

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK,ss

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2019-0259

Bristol Superior Court
No. 1973CV00299

MASSACHUSETTS COALITION FOR THE HOMELESS & others¹

vs.

CITY OF FALL RIVER & others.²

ORDER OF TRANSFER and RESERVATION AND REPORT

This is a petition under G. L. c. 211, § 4A, seeking exercise of the court's supervisory power to transfer one count of a complaint filed in Bristol Superior Court, Civil Action No. 1973-CV-00299, to the full court. That count presents a single issue of law concerning the constitutionality of G. L. c. 85, § 17A, known as the "Panhandling Statute." The Superior Court judge has issued a preliminary injunction enjoining the respondents from enforcing the statute. The Attorney General, acting as counsel for the District Attorney for Bristol County, concedes that "the statute is unconstitutional insofar as it imposes a fine on those who signal or stop a moving [] car on a public way, or accost occupants of a stopped car on a public way, for the purpose of 'soliciting alms' (i.e., panhandling), while simultaneously permitting persons to engage in the same conduct for the purpose of engaging in other forms of expression." The Attorney General also has stated that, if the case is transferred, the "Commonwealth does not intend to defend the constitutionality of the statute."


¹ John Correia and Joseph Treeful.

² District Attorney for Bristol County; Chief, Fall River Police Department.

General Laws c. 211, § 4A, permits "a single justice of this court, in the sound exercise of his or her discretion, to transfer a case timely filed in another court to this court." Beres v. Board of Registration of Chiropractors, 459 Mass. 1012, 1013 (2011). I consider this to be an appropriate case to exercise the court's extraordinary power of supervision under G. L. c. 211, § 4A, and transfer the case to the Supreme Judicial Court for Suffolk County. See Barber v. Commonwealth, 353 Mass. 236, 238-239 (1967). See also Gurry v. Board of Public Accountancy, 394 Mass. 118, 119 (1985). The petitioners have represented that the statute is "potentially being enforced by municipalities other than Fall River;" that the State Police have filed complaints under the statute; that the respondents have indicated that they would not be inclined to appeal a decision adverse to them with regard to the constitutionality of the statute; and that, if the issue is decided by the Superior Court in the first instance, the constitutionality of the statute might otherwise not reach the appellate courts.

Because the case raises important issues with statewide significance concerning the applicability, constitutionality, and enforceability of the Panhandling Statute, and notwithstanding issues concerning adversarial presentation of the appeal, I reserve decision and report the case to the full court. See Borman v. Borman, 378 Mass. 775, 784 (1979); Dow Jones & Co., Inc. v. Superior Court, 364 Mass. 317, 318 (1973). The record before the full court shall consist of the pleadings and supporting materials filed in the county court. The petitioners are designated as the appellants.

By the Court,


Elspeth Cypher
Associate Justice

Entered: February 26, 2020