Cir 1994) (state agency may not be sued for alleged civil rights violations).

Douglas v. Boston Police Dep't, No. 10-11049-WGY, at *1 (D. Mass. 2010) (dismissing suit against a municipal police department because department “has no legal existence or liability to suit separate from the [municipality]”). Therefore, any and all allegations or claims against the named “Canton Police Department” will be unsuccessful as it is not a legal entity that can be sued.

B. A Temporary Restraining Order is Not Appropriate Relief Given The Alleged Police Response

Preliminary injunctive relief is an extraordinary remedy not to be granted absent showing of probable success on merits and possibility of irreparable injury should it not be granted. Injunctive relief is "an act of equitable discretion by the district court." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, (2006). This is "an extraordinary remedy never awarded as of right." *Sindi v. El-Moslimany*, 896 F.3d 1, 29 (1st Cir. 2018) (internal quotation marks omitted).

Plaintiffs by their own admission in their verified complaint “gathered on Sunday, November 5, 2023, across the street from Chris Albert’s business, D&E Pizza.” (Docket #1, ¶29). They did so carrying signs referencing a pending Superior court criminal trial. (Docket #1, ¶30). Plaintiffs note they have selected to protest outside Chris Albert’s business, knowing he is a witness in the case and protesting what they perceived as “Chris Albert’s expected testimony”. (Docket #5, pg. 11). Plaintiffs indicate they “want Chris Albert to testify truthfully”. (Docket #5, pg. 7). Plaintiffs note they do this based off their impression of Chris Albert’s expected

testimony. Plaintiffs presume to know what his testimony will be and that it will be untruthful, they use this to justify harassment of this witness outside his place of business.

For all of the Plaintiffs' deep concern about the expected testimony of Chris Albert, or that of his son's, it is illegal for members of the public to harass or otherwise influence their testimony. *See* M.G.L. 268, §13A & M.G.L. 268, §13B. It is for impartial jurors to decide what is true in the matter of Karen Reed. Plaintiffs' constitutional rights to free speech are not unlimited, they are limited particularly where they can be used to influence a criminal proceeding. *See Lavienna-Torres v. Colon-Alsina*, No. 12-1277 (JAF), 2013 U.S. Dist. LEXIS 69210, at *40 (D.P.R. May 13, 2013) ("the state's ability to protect witnesses and their families—is a topic of clear public interest"). Moreover, it is in the interests of the police to protect witnesses, in order to secure convictions." *Rivera v. Rhode Island*, 402 F.3d 27, 38 (1st Cir. 2005). Chris Albert has every right, as any other witness, to be free from harassment as to what his expected testimony will be and a determination of whether or not it is truthful, unimpacted from Plaintiffs' influence.

Plaintiffs' rights have not been violated to date nor have they presented any evidence other than the conjecture that the Canton police will or intend to violate their rights in the future. Plaintiffs motion for a temporary restraining order is predicated on their fear of potential arrest by the police for future conduct that has not yet occurred. On November 5th as stated in their complaint plaintiffs were merely advised of the law by police officers handing out copies of M.G.L. ch. 268 §13A. the Complaint is devoid of any allegation that the Plaintiffs' First Amendment rights were impacted or violated on that day. Plaintiffs have not been prohibited or enjoined from lawful protest in any way by the Canton police personnel: they have merely been

instructed as to what conduct the law prescribes for the protection of witnesses and others involved in the judicial process.

B. The Plaintiffs Lack Standing for a Temporary Restraining Order

The Plaintiffs do not have standing, as their requested relief is for merely theoretical future harms based on conjecture. “To have standing in any capacity, a litigant must show that the challenged action has caused the litigant injury.” *Sullivan v. Chief Justice for Admin. & Mgt. of the Trial Court*, 448 Mass. 15, 21 (2006), citing *Slama v. Attorney Gen.*, 384 Mass. 620, 624 (1981). “However, alleging ‘injury alone is not enough; a plaintiff must allege a breach of duty owed to [her] by the public defendant.’” *Sullivan*, 448 Mass. at 21, citing *Northbridge v. Natick*, 394 Mass. 70, 75 (1985). “Injuries that are speculative, remote, and indirect are insufficient to confer standing.” *Sullivan*, 448 Mass. at 21. Here, any alleged injury is entirely speculative, and the Plaintiffs therefore does not have standing. Any possible police action that may be taken in the future will be predicated upon and in response to is yet unknown conduct taken by the Plaintiffs.

C. The Plaintiffs Cannot Show a Likelihood of Success on the Merits.

To succeed in an action for a preliminary injunction, a plaintiff must show 1) likelihood of success on the merits; 2) that irreparable harm will result from denial of the injunction; and 3) that, in light of the plaintiff’s likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction. *Tri-Nel Mgt., Inc. v. Board of Health of Barnstable*, 433 Mass. 217, 219 (2001), citing *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). A court must also “examine whether the

public interest would support entering an injunction or, in the alternative, whether an injunction would adversely affect the public.” *Le Clair v. Norwell*, 430 Mass. 328, 337 (1999); see *United States v. D’Annolfo*, 474 F. Supp. 220, 222 (D. Mass. 1979) (“When the government acts to enforce a statute or make effective a declared policy of Congress, the standard of public interest and not the requirements of private litigation measure the propriety and need for injunctive relief.”); *Edwards v. Boston*, 408 Mass. 643, 647 (1990) (“before issuing the preliminary injunction, a judge is required to determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public”).

i. Likelihood on the Merits

The Plaintiffs are unable to show a likelihood of success of any civil rights violation by the Canton Police Department. Nor will plaintiffs likely show that the possible enforcement of M. G. L ch. 268 §§13A & 13B is unlawful or that said statute is unconstitutionally vague. No Court has ever made such a determination and it is wildly premature to ask this Court to enjoin the police from the possible future enforcement of a lawful statute based upon a generalized and as yet unestablished claim that the statute is unconstitutional.

M. G. L ch. 268 §§13A & 13B are sufficiently clear. See *Commonwealth v. McGhee*, 472 Mass. 405, 414 (the language in a statute "will be constitutionally adequate if it 'conveys [a] sufficiently definite warning as to the prescribed conduct when measured by common understanding and practice.'"). Moreover, similar restrictions under law have been long recognized. See *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32 n.18 (1984) (“Although litigants do not surrender their First Amendment rights at the courthouse door, ... those rights may be subordinated to other interests that arise in this setting. For instance, on several occasions, this Court has approved restrictions on the communications of trial participants where necessary to

ensure a fair trial for a criminal defendant In the conduct of a case. A court often finds it necessary to restrict the free expression of participants including counsel, witnesses, and jurors.) (internal quotations and citations omitted). The First Amendment does not supersede the proper administration of justice and the court's obligation to ensure a fair trial, including protecting witnesses from intimidation. *See Commonwealth v. McCreary*, 45 Mass. App. Ct. 797, 799 (1998) (purpose of witness intimidation statute "is to protect witnesses from being bullied or harried so that they do not become reluctant to testify or, to give truthful evidence in investigatory or judicial proceedings ... [and] to prevent interference I with the administration of justice"). The right to a fair trial is just as important' to the functioning of democracy as the First Amendment.¹

The Plaintiffs further fail to show irreparable harm will result from denial of the injunction; Simply stated, it is unreasonable and unrealistic to have a restraining order against a police department on an untested or established claim that an existing state penal statute is unconstitutional.

The Plaintiffs have not shown irreparable injury that would entitle them to interim relief because the Plaintiffs had not presented any evidence or testimony from which this Court can concluded that their speech was actually chilled by Defendants' actions or will be in the future. Plaintiffs picketing is no less effective if it is held somewhere not to consciously and actively intimidate a witness to the pending criminal trial at matter.

ii. *Public Interest*

¹ Taken from Memorandum and order on Defendant's Bail Petitions in *Commonwealth vs. Aidan Kearney*, Docket Nos. 23BP116, 23BP117, 23BP118, 23BP119, 23BP120, 23BP123, 23BP124, 23BP125, 23BP126, in the Norfolk Superior Court.

The public interest would not support entering such an order. Police officers serve and protect their community; by entering the proffered TRO this Court would inherently prevent members of the Canton Police Department from effectively doing that which they are empowered and expected to do. If theoretical police action is taken on November 12, 2023 which involves the enforcement of the referenced statute, those impacted by arrest or by criminal complaint may test the existence of probable cause for the police action and or test the constitutionality of said statute in that state forum.

CONCLUSION

For all of the foregoing reasons, Defendants respectfully requests that this Honorable Court deny Plaintiff’s request for a temporary restraining order.

The Defendants further request a hearing on said motion.

Respectfully submitted,

DEFENDANTS,

Canton Police Department, The Town of Canton, Massachusetts, Helena Rafferty, Officer Robert Zepf, Officer Michael Chin, Officer Anthony Pascarelli, and Sargeant Joseph Silvasy

By their Attorney,

/s/ Douglas I. Louison

Douglas I. Louison (BBO# 545191)
Joseph A. Mongiardo (BBO# 710670)
Louison, Costello, Condon & Pfaff, LLP
Ten Post Office Square, Suite 1330
Boston, MA 02109
(617) 439-0305
jmongiardo@lccplaw.com
dlouison@lccplaw.com

CERTIFICATE OF SERVICE

I hereby certify that the Notice of Appearance, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on the 9th day of November, 2023

/s/ Douglas I. Louison
Douglas I. Louison

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 1:23-CV-12685-DJC

MEREDITH O'NEIL, JESSICA
SVEDINE, DEANNA CORBY, NICK
ROCCO, JENNA ROCCO, AND ROBERTO
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and OFFICER ROBERT ZEPF, OFFICER MICHAEL
CHIN, OFFICER ANTHONY PASCARELLI, and
SARGEANT JOSEPH SILVASY, in their official
Capacities,

Defendants

ANSWER AND JURY CLAIM

The Defendants, Canton Police Department, The Town of Canton, Massachusetts, Helena Rafferty, Officer Robert Zepf, Officer Michael Chin, Officer Anthony Pascarelli, and Sargeant Joseph Silvasy, answer the Plaintiffs' Verified Complaint as follows:

INTRODUCTION

To the extent that these unnumbered paragraphs contain an introductory statement, no response is required. To the extent that factual allegations are asserted against them, Defendants deny same.

THE PARTIES

- 1, Defendants deny the allegations within Paragraph 1.
- 2, To the extent that this paragraph makes legal conclusions, no response is required. In further responding, the Defendants deny the allegations within Paragraph 2 to the extent they assert the Canton Police Department is an independent subdivision of the Town of Canton capable of suit.
3. To the extent that this paragraph makes legal conclusions, no response is required. The Defendants otherwise admit the allegations of Paragraph 3.

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4. Defendants admit the allegations within Paragraph 4.

5. The Defendants admit that the named individuals are police officers with the Canton Police Department. The Defendants deny the remainder of Paragraph 5.

JURISDICTION AND VENUE

6. The Defendants neither admit nor deny the allegations within Paragraph 6 as same is a statement of jurisdiction. To the extent that the paragraph makes factual allegations against them, the Defendants deny same.

7. The Defendants neither admit nor deny the allegations within Paragraph 7 as same is a statement of jurisdiction. To the extent that the paragraph makes factual allegations against them, the Defendants deny same.

8. The Defendants neither admit nor deny the allegations within Paragraph 8 as same is a statement of venue. To the extent that the paragraph makes factual allegations against them, the Defendants deny same.

FACTS COMMON TO ALL COUNTS

9. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 9 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

10. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 10 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

11. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 11 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

12. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 12 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

13. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 13 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

14. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 14 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

15. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 15 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

16. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 16 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

17. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 17 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

18. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 18 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

19. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 19 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

20. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 20 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

21. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 21 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

22. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 22 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

23. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 23 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

24. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 24 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

25. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 25 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

26. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 26 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

27. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent the allegations contained in Paragraph 27 are not directed at the Defendants, no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

28. To the extent the allegations of this paragraph are not directed at the Defendants no response is required. To the extent that factual allegations are asserted against them, the Defendants deny the allegations contained in Paragraph 28.

29. Defendants deny the allegations contained within Paragraph 29.

30. Defendants deny the allegations contained within Paragraph 30.

31. Defendants deny the allegations contained within Paragraph 31.

32. Defendants deny the allegations contained within Paragraph 32.

33. Defendants deny the allegations contained within Paragraph 33.

34. The Defendants admit only that officers informed the protestors that if the protest could be seen by Chris Albert, it could be considered “witness intimidation” under Mass. Gen Laws, ch. 268 §13A. The Defendants otherwise deny the allegations contained within Paragraph 34.

35. The Defendants admitted that the officers offered and did hand the Plaintiffs a copy of Mass. Gen. Laws, ch. 268, § 13A of which they informed the Plaintiffs. The Defendants otherwise deny the allegations contained within Paragraph 35.

36. To the extent the Complaint refers to and summarizes a document, the document speaks for itself. To the extent that this paragraph makes legal conclusions no response is required. The Defendants otherwise deny the allegations contained within Paragraph 36.

37. To the extent the allegations of this paragraph are not directed at the Defendants no response is required. To the extent that factual allegations are directed to them the Defendants deny the allegations contained within Paragraph 37.

38. Defendants deny the allegations contained within Paragraph 38.

39. Defendants deny the allegations contained within Paragraph 39.

40. Defendants deny the allegations contained within Paragraph 40.

CAUSE OF ACTION

Count I

Violation of the First Amendment to the United States Constitution: Retaliation (42 U.S.C. 1983 – First Amendment)

41. The Defendants reasserts and realleges its responses to Paragraphs 1-40 above.

42. The Defendants deny the allegations contained in Paragraph 42.

43. The Defendants deny the allegations contained in Paragraph 43.

44. The Defendants deny the allegations contained in Paragraph 44.

45. The Defendants neither admit nor deny Paragraph 45 as same is a statement of law. To the extent that factual allegations are asserted against them, the Defendants deny same.

46. The Defendants deny the allegations contained in Paragraph 46.

47. To the extent the allegations of Paragraph 47 are not directed at the Defendants no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

48. To the extent the allegations of Paragraph 48 are not directed at the Defendants no response is required. To the extent that factual allegations are asserted against them, the Defendants deny same.

49. The Defendants deny the allegations contained in Paragraph 49.

50. The Defendants deny the allegations contained in Paragraph 50.

Count II

**Violation of the First Amendment to the United States Constitution
Declaratory Judgment & Injunctive Relief
(42 U.S.C. 1983 – First Amendment)**

51. The Defendants reasserts and realleges its responses to Paragraphs 1-50 above.

52. The Defendants neither admit nor deny Paragraph 52 as same is a statement of law.

53. The Defendants deny the allegations contained in Paragraph 53.

54. The Defendants deny the allegations contained in Paragraph 54.

55. The Defendants deny the allegations contained in Paragraph 55.

56. The Defendants neither admit nor deny Paragraph 56 as same is a statement of law.

57. The Defendants deny the allegations contained in Paragraph 57.

58. The Defendants neither admit nor deny Paragraph 58 as same is a statement of law. To the extent that factual allegations are asserted against them, the Defendants deny same.

59. The Defendants deny the allegations contained in Paragraph 59.

60. The Defendants deny the allegations contained in Paragraph 60.

61. The Defendants deny the allegations contained in Paragraph 61.

WHEREFORE, Defendants demand judgment in their favor together with costs and attorney's fees.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The Plaintiff's Complaint has failed to state a claim for which relief may be granted.

Second Affirmative Defense

The Plaintiff has failed to effectuate service of process upon the Defendants.

Third Affirmative Defense

Any alleged injuries or damages sustained by the Plaintiffs were caused by their own intentional or criminal conduct for which Defendants are not legally responsible.

Fourth Affirmative Defense

Defendants allege that the injuries complained of, and the damages sought by Plaintiff were caused directly and proximately by the fault, intervening acts, or omissions of third persons.

Fifth Affirmative Defense

The Defendants acted with probable cause and legal justification.

Sixth Affirmative Defense

The Defendants acted objectively reasonably under the circumstances and are qualifiedly immune from liability.

Seventh Affirmative Defense

Defendants are not liable for any acts or omissions undertaken by or at the direction of federal, state, or local authority, including without limitation, acts or omissions made in accordance with applicable statutes, regulations, permits, and industry standards to the full extent of their responsibilities. Defendants allege that they have conformed to and performed any and all obligations imposed by applicable statutes, regulations, permits, and industry standards to the full extent of their responsibilities. In addition, Defendants' conduct conformed to the generally recognized state of scientific, medical, and technical knowledge in existence at all relevant times.

Eighth Affirmative Defense

The Plaintiffs have failed to state a claim for relief for punitive damages, and any such claims therefore must fail.

Ninth Affirmative Defense

Plaintiffs' conduct is not in good faith, is otherwise inequitable, and the injunctive or declaratory relief sought should therefore be barred, in whole or in part, by the equitable doctrine of unclean hands.

Tenth Affirmative Defense

This action is barred in whole or in part because of lack of standing.

Eleventh Affirmative Defense

The damages sought by Plaintiff are unavailable to the extent the Plaintiff's alleged damages were caused by one or more acts or omissions of parties other than Defendants.

Twelfth Affirmative Defense

This action is barred because Defendants at all times acted in good faith.

Thirteenth Affirmative Defense

The Plaintiffs have failed to meet the standards for injunctive relief, and such would be inappropriate.

DEMAND FOR JURY TRIAL

The Defendants demand a trial by jury on all counts.

Respectfully submitted,
DEFENDANTS,
Canton Police Department, The Town of
Canton, Massachusetts, Helena Rafferty,
Officer Robert Zepf, Officer Michael Chin,
Officer Anthony Pascarelli, and Sergeant
Joseph Silvasy
By their Attorney,

/s/ Douglas I. Louison
Douglas I. Louison (BBO# 545191)
Joseph A. Mongiardo (BBO# 710670)
Louison, Costello, Condon & Pfaff, LLP
Ten Post Office Square, Suite 1330
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(617) 439-0305
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dlouison@lccplaw.com

DATED: November 30, 2023

CERTIFICATE OF SERVICE

I hereby certify that the Notice of Appearance, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 30, 2023

/s/ Douglas I. Louison
Douglas I. Louison

United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:23-cv-12685-DJC

O'Neil et al v. Canton Police Department et al
Assigned to: Judge Denise J. Casper
Case in other court: USCA - First Circuit, 23-02062
Cause: 42:1983 Civil Rights Act

Date Filed: 11/07/2023
Jury Demand: Both
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Meredith O'Neil

represented by **Marc J. Randazza**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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ATTORNEY TO BE NOTICED

Plaintiff

Jessica Svedine

represented by **Marc J. Randazza**
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LEAD ATTORNEY
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Jay M. Wolman
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Deanna Corby

represented by **Marc J. Randazza**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jay M. Wolman
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ATTORNEY TO BE NOTICED

Plaintiff

Nick Rocco

represented by **Marc J. Randazza**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jay M. Wolman
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Jenna Rocco
TERMINATED: 12/18/2023

represented by **Marc J. Randazza**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jay M. Wolman
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ATTORNEY TO BE NOTICED

Plaintiff

Roberto Silva

represented by **Marc J. Randazza**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jay M. Wolman
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Canton Police Department

represented by **Douglas I. Louison**
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Defendant

Town of Canton Massachusetts

represented by **Douglas I. Louison**
(See above for address)
ATTORNEY TO BE NOTICED

Joseph Anthony Mongiardo
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Helena Rafferty
*as Chief of the Canton Police Department
and in her personal capacity*

represented by **Douglas I. Louison**
(See above for address)
ATTORNEY TO BE NOTICED

Joseph Anthony Mongiardo
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Robert Zepf

represented by **Douglas I. Louison**
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ATTORNEY TO BE NOTICED

Joseph Anthony Mongiardo
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ATTORNEY TO BE NOTICED

Defendant

Michael Chin

represented by **Douglas I. Louison**
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ATTORNEY TO BE NOTICED

Joseph Anthony Mongiardo
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Anthony Pascarelli

represented by **Douglas I. Louison**
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ATTORNEY TO BE NOTICED

Joseph Anthony Mongiardo
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ATTORNEY TO BE NOTICED

Defendant

Joseph Silvasy

represented by **Douglas I. Louison**
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ATTORNEY TO BE NOTICED

Joseph Anthony Mongiardo
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/07/2023	1	COMPLAINT against MICHAEL CHIN, CANTON POLICE DEPARTMENT, HELENA RAFFERTY, ANTHONY PASCARELLI, TOWN OF CANTON MASSACHUSETTS, JOSEPH SILVASY, ROBERT ZEPF Filing fee: \$ 402, receipt number AMADC-10122835 (Fee Status: Filing Fee paid), filed by DEANNA CORBY, MEREDITH O'NEIL, JENNA ROCCO, NICK ROCCO, ROBERTO SILVA, JESSICA SVEDINE. (Attachments: # 1 Exhibit A - Boston Magazine Article, # 2 Exhibit B - Email from Deputy Chief Patricia Sherrill, # 3 Civil Cover Sheet)(Randazza, Marc) (Entered: 11/07/2023)
11/07/2023	2	NOTICE of Appearance by Jay M. Wolman on behalf of DEANNA CORBY, MEREDITH O'NEIL, JENNA ROCCO, NICK ROCCO, ROBERTO SILVA, JESSICA SVEDINE (Wolman, Jay) (Entered: 11/07/2023)
11/08/2023	3	ELECTRONIC NOTICE of Case Assignment. Judge Denise J. Casper assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Paul G. Levenson. (Horvath, Courtney) (Entered: 11/08/2023)
11/08/2023	4	Emergency MOTION for Temporary Restraining Order <i>and for a Preliminary Injunction</i> by DEANNA CORBY, MEREDITH O'NEIL, JENNA ROCCO, NICK ROCCO, ROBERTO SILVA, JESSICA SVEDINE.(Wolman, Jay) (Entered: 11/08/2023)
11/08/2023	5	MEMORANDUM in Support re 4 Emergency MOTION for Temporary Restraining Order <i>and for a Preliminary Injunction</i> filed by DEANNA CORBY, MEREDITH O'NEIL, JENNA ROCCO, NICK ROCCO, ROBERTO SILVA, JESSICA SVEDINE. (Attachments: # 1 Text of Proposed Order)(Wolman, Jay) (Entered: 11/08/2023)
11/08/2023	6	NOTICE by DEANNA CORBY, MEREDITH O'NEIL, JENNA ROCCO, NICK ROCCO, ROBERTO SILVA, JESSICA SVEDINE <i>OF CONSTITUTIONAL QUESTION</i> (Wolman, Jay) (Entered: 11/08/2023)
11/08/2023	7	NOTICE by DEANNA CORBY, MEREDITH O'NEIL, JENNA ROCCO, NICK ROCCO, ROBERTO SILVA, JESSICA SVEDINE <i>Re: Informal Service</i> (Wolman, Jay) (Entered: 11/08/2023)
11/08/2023	8	Summons Issued as to All Defendants. Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service. (Currie, Haley) (Entered: 11/08/2023)
11/09/2023	9	NOTICE of Appearance by Douglas I. Louison on behalf of Canton Police Department, Michael Chin, Anthony Pascarelli, Helena Rafferty, Joseph Silvasy, Town of Canton Massachusetts, Robert Zepf (Louison, Douglas) (Entered: 11/09/2023)
11/09/2023	10	NOTICE of Appearance by Joseph Anthony Mongiardo on behalf of Canton Police Department, Michael Chin, Anthony Pascarelli, Helena Rafferty, Joseph Silvasy, Town of Canton Massachusetts, Robert Zepf (Mongiardo, Joseph) (Entered: 11/09/2023)
11/09/2023	11	Judge Denise J. Casper: ELECTRONIC ORDER entered. In light of the Notice of Appearances filed on behalf of the defendants, and the pending Motion for TRO, D. 4 , defense counsel to file a response to the pending motion no later than 11/10/23 at 10:00AM. (Currie, Haley) (Entered: 11/09/2023)

11/09/2023	12	Opposition re 4 Emergency MOTION for Temporary Restraining Order <i>and for a Preliminary Injunction</i> filed by Canton Police Department, Michael Chin, Anthony Pascarelli, Helena Rafferty, Joseph Silvasy, Town of Canton Massachusetts, Robert Zepf. (Mongiardo, Joseph) (Entered: 11/09/2023)
11/10/2023	13	Judge Denise J. Casper: ORDER entered. MEMORANDUM AND ORDER - The Court DENIES Plaintiffs' motion for a temporary restraining order and preliminary injunction, D. 4 . (Currie, Haley) (Entered: 11/10/2023)
11/30/2023	14	ANSWER to 1 Complaint,, with Jury Demand by Canton Police Department, Michael Chin, Anthony Pascarelli, Helena Rafferty, Joseph Silvasy, Town of Canton Massachusetts, Robert Zepf.(Louison, Douglas) (Entered: 11/30/2023)
12/01/2023	15	<p>NOTICE of Scheduling Conference - Scheduling Conference set for 1/2/2024 02:15 PM in Courtroom 11 (Remote only) before Judge Denise J. Casper.</p> <p>This hearing will be conducted by video conference. Counsel of record will receive a video conference invite at the email registered in CM/ECF. If you have technical or compatibility issues with the technology, please notify the courtroom deputy of the session as soon as possible.</p> <p>Audio access to the hearing may be available to the media and public. Please check the Court schedule. In order to gain access to the hearing, you must sign up at the following address: https://forms.mad.uscourts.gov/courtlist.html.</p> <p>For questions regarding access to hearings, you may refer to the general orders and public notices of the Court available on www.mad.uscourts.gov or contact media@mad.uscourts.gov. (Currie, Haley) (Main Document 15 replaced on 12/11/2023) (Currie, Haley). (Entered: 12/01/2023)</p>
12/01/2023	16	Judge Denise J. Casper: Standing Order Regarding Appearance of Counsel Via Telephone or Video Conference (Currie, Haley) (Entered: 12/01/2023)
12/01/2023	17	Judge Denise J. Casper: Standing Order Re: Courtroom Opportunities for Relatively Inexperienced Attorneys (Currie, Haley) (Entered: 12/01/2023)
12/06/2023	18	CERTIFICATION pursuant to Local Rule 16.1 (D)(3) <i>Town of Canton</i> . (Louison, Douglas) (Entered: 12/06/2023)
12/06/2023	19	CERTIFICATION pursuant to Local Rule 16.1 (D)(3) <i>for the Canton Police Department and Chief Helena Rafferty</i> . (Louison, Douglas) (Entered: 12/06/2023)
12/06/2023	20	CERTIFICATION pursuant to Local Rule 16.1 (D)(3) <i>Officer Anthony Pascarelli</i> . (Louison, Douglas) (Entered: 12/06/2023)
12/06/2023	21	CERTIFICATION pursuant to Local Rule 16.1 (D)(3) <i>Officer Michael Chin</i> . (Louison, Douglas) (Entered: 12/06/2023)
12/08/2023	22	CERTIFICATION pursuant to Local Rule 16.1 (D)(3) <i>Sergeant Joseph Silvasy</i> . (Louison, Douglas) (Entered: 12/08/2023)
12/10/2023	23	NOTICE OF APPEAL as to 13 Memorandum & ORDER by Deanna Corby, Meredith O'Neil, Jenna Rocco, Nick Rocco, Roberto Silva, Jessica Svedine Filing fee: \$ 600, receipt number AMADC-10168751 Fee Status: Not Exempt. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First

		Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 1/2/2024. (Randazza, Marc) (Entered: 12/10/2023)
12/10/2023	24	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re 23 Notice of Appeal. (Paine, Matthew) (Entered: 12/10/2023)
12/11/2023	25	USCA Case Number 23-2062 for 23 Notice of Appeal, filed by Jessica Svedine, Meredith O'Neil, Nick Rocco, Roberto Silva, Deanna Corby, Jenna Rocco. (Paine, Matthew) (Entered: 12/11/2023)
12/11/2023	26	ELECTRONIC NOTICE OF RESCHEDULING - Scheduling Conference set for 1/16/2024 02:30 PM in Courtroom 11 (Remote only) before Judge Denise J. Casper. This hearing will be conducted by video conference. Counsel of record will receive a video conference invite at the email registered in CM/ECF. If you have technical or compatibility issues with the technology, please notify the courtroom deputy of the session as soon as possible. Audio access to the hearing may be available to the media and public. Please check the Court schedule . In order to gain access to the hearing, you must sign up at the following address: https://forms.mad.uscourts.gov/courtlist.html . For questions regarding access to hearings, you may refer to the general orders and public notices of the Court available on www.mad.uscourts.gov or contact media@mad.uscourts.gov . (Currie, Haley) (Entered: 12/11/2023)
12/15/2023	27	STIPULATION of Dismissal <i>and Order for Dismissal of Plaintiff Jenna Rocco Only</i> by Jenna Rocco. (Randazza, Marc) (Entered: 12/15/2023)
12/19/2023	28	CERTIFICATION pursuant to Local Rule 16.1 (D)(3) for Officer Robert Zepf. (Louison, Douglas) (Entered: 12/19/2023)
12/26/2023	29	CERTIFICATION pursuant to Local Rule 16.1 of Plaintiff Nick Rocco. (Randazza, Marc) (Entered: 12/26/2023)
12/26/2023	30	CERTIFICATION pursuant to Local Rule 16.1 of Plaintiff Deanna Corby. (Randazza, Marc) (Entered: 12/26/2023)
12/26/2023	31	CERTIFICATION pursuant to Local Rule 16.1 of Plaintiff Roberto Silva. (Randazza, Marc) (Entered: 12/26/2023)
12/26/2023	32	CERTIFICATION pursuant to Local Rule 16.1 of Plaintiff Jessica Svedine. (Randazza, Marc) (Entered: 12/26/2023)
12/26/2023	33	CERTIFICATION pursuant to Local Rule 16.1 of Plaintiff Meredith O'Neil. (Randazza, Marc) (Entered: 12/26/2023)
01/02/2024	34	JOINT SUBMISSION pursuant to Local Rule 16.1 by Deanna Corby, Meredith O'Neil, Nick Rocco, Roberto Silva, Jessica Svedine.(Wolman, Jay) (Entered: 01/02/2024)
01/16/2024	35	Electronic Clerk's Notes for proceedings held before Judge Denise J. Casper: Scheduling Conference held on 1/16/2024 by video conference. Counsel report initial disclosures have been exchanged. Amended Pleadings due by 5/25/2024. Written discovery to be served by 8/25/2024. Fact Discovery to be completed by 10/25/2024. Plaintiffs' trial expert designations to be disclosed by 5/30/2024. Plaintiffs' trial experts to be deposed by 6/30/2024. Defendants' trial expert designations to be disclosed by 7/30/2024. Defendants' trial experts to be deposed by 8/30/2024. Motions for Summary Judgment to be filed by