STATE OF MICHIGAN
IN THE 14A-3 DISTRICT COURT

CITY OF CHELSEA,

Plaintiff,

v.

MYA PRITI KING,

Defendant.
_____/

Case No. 20C023624-OI

Hon. Anna M. Frushour

Peter C. Flintoft (P13531)
Mariah E. Fink (P73757)
Keusch, Flintoft & Fink, PLLC
119 S. Main Street, PO Box 187
Chelsea, MI 48118
(734) 476-8671
flintoft@keuschlaw.com

Attorneys for Plaintiff

Michael J. Steinberg (P43085)
Diane Kee*
Laila Kassis*
Jeremy Shur*
Civil Rights Litigation Initiative
University of Michigan Law School
701 South State Street, Suite 2020
Ann Arbor, MI 48109
(734) 615-2407 | mjsteinb@umich.edu

*Student Attorneys practicing pursuant to MCR 8.120

John A. Shea (P37634)
Cooperating Attorney,
ACLU Fund of Michigan
120 N. Fourth Avenue
Ann Arbor, MI 48104
(734) 995-4646 | jashea@earthlink.net

Daniel S. Korobkin (P72842)
ACLU Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201
(313) 578-6824 | dkorobkin@aclumich.org

Attorneys for Defendant

_____/

DEFENDANT'S MOTION TO DISMISS CIVIL INFRACTION

DEFENDANT'S MOTION TO DISMISS CIVIL INFRACTION

Defendant Mya King, through her counsel, asks this Court to dismiss the civil infraction filed against her by the City of Chelsea ("the City"). In support of this relief, Ms. King states the following:

1. Defendant Mya King is charged under MCL 257.676b, a state statute regulating traffic flow that is unconstitutional on its face. The statute is a content-based regulation of speech that specifically allows people to impede traffic if they are soliciting money on behalf of a charitable or civic organization, but makes it illegal for individuals to engage in any other type of constitutionally protected speech that impedes traffic:

> (1) Subject to subsection (2), a person, without authority, shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street or highway in this state, by means of a barricade, object, or device, or with his or her person. This section does not apply to persons maintaining, rearranging, or constructing public utility facilities in or adjacent to a street or highway.
>
> (2) Subsection (1) and any provision of the Michigan Administrative Code that prohibits a person from standing in a roadway other than a limited access highway for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle do not apply to a person who is soliciting contributions on behalf of a charitable or civic organization during daylight hours . . . . [MCL 257.676b(1)-(2) (emphasis added).]

2. The First Amendment of the United States Constitution bars the government from using content-based speech regulations to exclude categories of speech based on subject matter in traditional public fora like streets, sidewalks, and parks. *Police Dep't of City of Chicago v Mosley*, 408 US 92, 98-99; 92 S Ct 2286; 33 L Ed 2d 212 (1972).

3. Exercising constitutional rights through peaceful political protest "has always rested on the highest rung of the hierarchy of First Amendment values." *Carey v Brown*, 447 US 455, 466-67; 100 S Ct 2286; 65 L Ed 2d 263 (1980); *see also Gregory v City of Chicago*, 394 US 111,

112; 89 S Ct 946; 22 L Ed 2d 134 (1969). The level of First Amendment protection for core political speech has reverently been described as "at its zenith." *Meyer v Grant*, 486 US 414, 425; 108 S Ct 1886; 100 L Ed 2d 425 (1988).

4. If the government stifles protected speech using a content-based regulation like MCL 257.676b, it must defeat the presumption of unconstitutionality by demonstrating that the law is narrowly tailored to further a compelling government interest. *Reed v Town of Gilbert*, 576 US 155, 163; 135 S Ct 2218; 192 L Ed 2d 236 (2015).

5. MCL 257.676b impermissibly favors charitable solicitation speech over all other protected speech, including the highly protected political speech that the City believes Ms. King was engaged in on July 31, 2020.

6. MCL 257.676b is a facially content-based regulation of speech in a traditional public forum.

7. MCL 257.676b is unconstitutional because it cannot survive strict scrutiny.

8. MCL 257.676b is not narrowly tailored to serve a compelling government interest.

9. Assuming promoting traffic safety is a compelling governmental interest, the government has several viable alternatives to effectuate its interest without categorically banning protected speech.

10. MCL 257.676b also fails the narrow tailoring prong of strict scrutiny because it irrationally exempts only charitable solicitors from sanction when other protected speakers—like political demonstrators—could impede the same traffic on equally or less disruptive terms.

11. MCL 257.676b is unconstitutional on its face and as applied to Ms. King.

RELIEF REQUESTED

The statute under which Defendant Mya King was cited is invalid on its face and as applied because it is a content-based regulation of speech in a traditional public forum that is not narrowly tailored to further a compelling government interest. Accordingly, Ms. King requests that this Court dismiss the civil infraction against her with prejudice for the reasons stated in the accompanying brief.

Respectfully submitted,

Michael J. Steinberg, by JAS w/ permission

Michael J. Steinberg (P43085)
Diane Kee*
Laila Kassis*
Jeremy Shur*
Civil Rights Litigation Initiative
University of Michigan Law School
701 South State Street, Suite 2020
Ann Arbor, MI 48109
(734) 615-2407
mjsteinb@umich.edu

*Student attorneys practicing pursuant to MCR 8.120

Dated: November 9, 2020

Daniel S Korobkin by JAS w/ permission

Daniel S. Korobkin (P72842)
ACLU Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201
(313) 578-6824
dkorobkin@aclumich.org

John A. Shea (P37634)
Cooperating Attorney,
ACLU Fund of Michigan
120 N. Fourth Avenue
Ann Arbor, MI 48104
(734) 995-4646
jashea@earthlink.net

STATE OF MICHIGAN
IN THE 14A-3 DISTRICT COURT

CITY OF CHELSEA,

Plaintiff,

v.

MYA PRITI KING,

Defendant.
_____/

Case No. 20C023624-OI

Hon. Anna M. Frushour

Peter C. Flintoft (P13531)
Mariah E. Fink (P73757)
Keusch, Flintoft & Fink, PLLC
119 S. Main Street, PO Box 187
Chelsea, MI 48118
(734) 476-8671
flintoft@keuschlaw.com

Attorneys for Plaintiff

Michael J. Steinberg (P43085)
Diane Kee*
Laila Kassis*
Jeremy Shur*
Civil Rights Litigation Initiative
University of Michigan Law School
701 South State Street, Suite 2020
Ann Arbor, MI 48109
(734) 615-2407 | mjsteinb@umich.edu

*Student Attorneys practicing pursuant to MCR 8.120

John A. Shea (P37634)
Cooperating Attorney,
ACLU Fund of Michigan
120 N. Fourth Avenue
Ann Arbor, MI 48104
(734) 995-4646 | jashea@earthlink.net

Daniel S. Korobkin (P72842)
ACLU Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201
(313) 578-6824 | dkorobkin@aclumich.org

Attorneys for Defendant

_____/

DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO DISMISS CIVIL INFRACTION PURSUANT TO THE FIRST AMENDMENT OF THE U.S. CONSTITUTION

TABLE OF CONTENTS

STATEMENT OF ISSUE PRESENTED

I. **Does MCL 257.676b violate the First Amendment of the United States Constitution because it is a content-based restriction on speech that is not narrowly tailored to serve a compelling government interest?**

Defendant says, "Yes."

INTRODUCTION

Defendant Mya King has been issued a civil infraction under MCL 257.676b, a state statute prohibiting traffic impediment that is a content-based regulation of speech in a traditional public forum. The City of Chelsea cited Ms. King under MCL 257.676b because it believed she was peacefully protesting racial injustice and police brutality on public streets in downtown Chelsea. While MCL 257.676b exempts those who are "soliciting contributions on behalf of a charitable or civic organization during daylight hours" from its general prohibition against obstructing traffic, it categorically bans all other protected speech—including political speech, labor picketing, and leafletting. By carving an exception for charitable solicitation, the government has drawn an "impermissible distinction" between categories of speech based on subject matter. *Police Dep't of City of Chicago v Mosley*, 408 US 92, 94; 92 S Ct 2286; 33 L Ed 2d 212 (1972). Put simply, the government may not choose to afford favorable status to one type of speech over another. *See Barr v Am Ass'n of Political Consultants, Inc*, 140 S Ct 2335, 2343, 2346; 207 L Ed 2d 784 (2020).

When regulating public streets and sidewalks which "occup[y] a special position in terms of First Amendment protection," the government must typically use content-neutral time, place, and manner restrictions. *United States v Grace*, 461 US 171, 180; 103 S Ct 1702; 75 L Ed 2d 736 (1983). If the government relies on a content-based regulation like MCL 257.676b, it must defeat the presumption of unconstitutionality by demonstrating that the law is narrowly tailored to further a compelling government interest. *Reed v Town of Gilbert*, 576 US 155, 163; 135 S Ct 2218; 192 L Ed 2d 236 (2015). Assuming the government's interest in traffic safety is a compelling one, the government cannot overcome this heavy burden because MCL 257.676b is not narrowly tailored to effectuate this interest. For the reasons explained below, Ms. King

respectfully requests that this Court declare MCL 257.676b unconstitutional, either on its face or as applied, and dismiss the civil infraction against Ms. King.

STATEMENT OF FACTS

Defendant Mya King is a civic-minded sixteen-year-old high school student from Chelsea who was horrified by the recent killings of Black Americans such as George Floyd and Breonna Taylor. Like millions of Americans,[1] Ms. King has participated in peaceful protests calling for an end to racism and police violence.

In June 2020, Ms. King and other members of Anti-Racist Chelsea Youth (ARCY) gathered for an open mic night at Pierce Park. During the event, Ms. King noticed an intoxicated adult counter-protestor who had entered the park to harass the assembled youth. When Ms. King attempted to step between the counter-protestor and a group of middle schoolers, the counter-protestor punched Ms. King in the face. The City of Chelsea has asked the Washtenaw County Prosecutor to issue criminal charges against the assailant.[2]

On August 28, 2020, the Chelsea Police Department mailed Ms. King a citation. The cover letter accused her of "blocking the street while demonstrating" on July 31, 2020. (Exhibit 1). The civil infraction was issued under MCL 257.676b, a state statute regulating traffic that, as demonstrated below, is an unconstitutional content-based restriction against protected speech in a traditional public forum. Accordingly, this Court should dismiss the charge on the ground that the MCL 257.676b is unconstitutional on its face and/or that it is unconstitutional as applied to the speech Ms. King is accused of engaging in on July 31.

---

[1] Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in US History*, New York Times (July 3, 2020), https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html.

[2] Nathan Clark, *Teen Punched at Chelsea Protest Plans on Fighting Ticket*, MLive (October 29, 2020), https://www.mlive.com/news/2020/10/teen-punched-at-chelsea-protest-plans-on-fighting-ticket.html?fbclid=IwAR2YOd3xhh7a9DD3Lk02efJIp5nA2wU3pR-QYh1Cq-FRgE96JTzpjy1QrGE.

ARGUMENT

I. MCL 257.676b, WHICH EXEMPTS CHARITABLE SOLICITATION, IS UNCONSTITUTIONAL ON ITS FACE BECAUSE (1) IT INHIBITS POLITICAL SPEECH; (2) IT IS A CONTENT-BASED RESTRICTION ON SPEECH IN A TRADITIONAL PUBLIC FORUM; AND (3) IT IS NOT NARROWLY TAILORED TO SERVE A COMPELLING GOVERNMENT INTEREST.

Ms. King has been charged under MCL 257.676b, a statute that impermissibly favors the speech of people soliciting on behalf of charitable and civic organizations over those engaged in core political speech. Subsection 1 of the statute makes it illegal for a person to impede the normal flow of traffic without authority:

> Subject to subsection (2), a person, without authority, shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street or highway in this state, by means of a barricade, object, or device, or with his or her person. This section does not apply to persons maintaining, rearranging, or constructing public utility facilities in or adjacent to a street or highway. MCL 257.676b(1).

Yet, subsection 2 of the statute carves out an exception to its general prohibition against impeding traffic exclusively for charitable solicitation:

> (2) Subsection (1) and any provision of the Michigan Administrative Code that prohibits a person from standing in a roadway other than a limited access highway for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle do not apply to a person who is soliciting contributions on behalf of a charitable or civic organization during daylight hours . . . . MCL 257.676b(2) (emphasis added).

Subsection 2 renders the statute unconstitutional as a content-based regulation of speech in a traditional public forum. As the United States Supreme Court held in *Reed v Town of Gilbert*, "content-based restrictions on speech . . . can stand only if they survive strict scrutiny." 576 US 155, 171; 135 S Ct 2218; 192 L Ed 2d 236 (2015). Here, the statute is unconstitutional on its face because it is content-based—it favors one type of speech over all others, including political speech in a traditional public forum. Furthermore, MCL 257.676b is not narrowly

tailored to serve a compelling state interest. Therefore, Ms. King requests that this Court declare MCL 257.676b unconstitutional on its face and dismiss the citation issued against her.

A. Political Speech in a Traditional Public Forum Merits the Highest Protection Under the First Amendment.

It long has been recognized that "speech on public issues . . . is entitled to special protection." *Connick v Myers*, 461 US 138, 145; 103 S Ct 1684; 75 L Ed 2d 708 (1983); *Garrison v Louisiana*, 379 US 64, 74-75, 85 S Ct 209; 13 L Ed 2d 125 (1964) ("[S]peech concerning public affairs is more than self-expression; it is the essence of self-government."). When a person participates in "interactive communication concerning political change," this speech "is appropriately described as 'core political speech.'" *Meyer v Grant*, 486 US 414, 422; 108 S Ct 1886; 100 L Ed 2d 425 (1988). Engaging in core political speech through peaceful political protest "has always rested on the highest rung of the hierarchy of First Amendment values." *Carey v Brown*, 447 US 455, 466-67; 100 S Ct 2286; 65 L Ed 2d 263 (1980); *see also Gregory v City of Chicago*, 394 US 111, 112; 89 S Ct 946; 22 L Ed 2d 134 (1969). The level of First Amendment protection for core political speech has reverently been described as "at its zenith." *Meyer*, 486 US at 425. Therefore, when the government regulates such speech, its burden to justify its conduct may be "well-nigh insurmountable." *Id.*

The First Amendment also affords special protection to expressive activity, such as picketing with signs and placards, that occurs on streets and sidewalks. *Boos v Barry*, 485 US 312, 318; 108 S Ct 1157; 99 L Ed 2d 333 (1988); *McGlone v Bell*, 681 F3d 718, 732 (CA 6 2012). As recently summarized in *McCullen v Coakley*, 573 US 464, 476; 134 S Ct 2518; 189 L Ed 2d 502 (2014):

> Such areas occupy a special position in terms of First Amendment protection because of their historic role as sites for discussion and debate. These places—which we have labeled "traditional public fora"—have immemorially been held in trust for the use of the

> public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.

(Citations and quotation marks omitted.) "In such places, the government's ability to permissibly restrict expressive conduct is very limited." *United States v Grace*, 461 US 171, 177; 103 S Ct 1702; 75 L Ed 2d 736 (1983). Where the government seeks to impose "any restriction based on the content of the speech" in a traditional public forum, the regulation must survive strict scrutiny. *Pleasant Grove City v Summum*, 555 US 460, 469; 126 S Ct 1125; 172 L Ed 2d 853 (2009). Moreover, when the government allows some forms of protected speech but prohibits others in a traditional public forum, this statutory scheme "is never permitted." *Police Dep't of City of Chicago v Mosley*, 408 US 92, 99; 92 S Ct 2286; 33 L Ed 2d 212 (1972).

The City of Chelsea has accused Ms. King of violating MCL 257.676b because it believed she was participating in a peaceful political demonstration on public streets. The First Amendment most vigorously protects political speech in that forum, and, as more fully discussed below, the statute under which Ms. King was cited must yield to those protections.

B. MCL 257.676b Is a Content-based Regulation of Speech Because It Distinguishes Between Types of Speech on Its Face.

At its core, the First Amendment "bars the government from dictating what we see or read or speak or hear." *Ashcroft v Free Speech Coal*, 535 US 234, 245; 122 S Ct 1389; 152 L Ed 2d 403 (2002). One way in which the government violates this basic premise is by regulating speech on its face—making "an impermissible distinction between" types of speech based on its content. *Police Dep't of City of Chicago v Mosley*, 408 US 92, 94; 92 S Ct 2286; 33 L Ed 2d 212 (1972); *Barr v Am Ass'n of Pol Consultants, Inc*, 140 S Ct 2335, 2343, 2346; 207 L Ed 2d 784 (2020). When a statute "singles out specific subject matter for differential treatment," the statute is plainly content-based "even if it does not target viewpoints within that subject matter." *Reed v*

Town of Gilbert, 576 US 155, 169; 135 S Ct 2218; 192 L Ed 2d 236 (2015). This facial discrimination is particularly problematic when the government promotes "selective exclusion" of speech in public places. *Mosley*, 408 US at 94.

For example, in *Reed v Town of Gilbert*, the Supreme Court laid out the approach courts must take when confronted with a content-based regulation of speech.[3] First, the court must consider "whether a law is content neutral on its face." *Reed*, 576 US at 166. Second, even if the law appears facially neutral, it may still be content-based if it was passed with the purpose of regulating certain types of speech. *Id.* Most importantly, "the government's benign motive, content-neutral justification" or lack of animus in its purpose "cannot transform a facially content-based law into one that is content neutral." *Id.* Therefore, if a statute is facially content-based, it is "presumptively unconstitutional and may be justified only if the government proves that [it is] narrowly tailored to serve compelling state interests." *Id.* at 163.

The sign ordinance at issue in *Reed* generally prohibited displaying outdoor signs, but "exempt[ed] 23 categories of signs," including Ideological Signs, Political Signs, and Temporary Directional Signs. *Id.* at 159. Within the exempted categories, the government imposed additional regulations related to the signs' size, location, and length of display time. *Id.* at 159-60. The petitioner, a church pastor, was twice cited for violating the ordinance when his church "exceeded the time limits for displaying its temporary directional signs" used to inform the public of Sunday church services. *Id.* at 161. The Court held that the ordinance was "a

[3] The Supreme Court's clarification of assessing content neutrality in *Reed* has been described as "revolution[izing] the doctrine." Mittal, *The Supreme Board of Sign Review:* Reed *and its Aftermath*, 125 Yale L J F 359, 359 (2016). By focusing on the ordinance's facial distinctions on speech, the Court took "a departure from the existing conception of content discrimination," which primarily focused on "impermissible government justification or purpose" to determine whether the statute was content-based. *Id.* at 360. Therefore, after *Reed*, "viewpoint-based regulations but also subject matter-based regulations" must survive strict scrutiny. *Id.*

paradigmatic example of content-based discrimination" because it "singles out specific subject matter for differential treatment." *Id.* at 169.

Similarly, in *Police Department of the City of Chicago v Mosley,* the Supreme Court invalidated an ordinance prohibiting picketing "on a public way within 150 feet of any primary or secondary school building," except "the peaceful picketing of any school involved in a labor dispute." 408 US at 93. For seven months, Earl Mosley peacefully demonstrated without incident outside of a high school to protest the school's racially discriminatory policies. *Id.* After the ordinance was passed, the City warned Mosley that he would be arrested if he continued his picket. *Id.* The Court identified that "[t]he central problem with Chicago's ordinance is that it describes permissible picketing in terms of its subject matter." *Id.* at 95. As a facially content-based speech restriction in a traditional public forum, the ordinance exemplified a regulatory scheme that "is never permitted." *Id.* at 99.

Like the ordinances addressed in *Reed* and *Mosley*, the text of MCL 257.676b is content-based on its face. The statute permits speech which impedes traffic so long as it involves "soliciting contributions on behalf of a charitable or civic organization during daylight hours." MCL 257.676b(2). All other speech activity that impedes traffic is proscribed. The statute is not merely regulating speech "in terms of time, place, and manner, but in terms of subject matter." *Mosley*, 408 US at 99. In enacting MCL 275.676b, the government has "impermissibly favor[ed]" charitable solicitation speech "over political and other speech, in violation of the First Amendment." *Barr*, 140 S Ct at 2343.

C. MCL 257.676b Is Not Narrowly Tailored to Further a Compelling Government Interest Where It Permits Charitable Solicitation that Impedes Traffic but No Other Protected Speech.

Assuming that the City has a compelling interest in facilitating safe and efficient traffic flow, MCL 257.676b is not narrowly tailored to effectuate that interest. The statute is therefore unconstitutional on its face and cannot be used to restrict political speech in its streets. A content-based regulation of speech in a traditional public forum is subject to strict scrutiny. *Reed*, 576 US at 163. The government carries an exceptionally high burden to justify content-based speech regulations, as they are "presumptively unconstitutional." *Id.*; *United States v Playboy Entm't Grp, Inc*, 529 US 803, 818; 120 S Ct 1878; 146 L Ed 2d 865 (2000) ("It is rare that a regulation restricting speech because of its content will ever be permissible."). If the government cannot justify its differential treatment of protected speech, it will fail to meet its burden to show that the law is narrowly tailored. *Reed,* 576 US at 172. In other words, the government may only "regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest." *Sable Commc'ns of Cal, Inc v FCC*, 492 US 115, 126; 109 S Ct 2829; 106 L Ed 2d 93 (1989).

In *Police Department of the City of Chicago v Mosley,* the Supreme Court acknowledged that "preventing school disruption," was a "legitimate concern," but the content-based ordinance was "[f]ar from being tailored to a substantial governmental interest." 408 US 92, 100-02; 92 S Ct 2286; 33 L Ed 2d 212 (1972). Because the ordinance permitted peaceful labor picketing, the Court found that "there [was] no justification for prohibiting all nonlabor picketing," when such demonstrations could be just as peaceful. *Id.* at 100. Therefore, the Court held that "Chicago may not vindicate its interest in preventing disruption by the wholesale exclusion of picketing on all but one preferred subject." *Id.* at 101.

Like the ordinance at issue in *Mosley*, MCL 257.676b gives preferential treatment to one category of speech (charitable solicitation) while banning all other protected speech, including

core political speech. As in *Mosley*, MCL 257.676b likewise fails to account for how "the wholesale exclusion" of speech "on all but one preferred subject," *Mosley*, 408 US at 101, can effectuate its interest in promoting traffic flow and safety.

As anyone familiar with observing (or directly experiencing) street solicitors knows, solicitors must actually be *in* traffic to make their solicitation. Solicitors must be within touching distance not only of vehicles, but persons within vehicles, requiring vehicles to come to a complete stop in the middle of a traffic lane. The government cannot claim that strictly limiting political speech activity in streets is necessary to effectuate safe and efficient traffic flow, while permitting solicitors to have unfettered access to vehicles moving within and through traffic intersections.[4]

Furthermore, unlike other constitutional claims of facial invalidity, a facial challenge on First Amendment grounds allows the court to consider "hypothetical applications of the law to hypothetical individuals not before the court." *Connection Distrib Co v Holder*, 557 F3d 321, 335 (CA 6 2009); *see also* of *Members of City Council of City of Los Angeles v Taxpayers for Vincent*, 466 US 789, 798, 104 S Ct 2118; 80 L Ed 2d 772 (1984).

Under the regulatory scheme of MCL 257.676b, a charitable solicitor who meets the statutory requirements would be free to approach drivers to collect money for the local Kiwanis Club. On the other hand, a labor organizer on the exact same street would be sanctioned for approaching drivers to collect signatures for a ballot initiative for fair wages. Although both the charitable solicitor and the labor organizer are engaged in protected speech, and they could

[4] *See Reed*, 576 US at 172 ("The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town while at the same time allowing unlimited numbers of other types of signs that create the same problem.").

impede the same traffic on an equal basis, the statute treats them differently based solely on what they are saying.

The irrationality of MCL 257.676b becomes even more apparent when one considers that the carveout for charitable solicitation permits an unlimited number of solicitors to use loudspeakers, megaphones, and flashy signs to impede and distract drivers, all while darting across multiple lanes of traffic to collect donations. But the statute prohibits a single political canvasser from leafletting if their strategic post is slightly in the road at the start of a crosswalk. Under MCL 257.676b, even if silent labor picketers contained their activity to just one traffic lane adjacent to the sidewalk—leaving plenty of room for cars to safely pass and never directly engaging with drivers—they would still be violating the law.

Shutting down all core political speech is not the least speech-restrictive means the City could use to further its interest in traffic safety. The City could simply redirect traffic for the brief periods in which peaceful demonstrations occur, as the cities of Ann Arbor, Ypsilanti, and Saline have done for Black Lives Matter protests.[5] The City could have placed temporary barriers to mark off one lane of traffic for pedestrian protestor use, as Ann Arbor has done for pedestrians and bicyclists as part of its Healthy Streets initiative.[6] However, shutting down protected speech based on "broad classifications, especially those based on subject matter" is the antithesis of using the least restrictive means. *Mosley*, 408 US at 101. This country's deepest

---

[5] Steve Marowski, *Thousands March in Support of Black Lives Matter in Downtown Ypsilanti*, MLive (June 6, 2020), https://www.mlive.com/news/ann-arbor/2020/06/thousands-march-in-support-of-black-lives-matter-in-downtown-ypsilanti.html; Samuel Dodge, *Anti Police Brutality March Attracts Ann Arbor Police, Washtenaw Sheriff and Jim Harbaugh*, MLive (June 2, 2020), https://www.mlive.com/news/ann-arbor/2020/06/anti-police-brutality-march-attracts-ann-arbor-police-washtenaw-sheriff-and-jim-harbaugh.html; Tim Longmoore, *Freedom Fighters Stage Peaceful Protest in Saline,* Saline Post (August 10, 2020), https://thesalinepost.com/g/saline-mi/n/15208/freedom-fighters-stage-peaceful-protest-saline.

[6] Dana Afana, *'Healthy Streets' Plan to Slow Traffic in Ann Arbor Residential Areas*, MLive (June 25, 2020), https://www.mlive.com/news/ann-arbor/2020/06/healthy-streets-plan-to-slow-traffic-in-ann-arbor-residential-areas.html.

First Amendment values "would rest on a soft foundation indeed if government could distinguish among picketers on such a wholesale and categorical basis." *Id.*

When a statute violates the First Amendment on its face, it cannot be used to charge any person engaged in protected speech. *See Taxpayers for Vincent*, 466 US at 797-98 ("[A] holding of facial invalidity expresses the conclusion that the statute could never be applied in a valid manner."). Since MCL 257.676b cannot withstand strict scrutiny, the charge against Ms. King must be dismissed.

II. MCL 257.676b IS UNCONSTITUTIONAL AS APPLIED TO MS. KING.

Although the statute is unconstitutional on its face, this Court may exercise its discretion to find that MCL 257.676b is unconstitutional as applied to Ms. King, rather than striking down the entire statute. *See Ayotte v Planned Parenthood of N New England*, 546 US 320, 329; 126 S Ct 961; 163 L Ed 2d 812 (2006). In contrast to a facial challenge, "an 'as-applied' challenge consists of a challenge to the statute's application only to the party before the court." *Amelkin v McClure*, 205 F3d 293, 296 (CA 6 2000); *Bonner v City of Brighton*, 495 Mich 209, 223 n 27; 848 NW2d 380, 389 (2014).

As discussed above, engaging in in core political speech through peaceful political protest "has always rested on the highest rung of the hierarchy of First Amendment values." *Carey v Brown*, 447 US 455, 466-67; 100 S Ct 2286; 65 L Ed 2d 263 (1980). Even if the government is factually mistaken about a person's participation in political speech, the government commits "the same kind, and degree, of constitutional harm" when it punishes her based on inaccurate belief. *Heffernan v City of Paterson*, 136 S Ct 1412, 1419; 194 L Ed 2d 508 (2016). Furthermore, the government has "very limited" ability to regulate political speech in a traditional public forum. *United States v Grace*, 461 US 171, 177; 103 S Ct 1702; 75 L Ed 2d

736 (1983). Therefore, when the government "trenches upon an area in which the importance of First Amendment protections is 'at its zenith,'" its burden to justify the abridgement of protected speech "is well-nigh insurmountable." *Meyer v Grant*, 486 US 414, 425; 108 S Ct 1886; 100 L Ed 2d 425 (1988). If the government fails to demonstrate a compelling government interest and narrow tailoring for its differential treatment of protected speech, a court must find its speech regulation unconstitutional. *See Reed v Town of Gilbert*, 576 US 155, 171-72; 135 S Ct 2218; 192 L Ed 2d 236 (2015).

In August 2020, the City of Chelsea cited Ms. King under MCL 257.676b because it believed she was participating in a peaceful demonstration that took place entirely on public streets and sidewalks in downtown Chelsea. While the government may lawfully regulate the flow of traffic, it ran afoul of the First Amendment by applying MCL 257.676b, a content-based speech regulation, in a public forum. As discussed in Part I.B, MCL 257.676b(2) exempts charitable solicitation from the statute's general proscription against impeding traffic. Because the City ticketed Ms. King for supposedly engaging in core political speech—which the statute wholly prohibits—it impermissibly treated some types of speech less favorably than others. As detailed in Part I.C, the City lacks even a rational basis for shutting down all political speech, while carving out a special exception for charitable solicitation. Under MCL 257.676b, it would have been permissible for charitable solicitors to impede traffic in the exact same manner as peaceful political demonstrators on July 31, but only because they were asking for donations rather than protesting racial injustice. By failing to narrowly tailor its speech regulation to effectuate its interest in promoting traffic safety, the City violates the First Amendment.

CONCLUSION

MCL 257.676b is a content-based regulation of speech in a traditional public forum that is unconstitutional on its face and as applied to Ms. King. By ticketing Ms. King under this statute, the City has illegally infringed on her constitutionally protected right to engage in core political speech in the public spaces where the exchange of ideas is to be most open. Accordingly, Ms. King respectfully requests that this Court dismiss the case against her with prejudice.

Respectfully submitted,

Michael J. Steinberg (P43085)
Diane Kee*
Laila Kassis*
Jeremy Shur*
Civil Rights Litigation Initiative
University of Michigan Law School
701 South State Street, Suite 2020
Ann Arbor, MI 48109
(734) 615-2407
mjsteinb@umich.edu

*Student attorneys practicing pursuant to MCR 8.120

Dated: November 9, 2020

Daniel S. Korobkin (P72842)
ACLU Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201
(313) 578-6824
dkorobkin@aclumich.org

John A. Shea (P37634)
Cooperating Attorney,
ACLU Fund of Michigan
120 N. Fourth Avenue
Ann Arbor, MI 48104
(734) 995-4646
jashea@earthlink.net

Exhibit 1

CHELSEA POLICE DEPARTMENT

311 South Main Street
Chelsea, Michigan 48118

734/475-9122
Fax 734/475-1996

Edward A. Toth Jr.
Chief of Police

August 28, 2020

Maya Priti King
In Care of: Priya Jha King
728 S. Main
Chelsea, MI 48118

Dear Ms. King

You have been identified blocking the street while demonstrating on 07/31/2020. By doing this you were blocking vehicular traffic on Main Street (M-52). For this reason, you are being issued a civil infraction violation for Impeding Traffic (MI Motor Vehicle Code 257.676b).

Read the back of the violation and contact the 14 A District Court within ten days of receiving this ticket.

Please stay on the sidewalk if you choose to demonstrate in the City of Chelsea, MI.

Respectfully

Sgt. Rich Kinsey, CPD #101

P.S. Ms. King I contacted your lawyer to tell him this was coming to you.

222-6900
Juvenile

20-1726/C23624