COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

No. SJC-12914

MASSACHUSETTS COALITION FOR THE HOMELESS,
JOHN CORREIRA and JOSEPH TREEFUL,

Plaintiffs/Appellants,

v.

CITY OF FALL RIVER, DISTRICT ATTORNEY OF BRISTOL COUNTY, CHIEF OF POLICE OF FALL RIVER,

Defendants/Appellees.

ON RESERVATION AND REPORT FROM THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY PURSUANT TO G.L. C. 211, § 4

REPLY BRIEF OF PLAINTIFFS/APPELLANTS THE MASSACHUSETTS COALITION FOR THE HOMELESS, JOHN CORREIRA AND JOSEPH TREEFUL

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June 22, 2020

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ARGUMENT

The District Attorney of Bristol County ("District Attorney" or "D.A.") rightfully concedes the unconstitutionality of G. L. c. 85, § 17A ("the Statute" or "Section 17A"), which criminalizes signaling or stopping vehicles on public ways for the purpose of engaging in some, but not all, forms of free speech. The City of Fall River and its Police Chief (collectively "the City" or "Fall River") argue that the Statute passes constitutional muster because the City – only one of all the municipalities, in addition to the Commonwealth, authorized by Section 17A to violate free speech rights – has an unwritten policy to warn people and only cite them under the Statute for actually disrupting traffic. Even assuming such a policy exists, it is irrelevant to resolving this facial challenge to Section 17A. The City's arguments therefore cannot save the Statute from being declared unconstitutional.

Despite conceding that the Statute is unconstitutional, the District Attorney suggests, with no citation to any supporting authority, that this Court should declare only a "portion" of the Statute unconstitutional. For the reasons set forth below, the District Attorney's suggestion is inadequate; the

Statute discriminates based on content of speech from top to bottom, is unconstitutional on its face in numerous ways, and must be declared unlawful in its entirety.

I. Section 17A is a content-based restriction on speech that is not narrowly tailored to serve a compelling government interest.

Fall River argues that the Statute is a reasonable time, place, and manner restriction or, in the alternative, that it is narrowly tailored to achieve a compelling interest in traffic safety by virtue of the City's purportedly limited enforcement of it. Fall River Br. 6-9. These arguments cannot rescue the Statute's unconstitutionality.

A law restricting speech is not a reasonable time, place, and manner restriction unless it is content neutral. See *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *Benefit v. Cambridge*, 424 Mass. 918, 923-924 (1997); *Planned Parenthood League of Mass., Inc. v. Attorney Gen.*, 391 Mass. 709, 714 (1984); *Thayer v. Worcester*, 144 F. Supp. 3d 218, 232-234 (D. Mass. 2015). The Statute here draws distinctions on its face based on who is speaking and the content of the speech; it is clearly not content neutral. See Initial Brief of Appellants Massachusetts Coalition for the Homeless

("MCH") and others ("MCH Br.") 21-25; accord D.A. Br. 12-14. Section 17A authorizes law enforcement to cite a person who barely (if at all) disrupts traffic if she is seeking "alms" or soliciting charity for a nonprofit without a permit, but not a person selling newspapers who brings moving traffic to a screeching halt and not a person who wanders into and completely disrupts traffic in order to distribute political flyers or restaurant take-out menus. Thus, the Statute is subject to strict scrutiny, which it cannot survive.

Even assuming traffic safety is a compelling interest in relation to free speech, but see MCH Br. 28-31, the Statute is not at all narrowly tailored to achieve it. MCH Br. 25-28; accord D.A. Br. 15. See also *Erznoznik v. Jacksonville*, 422 U.S. 205, 215 (1975) (rejecting traffic safety as a sufficient interest with regard to an under-inclusive regulation).

Fall River's claim that the Statute is narrowly tailored because the City enforces it only when traffic is repeatedly disrupted and after notice is given is not legally relevant to this facial challenge.[1]

[1] It also is not supported by the Record before this Court, which, in spite of the D.A.'s suggestion in

Footnote Continued on Next Page

In a facial challenge, the issue is whether *the statute* is narrowly tailored, not whether a particular official's enforcement of it is. See, e.g., *Bulldog Inv'rs Gen. P'ship v. Sec'y of Commonwealth*, 460 Mass. 647, 678 n.21 (2011) (quoting *United States v. Stevens,* 559 U.S. 460, 480 (2010)) ("We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly"); see also *Reed v. Gilbert*, 576 U.S. 155, 167 (2015) ("Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech."); *Dominguez v. State*, 902 S.W.2d 5, 8 (Tex. App. 1995) ("[A]ny ordinance allowing newspaper sales in the roadway, while prohibiting other types of first amendment activity, would run seriously afoul of

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footnote 2 of his Brief, contains the materials required by the Single Justice's order reserving and reporting this matter. R.A. 146. Nor is it supported by the record before the Superior Court. As established below, at least one citation was issued simply because a Fall River officer "observed [the person] standing against a posted traffic sign holding a cardboard sign saying that he was 'Homeless,'" and because "[t]his is common behavior when someone is asking for monetary donations from motorists that are passing by." See Summons Report Ref. No. 19-79-AR which was included in Exhibit B to Affidavit of Jessica Lewis (Superior Court docket no. 5), a copy of which is included in the Record Addendum to this Reply.

the requirement that any time, place, and manner restriction must be content-neutral."). Indeed, the alternative would give government agents broad discretion to selectively enforce discriminatory statutes, which is anathema to the Constitution. See *Houston v. Hill*, 482 U.S. 451, 465 (1987) ("Although we appreciate the difficulties of drafting precise laws, we have repeatedly invalidated laws that provide the police with unfettered discretion to arrest individuals for words or conduct that annoy or offend them.").[2]

Further, regardless of whether a particular law enforcement agency or agent applies the Statute only

[2] Further, even if the City's assertion as to its enforcement practices were true or relevant, "[t]he dispositive question . . . is whether content discrimination is reasonably necessary to achieve [the government]'s compelling interests," *R.A.V. v. St. Paul*, 505 U.S. 377, 395-396 (1992). See also *Planned Parenthood*, 391 Mass. at 714-717 (invalidating a content-based law where alternative regulations could serve the same government interest without abridging First Amendment rights). Here the government cannot meet its burden to show that no alternatives exist. Under G. L. c. 90, § 18A, local governments have the authority to promulgate rules to protect pedestrian and traffic safety, provided they only impose *de minimis* fines for any violation, as opposed to the heftier ones authorized by the Statute. Indeed, Fall River has already promulgated an ordinance under this statute. See Section 70-413 A of the City Code, providing that "No pedestrian shall suddenly leave a sidewalk or safety island and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield the right-of-way."

when traffic is actually disrupted, the Statute fails constitutional review because on its face it is still content-based. It does not apply to, and tolerates significant traffic disruption by, persons not engaging in any form of free speech and by those engaging in free speech activities unrelated to seeking funds, such as the distribution of political flyers or promotional materials.

For these numerous reasons, and, for all the reasons set forth in the Appellants' initial brief and conceded by the District Attorney, the Statute is a content-based restriction on free speech that is not narrowly tailored to achieve any compelling interest. The Statute therefore fails constitutional review.

II. The Statute's pervasive constitutional flaws mean it must be declared unconstitutional in its entirety.

The District Attorney acknowledges that Section 17A is unconstitutional but suggests that Appellants allege that it is unconstitutional only "insofar as it prohibits the 'soliciting [of] any alms' from occupants of motor vehicles on public ways." D.A. Br. 17; see also *id.* at 16. The District Attorney then suggests, without citation to any authority, that this Court should only declare this one phrase unconstitutional, D.A. Br. 7

n.1, 12, 17, while leaving the remainder of the Statute intact. This argument misses the mark in multiple ways.

a. Appellants are challenging, and have the right to challenge, the Statute in its entirety.

Appellants bring and have a right to bring a facial challenge to the entire statute, not just to the reference to soliciting "alms." Indeed, in their Complaint and in each subsequent filing, Appellants have requested that the courts invalidate Section 17A in its entirety.[3] Hence, the "portion" of Section 17A being challenged is the whole statute.

In the free speech context, statutes may be challenged as overly broad by persons whose rights have not been directly affected. *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973); *Bulldog Inv'rs*, 460 Mass. at 676 ("The overbreadth doctrine allows an individual whose speech may be constitutionally regulated to argue that a law is unconstitutional because it infringes on the speech of others."). As courts have recognized, this means that those whose rights *have* been impacted can

[3] See MCH Br. 32; Joint Petition For Transfer, R.A. 11; Bristol Superior Court Memorandum Of Decision, R.A. 45; Pl. Response to the D.A.'s Notice of Consent to Entry of Judgment on Count 1 of Complaint, Superior Court Docket No. 16; Verified Complaint, prayer for relief number 4, R.A. 32.

challenge all the portions of the offending statute. See, e.g., *Hodgkins v. Peterson*, 355 F.3d 1048, 1056–57 (7th Cir. 2004) ("[P]laintiffs may launch a facial attack on their own behalf if the statute creates an unacceptable risk of suppression of ideas."); *Nunez v. San Diego*, 114 F.3d 935, 949 (9th Cir. 1997) (same); *Apodaca v. White*, 401 F. Supp. 3d 1040, 1048 (S.D. Cal. 2019) ("Facial constitutional challenges can manifest . . . [where] a plaintiff argues that the law is unconstitutional as applied to plaintiff's speech"). "Indeed, any other result would have the ironic effect of granting greater powers of statutory invalidation to those whose activities are unprotected than to those whose activities are protected." *Waters v. Barry*, 711 F. Supp. 1125, 1133–1134 (D.D.C. 1989).

A declaration of facial and complete invalidity is particularly warranted where, as here, the law's content and viewpoint-based distinctions are not limited to one word or phrase. In adjudging a viewpoint-discriminatory law, the U.S. Supreme Court recently stated that it has never upheld a discriminatory statute against facial attack simply because its unconstitutional applications are not "substantial" relative to its "plainly legitimate sweep." *Iancu v. Brunetti*, 139 S. Ct. 2294,

2302 (2019) (citing *Stevens*, 559 U.S. at 473).[4] Rather, "[t]he Court's finding of viewpoint bias end[s] the matter." *Id.* Indeed, a successful challenge to a law based on its content-based nature "leads ineluctably to facial invalidity." *Ne. Pa. Freethought Soc'y v. Cty. of Lackawanna Transit Sys.*, 938 F.3d 424, 431 (3d Cir. 2019) (citing *Iancu,* 139 S. Ct. at 2302; *Citizens United v. FEC*, 558 U.S. 310, 331 (2010)). If a statute "aims at the suppression of views, it is invalid[; i]f instead it's an impermissible content based restriction, that too leads to facial invalidity." *Id.* (internal marks and citations omitted).

Here, as discussed further below, invalidation only of the phrase concerning "alms" will not rectify Section 17A's content-discriminatory essence, which is why Appellants do – and have the legal right to – seek the invalidation of Section 17A in its entirety.

b. Section 17A cannot be saved by the District Attorney's proposed minor redaction because the remaining provisions would still be unconstitutional.

Section 17A contains only three sentences, all of which are permeated with content and viewpoint-

[4] Of course, Section 17A's unconstitutional applications are not just substantial, they are completely pervasive.

discriminatory restrictions on free speech, which cannot be remedied merely by striking out the word "alms" in the first sentence.

Under the sections of the Statute that would be left intact by the District Attorney's suggested approach, all persons – except newspaper sellers – would still be presumptively prohibited from seeking contributions or subscriptions and from selling any items without a permit on certain public ways,[5] while persons not engaged in soliciting funds – such as those handing out political flyers or sports bar advertisements – would remain entirely free to engage in traffic-interrupting speech or conduct. In other words, the Statute would remain "hopelessly underinclusive." *Reed*, 576 U.S. at 171.[6]

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[5] This Court recognized in *Benefit*, that "[i]t is beyond question that soliciting contributions is expressive activity that is protected by the First Amendment," whether those contributions are sought on behalf of an individual or on behalf of a nonprofit. 424 Mass. at 922-923.

[6] If the Court were to consider engaging in even more rewriting by declaring invalid the exemption for newspaper sellers, additional constitutional issues would be created. Principles of free speech and free press protect newspaper distribution, and removing the newspaper exemption would raise serious issues. *Citizens*

Footnote Continued on Next Page

In addition, per the last sentence of the Statute, those seeking contributions for nonprofits – including MCH – could never do so on state highways and could do so on local ways only if they get a permit, pursuant to no governing standards. The lack of governing standards to guide discretion for issuance of the permits anticipated by both the second and third sentences of the Statute itself violates constitutional free speech protections. *Forsyth Cty. v. Nationalist Movement,* 505 U.S. 123, 133 (1992) (declaring unconstitutional a local ordinance that required a permit and payment of fees to engage in free speech while containing no definite standards to guide the administrator's discretion); *Fitchburg v. 707 Main Corp.,* 369 Mass. 748, 752 (1976) (standardless licensing ordinance facially invalid). See also *Thomas v. Chicago Park Dist.,* 534 U.S. 316, 318-319 (2002) (upholding ordinance that contained specific

United, 558 U.S. at 390 (Scalia, J., concurring) (discussing fundamental place of newspapers in first amendment jurisprudence); *Lakewood v. Plain Dealer Pub. Co.,* 486 U.S. 750, 755-756 (1988) (same in the context of invalidating an unduly discretionary permitting system).

standards for when a permit could be denied and required a written decision).[7]

Hence, the District Attorney's suggested approach does not remedy the unconstitutionality of the Statute, which violates free speech principles at every turn.

c. For the Court to attempt to rewrite the Statute to save it would violate separation of powers.

When a court enters the arena of deciding whether to sever portions of a statute, or otherwise to interpret a statute contrary to its plain language, it risks violating the separation of powers demanded by Article 30 of the Declaration of Rights. See *Goldstein v. Sec'y of Commonwealth*, 484 Mass. 516, 527 (2020) (and cases cited) (discussing Article 30 while recognizing courts'

[7] The Statute is infused with other infirmities as well, including due process vagueness problems, which must be reviewed with greater scrutiny when free speech rights are involved. *Holder v. Humanitarian Law Project,* 561 U.S. 1, 19 (2010) (quoting *Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 499 (1982)). For instance, the Statute is unclear whether, under the first sentence, selling a "ticket of admission to any game, show, exhibition, fair, ball, entertainment or public gathering" is prohibited or part of the newspaper exception and thus allowed. In addition, there is no controlling definition of what constitutes a "newspaper." Is Spare Change News a newspaper or are those distributing it seeking contributions or subscriptions? Is a flyer with local news created by a local resident and sold for cost exempted as a "newspaper" or forbidden as a sale of merchandise or a request for a contribution or subscription?

duty to remedy constitutional violations); *id.* at 532-533 (Kafker, J., concurring) (quoting *Duracraft Corp. v. Holmes Prods. Corp.*, 427 Mass. 156, 167 (1998) ("We must construe statutory provisions, *when possible*, to avoid unconstitutionality . . . .") (emphasis added)).

Here, Section 17A impinges on fundamental rights and, as discussed in part b., each and every one of its three sentences is pervaded by content-based discrimination and/or lack of adequate standards to guide discretion. In such a situation, any attempt by the Court to rewrite the Statute to salvage its constitutionality would raise serious separation of powers issues and create additional free speech issues.

"[T]he touchstone for any decision about remedy is legislative intent, for a court cannot use its remedial powers to circumvent the intent of the legislature." *Ramirez v. Commonwealth*, 479 Mass. 331, 339 (2018) (quoting *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 330 (2006)). In discerning legislative intent, the Court cannot lightly assume that any word used by the Legislature is not necessary to fulfill that intent. See *W. Mass. Elec. Co. v. Dep't of Pub. Util.*, 373 Mass. 227, 234 n.12 (1977) (the addition of a word in the course of the legislative process may be

considered in undertaking to determine the Legislature's intention).

G. L. c. 4, § 6, Eleventh,[8] creates a presumption of severability only where there are "valid parts" of the statute that would remain. Here, given Section 17A's complete under and over-inclusiveness and lack of standards to guide permitting discretion, there simply are no valid parts to preserve.[9]

Indeed, if the Court attempted to rewrite the Statute by eliminating all the unconstitutional features appearing on its face, for instance by leaving intact only the words "[w]hoever signals a moving vehicle on any public way or causes the stopping of a vehicle thereon, or accosts any occupant of a vehicle stopped thereon at the direction of a police officer or signal man, or of a signal or device for regulating traffic,

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[8] It provides: "The provisions of any statute shall be deemed severable, and if any part of any statute shall be adjudged unconstitutional or invalid, such judgment shall not affect other *valid parts* thereof." (Emphasis added.)

[9] In contrast, in *O'Brien v. Borowski,* 461 Mass. 415, 430 (2012), *abrogated on other grounds by Seney v. Morhy,* 467 Mass. 58, 62 (2014), and *Commonwealth v. Welch,* 444 Mass. 80, 89 (2005), the Court merely had to interpret the Legislature's intent with regard to whether anti-harassment statutes cover constitutionally protected speech. In both, the Court merely interpreted the scope of statutory language; it did not rewrite it.

shall be punished by a fine of not more than fifty dollars," the Statute would then ensnare an even broader swath of constitutionally protected speech, while not being narrowly tailored to serve a compelling or legitimate governmental interest. See *Cutting v. Portland,* 802 F.3d 79 (1st Cir. 2015) (declaring unconstitutional a content-neutral city ordinance that banned "virtually all expressive activity" on all city medians). And, of course, there is no reason to think such a result would comport with legislative intent.

Hence, it is simply not possible to interpret Section 17A in a way that would pass constitutional muster. And for the Court to try would require it to engage in the "'quintessentially legislative work' of rewriting State law," which is beyond the proper scope of this Court's authority. *Ramirez*, 479 Mass. at 341 (quoting *Ayotte*, 546 U.S. at 329).

The U.S. Supreme Court, like this Court in *Ramirez,* has recognized the limits on the courts' power to essentially rewrite an unconstitutional statute and stated that a court

> ". . . may impose a limiting construction on a statute only if it is 'readily susceptible' to such a construction." We "'will not rewrite a . . . law to conform it to constitutional requirements,'" for doing so would constitute

> a "serious invasion of the legislative domain," and sharply diminish [the legislative body's] "incentive to draft a narrowly tailored law in the first place." To read § 48 as the Government desires requires rewriting, not just reinterpretation.

Stevens, 559 U.S. at 481 (internal citations omitted) (cited favorably in *Bulldog Inv'rs*, 460 Mass. at 676).

Section 17A cannot be salvaged by this Court. It is rife with content-based restrictions on free speech that cannot simply be excised. And the Court would intrude on legislative powers, and create additional constitutional questions, if it attempted to rewrite it.

For all these reasons, Section 17A must be declared unconstitutional as a whole.

CONCLUSION

The Statute, from top to bottom, is an unconstitutional content-based restriction on free speech that does not satisfy strict scrutiny. The Plaintiffs/Appellants therefore respectfully submit that Section 17A must be declared invalid in its entirety, pursuant to both the First Amendment and Article 16.

Respectfully submitted,

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STATUTORY ADDENDUM

G.L. c. 4, §6, Eleventh

The provisions of any statute shall be deemed severable, and if any part of any statute shall be adjudged unconstitutional or invalid, such judgment shall not affect other valid parts thereof.

G. L. c. 85, § 17A

Whoever, for the purpose of soliciting any alms, contribution or subscription or of selling any merchandise, except newspapers, or ticket of admission to any game, show, exhibition, fair, ball, entertainment or public gathering, signals a moving vehicle on any public way or causes the stopping of a vehicle thereon, or accosts any occupant of a vehicle stopped thereon at the direction of a police officer or signal man, or of a signal or device for regulating traffic, shall be punished by a fine of not more than fifty dollars. Whoever sells or offers for sale any item except newspapers within the limits of a state highway boundary without a permit issued by the department shall for the first offense be punished by a fine of fifty dollars and for each subsequent offense shall be punished by a fine of one hundred dollars. Notwithstanding the provisions of the first sentence of this section, on any city or town way which is not under jurisdiction of the department, the chief of police of a city or town may issue a permit to nonprofit organizations to solicit on said ways in conformity with the rules and regulations established by the police department of said city or town.

G. L. c. 90, § 18A

The department on ways within their control and at the intersection of state highways, and other ways, the metropolitan district commission on ways within their control and at the intersection of metropolitan district commission roadways, except state highways, and other ways, the traffic and parking commission of the city of Boston, the traffic commission or traffic director of any city or town having such a commission or director with authority to promulgate traffic rules, the city council of any other city, and the board of selectmen of any other town may, subject to the provisions of section two of chapter eighty-five, adopt, amend and repeal rules, not repugnant to law, regulating the use by pedestrians of ways within their respective control; provided, however, that no such rule adopted by said traffic and parking commission or by any such traffic commission or traffic director, any city council or any board of selectmen shall take effect until approved in writing by the department, nor, in the case of any such rule adopted by said traffic and parking commission, until published in the City Record, or, in the case of any other such rule, until published in a newspaper published in the city or town in which such rule is to be applicable, if any, otherwise in the county wherein such city or town lies. As used in this paragraph, the word ''pedestrian'' shall include a person in or on any conveyance, other than a bicycle, constructed and designed for propulsion by human muscular power, as well as including a person on foot. Whoever violates any provision of any such rule shall be punished by a fine of one dollar for the first, second or third such offense committed by such person within the jurisdiction of the district court in the particular calendar year, and by a fine of two dollars for the fourth or subsequent such offense so committed in such calendar year.

If a police officer takes cognizance of a violation of any provision of any such rule, he shall forthwith give to the offender a written notice to appear before the clerk of the district court having jurisdiction, at any time during office hours, not later than twenty-one days after the time of such violation. Such notice shall be made in triplicate and shall contain the name and address of the offender, the time, place and nature of the violation, and the name of the police officer. Upon the completion of his tour of duty such police officer shall give his commanding officer two copies of such notice. Said commanding officer shall retain one such copy in his files and, not later than the next court day, deliver the other copy to the clerk of the court before whom the offender has been notified to appear. The notice to appear as provided herein shall be printed in such form as the chief justice for the Boston municipal court department and the chief justice for the district court department may prescribe for their respective departments.

A police office taking cognizance of any such violation may request the offender to state his name and address. Whoever, upon such request, refuses to state his name and address, or states a false name and address or a name and address which is not his name and address in ordinary use, shall be punished by a fine of not less than twenty nor more than fifty dollars. Any such offender who refuses upon such request to state his name and address may be arrested without a warrant; but no person shall be arrested without a warrant for any other violation of any provision of this paragraph or for any violation of any provision of any such rule.

Any person notified to appear before the clerk of a district court as hereinbefore provided may appear before such clerk and confess the offense charged, either personally or through

an agent duly authorized in writing or by mailing to such clerk, with the notice, the sum provided herein, such payment to be made only by postal note, money order or check. If it is the first, second or third offense subject to this section.

Fall River Municipal Code
Section 70-413 A

No pedestrian shall suddenly leave a sidewalk or safety island and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield the right-of-way.

RECORD ADDENDUM

Fall River Police Department
Summons Report

Summons #: 19-79-AR
Call #: 19-1510

Date/Time Reported: 01/07/2019 @ 1107
Arrest Date/Time: 01/10/2019 @ 1531

OBTN: TFAL201900079
Reporting Officer: Officer Michael Pavao

Signature: _____

#	DEFENDANT(S)	SEX	RACE	AGE	SSN	PHONE
1	[redacted] FALL RIVER MA 02723	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Military Active Duty: N
HEIGHT: 511 WEIGHT: 140 - 150 HAIR: BROWN EYES: BROWN
BODY: SKINNY COMPLEXION: LIGHT
DOB: [redacted] PLACE OF BIRTH: FALL RIVER MA
STATE ID: [redacted] FBI ID: [redacted]
LICENSE NUMBER: MA [redacted] ETHNICITY: NOT HISPANIC
PCF #: [redacted]

[CONTACT INFORMATION]

Home Phone (Primary) [redacted]

[APPEARANCE]

GLASSES WORN: NO

[FAMILY/EMPLOYMENT INFORMATION]

MARITAL STATUS: SINGLE

FATHER'S NAME: [redacted]
MOTHER'S NAME:

EMPLOYER/SCHOOL: UNEMPLOYED
FALL RIVER

OCCUPATION: UNEMPLOYED

#	OFFENSE(S)	ATTEMPTED	TYPE
	LOCATION TYPE: Highway/Road/Alley/Street Zone: Zone 106, Sec 5 SUPPLY NEW ENGLAND 186 PLYMOUTH AVE FALL RIVER MA		
1	SOLICIT FROM PERSONS IN MOTOR VEHICLES 85/17A/A 85 17A OCCURRED: 01/07/2019 1107	N	Ordinance

Fall River Police Department Page: 1

NARRATIVE FOR OFFICER MICHAEL PAVAO

Ref: 19-79-AR

On Monday, January 7 2019, I Officer Michael Pavao was assigned to the Fall River Police Department Special Operations Division. Around 11:07 a.m., Officer Derek Amaral (Walking beat 4B) and I (Walking beat 4A) were on patrol in an unmarked police cruiser traveling north on Plymouth Ave. near the route 195 east off ramp to Plymouth Ave. This area of Plymouth Ave is a public way in a designated CDA area #4 and is a site for homeless people that constantly solicit from motor vehicles.

While stopped at a red traffic signal, I observed a male standing against a posted traffic sign holding a cardboard sign saying that he was "Homeless". This is common behavior when someone is asking for monetary donations from motorists that are passing by. I exited my cruiser and approached this male who identified himself as [redacted]. [redacted] told me that he recently chose this area to solicit from people because he was homeless after being discharged from the SSTAR Treatment Center [redacted] emained in the roadway approaching motorists for money as they passed by. At one point he was talking to a motorist who handed him money while the traffic signal was green holding up traffic briefly. [redacted] confirmed that he was from Taunton but is living on the streets of Fall River claiming that he was trying to register himself into a local homeless shelter but has been unsuccessful. Boudria said that he had recently been warned by the police not to solicit on Plymouth Ave. however despite that warning he returned to collect donations from motorists.

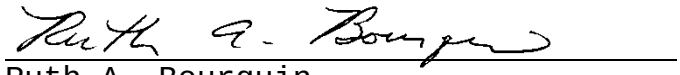
Based on the incident described above, I respectfully request a Summons be issued to [redacted] to appear in Court for ***Soliciting From Persons in Motor Vehicles.***

Officer Michael Pavao
Requesting Officer

Date

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the rules of court pertaining to the filing of reply briefs, pursuant to Mass. R. App. P. 16(c).



Ruth A. Bourquin

AFFIDAVIT OF SERVICE

I, Ruth A. Bourquin do hereby certify under the penalties of perjury that on this 22nd day of June, 2020, I caused a true copy of the foregoing document to be served by electronic filing through the CM/ECF system on the following counsel:

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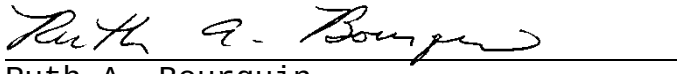

Ruth A. Bourquin

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Plaintiffs/Appellants

v.

CITY OF FALL RIVER, DISTRICT ATTORNEY OF BRISTOL COUNTY, CHIEF OF POLICE OF FALL RIVER,

Defendants/Appellees

ON RESERVATION AND REPORT FROM
THE SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY PURSUANT TO G.L. c. 211, § 4

REPLY BRIEF OF PLAINTIFFS/APPELLANTS THE MASSACHUSETTS COALITION FOR THE HOMELESS, JOHN CORREIRA AND JOSEPH TREEFUL