STATE OF MICHIGAN
IN THE WAYNE COUNTY CIRCUIT COURT

JACQUELINE GORDON,

Plaintiff,

v.

Case No. 22-107688-PH
Hon. Mary Beth Kelly

AMANDA CARAVALLAH,

Defendant.
_____________________________/

EMERGENCY MOTION TO TERMINATE PERSONAL PROTECTION ORDER

NOW COMES AMANDA CARRAVALLAH[1], Respondent herein, by and through her counsel, LaRene & Kriger, P.L.C., cooperating counsel with the American Civil Liberties Union of Michigan, and, pursuant to MCR 3.707(A), respectfully moves this Honorable Court for the entry of an Order terminating the *Ex Parte* Personal Protection Order entered on July 1, 2022, and in support of her Motion relies on her attached memorandum brief.

Respectfully Submitted,

/s/ Philip Mayor
Philip Mayor (P81691)
Daniel S. Korobkin (P72842)
American Civil Liberties Union Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6803
pmayor@aclumich.org
dkorobkin@aclumich.org

/s/ Allison L. Kriger
Allison L. Kriger (P76364)
Mark J. Kriger (P30298)
LaRene & Kriger, P.L.C.
645 Griswold Street, Suite 1717
Detroit, MI 48226
(313) 967-0100
allison.kriger@gmail.com
mkriger@sbcglobal.net

DATED: July 7, 2022

[1] In the Petition at issue here, and thus, in the caption, Respondent's last name is misspelled as "Caravallah." The correct spelling of her surname is Carravallah, and this spelling is used in the text of this motion and supporting brief.

STATE OF MICHIGAN

IN THE WAYNE COUNTY CIRCUIT COURT

JACQUELINE GORDON,

Plaintiff,

v.

Case No. 22-107688-PH
Hon. Mary Beth Kelly

AMANDA CARAVALLAH,

Defendant.
_______________________________/

MEMORANDU IN SUPPORT OF EMERGENCY MOTION TO TERMINATE PERSONAL PROTECTION ORDER

INTRODUCTION

On July 1, 2022, pursuant to MCL 650.2950a, MCR 3.703, and MCR 3.705, Petitioner Jaqueline Gordon, sought, and this Court entered *ex parte*, a personal protection order (PPO) restraining Respondent Amanda Carravallah from the following conduct:

a. Stalking as defined by MCL 750.411h and MCL 750.411i:

- Following or appearing within the sight of the petitioner.
- Appearing at the workplace or the residence of the petitioner/
- Approaching or confronting petitioner in a public place or on a private property.
- Entering onto or remaining on property owned, leased, or occupied by petitioner.
- Sending mail or other communications to the petitioner.
- Sending mail or other communications to the petitioner/
- Contacting the petitioner by telephone.
- Placing an object on or delivering an objection to property owned, leading, or occupied by petitioner.

- Threatening to kill or physically injure the petitioner.
- Purchasing or possessing a firearm.

b. Posting a message through the use of any medium of communication, including the internet or a computer of any electric medium, pursuant to MCL 750.411s.

Significantly, because the Respondent and Petitioner are neighbors across the street, the prohibition on Ms. Carravallah "appearing within sight" of Ms. Gordon essentially amounts to a house arrest order. Although this Court did not provide the "specific reasons for issuing…the personal protection order," as required by MCL 650.2950a(7) (see also paragraph 4 of PPO), Respondent now seeks to terminate the PPO because 1) a review of the TikTok videos and comments reveal that Petitioner at worst misled the Court about the content of the videos or at best is mistaken about the content therein, 2) and, even if taken as true, the conduct alleged in the petition – upon which the Order is predicated – cannot, as a matter of law, provide a basis for a PPO because it constitutes protected speech under the First Amendment to the United States Constitution.

STATEMENT OF FACTS

Petitioner Jaqueline Gordon and respondent Amanda Carravallah are neighbors on Arden Street in the City of Livonia who, "prior to Monday[, June 27, 2022 had] a great neighbor relationship – [they] had zero issues." PPO Petition, p. 3. According to the petitioner, on June 27, 2022 at approximately 3:00 P.M. that changed. Following the United States Supreme Court's decision in *Dobbs v. Jackson*, 597 U.S. – (2022), overturning *Roe v. Wade*, 410 U.S. 113 (1973), Ms. Carravallah made signs which, *inter alia*, read:

- "Abort the Court"
- "Fuck your God"

- “Writ off my clit”
- “This my pussy I can do what I want”
- “Rage with the Vagine”

[Images of the signs are attached as Exhibit A].

Ms. Gordon, according to her Petition, found these signs “offensive” and “vulgar,” PPO Petition, p. 3, and during the time Ms. Carravallah was posting the signs, Ms. Gordon was hosting eight children, ages five to twelve, for a children’s birthday party. *Id*. At one point, while the children were in front of Ms. Carravallah’s home, she “approached the children with the signs” and danced “around with her bottom barely covered.” *Id*. In response, Ms. Gordon called the police, though, according to the Petition, she was not “summoning them.” *Id*.

Ms. Gordon’s petition alleges that, later, Ms. Carravallah was on the telephone, and in voice “loud enough for [Ms. Gordon and her guests] to hear, Ms. Carravallah shouted that “she just wanted us (my family) to come over there and say something to her and step and [sic] her lawn and then she loudly referring [sic] to us as retards.” PPO Petition, p. 3.

The following day, June 28, 2022, at approximately 7:22 A.M., Ms. Carravallah’s husband was mowing the lawn – which Ms. Gordon found “odd” because “he was letting it sit there and dance around it.” *Id*.

In the balance of the petition, the petitioner alleges that Ms. Carravallah posted a series of Tik Tok videos with content Ms. Gordon categorized as “disturbing” and “made her afraid to go outside,” “fear[ ] what [Ms. Carravallah] would do next,” and “fear[ ] for [her] and [her] family’s safety.” *Id*. at 3-4. Specifically, on the night of June 27, after making lawn signs and dancing around with her bottom barely covered, Ms. Carravallah “was posting all sorts of Tik Tok Videos.” *Id*. at 3. As a result of “this incident” Ms. Gordon “felt very afraid to go outside and also feared

what [Ms. Carravallah] would do next." *Id*. Another neighbor, Melissa Cox, called the police; however, the police advised that Ms. Carravallah "was not breaking any rules/laws." PPO Petition, p. 3.

The following day, on June 28, 2022, at the same time her husband was mowing the lawn, Ms. Carravallah posted a Tik Tok video with the caption, "when you neighbors called the cops yesterday because they don't like your yard signs so your husband treats them to a 7 AM mowing followed by a porch concert on loop" *Id.*[2]

Ms. Gordon's petition, inaccurately states that Ms. Carravallah "call[ed Ms. Gordon] out by name in the caption." As seen in the still image of the video [attached as Exhibit B] above, none of Ms. Carravallah's neighbors are mentioned by name in the video in question.

---

[2] The song heard in the video is Y.A.S. (You Ain't Shit) by Todrick Hall, which reads:

Yo, well it was real cute when I met you. It was everything
Real sweet when you gave me that promise ring
Then I found out you suck, I thought you didn't give no fucks (wrong!)
You was giving fucks alright, screwing these yucks in the middle of the night
Bitch, you nasty, you trash, so I wrote this hook for that ass

You ain't shit, and ya mama ain't shit, and ya daddy ain't shit [Repeated three times]
You ain't shit, shit, shit, shit [Repeated four times]

You know who you are, you know who you are
You ain't shit, your dog ain't shit
You got a cute nephew, but his uncle a bitch
Somebody call the hoe police
And ya grammy ain't shit may she rest in peace
'Cause you done pissed off a petty bitch
Well I hope you fucking ready bitch, get ready bitch
I'ma hack your computer, I'ma egg your house
I don't do cardio, but I'ma run my mouth
I'ma hide in the bushes so you're scared to come out
Let everybody know that you use me for clout
'Cause there's a whole lotta miles on that Honda
You don rolled every anaconda in Wakanda

[Chorus repeated in full].

Later that day and again on June 30, according to the Petition, Ms. Carravallah posted additional videos, this time with location information "confirm[ing] our city and neighborhood," places of employment, and the names of participants in the neighborhood Facebook group. PPO Petition, pp. 4 And, comments posted to the videos, according to petitioner, are "frightening and hateful" and suggest that Ms. Carravallah wants someone to come to Ms. Gordon's home and "do something to [her] and some of [Ms. Carravallah's] followers comment on what should be done to me and my family." *Id*.

Tellingly, Ms. Gordon's petition fails to set forth the actual statements and content that Ms. Gordon alleges to be threatening, frightening and hateful.

A review of the videos posted to Ms. Carravallah's Tik Tok, moreover, reveals there are no calls to action against Ms. Gordon, nor any threats. Nevertheless, one unidentified neighbor, according to the petition, received "death threats and threats to rape his wife and daughter" and Ms. Gordon felt afraid for her and her family's safety as a result of the videos. *Id*. The petition does not state what neighbor is alleged to have received such threats, nor does it state who made those threats and in what medium, nor does it allege what relationship the person who allegedly made such a threat bears to Ms. Carravallah. In response, the police were called, but advised there is "nothing they can do." *Id*.

LAW AND ARGUMENT

Under MCL 600.2950a(1), a court may enter an order "restrain[ing] or enjoin[ing] an individual from engaging in conduct that is prohibited under ... MCL 750.411h, 750.441i, and 750.411s." To obtain a PPO under this section, however, the petition must "allege[ ] facts that constitute stalking as defined in section 411h or 411i, or conduct that is prohibited under section 411s, of the Michigan penal code . . . ." "[T]he petitioner [has] the burden of persuasion in a hearing

held on a motion to terminate or modify an ex parte PPO." *Pickering v. Pickering*, 253 Mich. App. 694, 699, 659 N.W.2d 649 (2002).

MCL 750.411s, in relevant part, proscribes, posting "a message through the use of any medium of communication . . . without the victim's consent, if . . . [t]he person knows or has reason to know that posting the message could cause 2 or more separate noncontinuous acts of unconsented contact with the victim," 237 MCL 750.411s(1)(a), **and** by posting the message, the person "intended to cause conduct that would make the victim feel terrorized, frightened, intimidated, threatened, harassed, or molested." MCL 750.411s(1)(b). The statute also includes an objective and subjective test: proof that conduct arising from posting the message would cause a *reasonable person*, MCL 750.411s(1)(c), and did cause the victim, MCL 750.411s(1) (d), to "suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested."

But, of course, the statutes at issue and, in turn, the court's authority to issue PPOs are, as they must be, limited by the constitution. "The First Amendment, applicable to the States through the Fourteenth Amendment, provides that 'Congress shall make no law . . . abridging the freedom of speech.' " *Virginia v. Black*, 538 U.S. 343, 358, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003), quoting U.S. Const., Am. I. This constitutional protection applies "to speech over the Internet to the same extent as speech over other media." *Thomas M Cooley Law Sch. v. Doe* 1, 300 Mich. App. 245, 256, 833 N.W.2d 331 (2013), citing *Reno v. American Civil Liberties Union*, 521 U.S. 844, 870, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997).

Although the "right to speak freely is not absolute." *Cooley*, 300 Mich. App. at 256, 833 N.W.2d 331, citing *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571, 62 S.Ct. 766, 86 L.Ed. 1031 (1942), content-based restrictions are limited, and "the government may not regulate [speech]

based on hostility—or favoritism—towards the underlying message expressed." *R. A. V. v. City of Saint Paul, Minnesota*, 505 U.S. 377, 386, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992). This is true even where the speech at issue is vulgar or offensive. See *Texas v Johnson,* 491 U.S. 397, 414 (1989) (If "there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit expression of an idea simply because society finds the idea itself offensive or disagreeable."); *Virginia v Black,* 538 U.S. 343, 358 (2003) (The "hallmark of the protection of speech is to allow 'free trade in ideas' – even ideas that the overwhelming majority of people might find distasteful or discomforting.").

And, even "mere advocacy of the use of force or violence does not remove speech from the protection of the First Amendment." *NAACP v. Claiborne Hardware Co*, 458 US 886, 927 (1982) (emphasis added). Accordingly, speech which serves to incite or encourage acts of terrorism, or other violent acts, only falls outside of first-amendment protection, and is thereby subject to prosecution, if it is likely to produce imminent or immediate violence.

In *United States v. Bagdasarian*, 652 F.3d 1113, 1119 (9th Cir. 2011), for example, the court considered whether the defendant was properly "knowingly and willfully threatening to kill, kidnap, or inflict bodily harm upon . . . a major candidate for the office of President or Vice President, or a member of the immediate family of such candidate" for, *inter alia*, posting the following comments and calls to action on the internet "Re: Obama fk the niggar, he will have a 50 cal in the head soon" and "shoot the nig country fkd for another 4 years+, what nig has done ANYTHING right? ? ? ? long term? ? ? ? never in history, except sambos."

The court, in relevant part explaining why the defendant's speech was constitutionally protected and why legislative bodies' refuse to enact threat statutes which punish words meant to incite or induce others, admonished:

> Neither statement [by defendant Bagdasarian] is thereby deprived of constitutional protection, however, because urging others to commit violent acts "at some indefinite future time" does not satisfy the imminence requirement for incitement under the *First Amendment. Hess v. Indiana*, 414 U.S. 105, 108, 94 S.Ct. 326, 38 L.Ed.2d 303 (1973) (holding that the imminence requirement under Brandenburg v. Ohio, 395 U.S. 444, 447, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969), is not satisfied by constitutionally protected speech that "amount[s] to nothing more than advocacy of illegal action at some indefinite future time").

Put simply, when it comes to potentially threatening speech, the government may only "punish those words which by their very utterance inflict injury or tend to incite an immediate breach of the peace," including "fighting words," "inciting or producing imminent lawless action," and "true threat[s]." *Black*, 538 U.S. at 359, 123 S.Ct. 1536 (quotation marks and citation omitted). See also *Citizen Publishing Co v Miller*, 115 P3d 107, 109, 113 (Ariz., 2005) (Holding defendant's comment in a newspaper that "we should proceed to the closest mosque and execute five of the first Muslims we encounter…falls far short of unprotected incitement" or an "act" rather than speech.)

Specifically, as to incitement to violence, a State may not forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is *directed to* inciting or producing *imminent* lawless action *and is likely to incite* or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (emphases added). Thus, "[t]he *Brandenburg* test precludes speech from being sanctioned as incitement" unless three requirements are met: "(1) the speech explicitly or implicitly encouraged the use of violence or lawless action, (2) the speaker intends that his speech will result in the use of violence or lawless action, and (3) the imminent use of violence or lawless action is the likely result of his speech." *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 246 (6th Cir. 2015) (en banc). Thus, "[s]peech that does not 'specifically advocate' for listeners to take unlawful action does not constitute incitement." *Higgins v. Kentucky Sports Radio, LLC*, 951 F.3d 728, 736 (6th Cir. 2020) (quoting *Bible Believers*, 805 F.3d at 245). The bar for incitement is high.

Communications are protected "[e]ven if [they] have the 'tendency . . . to encourage unlawful acts,' and even if the speaker intended the communications to have that effect." *Id.* at 736–77 (quoting *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 253 (2002)). Accordingly, in *Nwanguma v. Trump*, 903 F.3d 604 (6th Cir. 2018), when then-candidate Trump reacted to protesters at his political rally by repeatedly urging his impassioned followers to "get 'em out of here," the Sixth Circuit held that his statements did not rise to incitement, even though the protesters were in fact removed forcefully by Trump's supporters, and even though his words "may arguably have had a tendency to encourage unlawful use of force." *Id.* at 610 (emphasis omitted).

As to Petitioner's remarks suggesting that children in the neighborhood are being exposed to vulgar and offensive language, nothing in the PPO that was sought even purports to limit Ms. Carravallah's speech or her actions in the presence of minors—the PPO only restricts Ms. Carravallah's actions towards Petitioner herself—so this issue is a red herring. But in any event, the United States Supreme Court made clear in *Reno v. ACLU,* 521 U.S. 844 (1997) that the interest in protecting children from vulgar language (including images) does not override the protections of the First Amendment: "It is true that we have repeatedly recognized the governmental interest in protecting children from harmful materials. But that interest does not justify an unnecessarily broad suppression of speech addressed to adults." *Id.* at 875 (citation omitted). Accordingly, "the Government may not 'reduc[e] the adult population . . . to . . . only what is fit for children." *Id.* (quoting *Denver*, 518 U.S. at 759) (alteration in *Denver*). "[R]egardless of the strength of the government's interest" in protecting children, "[t]he level of discourse" adults may constitutionally engage in "cannot be limited to that which would be suitable for a sandbox." *Id.* (quoting *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 74-75 (1983)); *see also* ***Erznoznik v. City of Jacksonville***, 422 U.S. 205 (1975) (striking down ordinance preventing the showing of films

containing nudity in a drive-in movie theater if the film was visible from a public area).

With these principles in mind, even accepting Petitioner's allegations as true, Ms. Carravallah's conduct cannot provide the basis for a PPO under 411h, 411s, or 411i. During the three days that provide the impetus for the PPO, Ms. Carravallah made and *posted on her own property* signs protesting the *Dobbs* decision. She danced in skimpy clothing *on her own property*. She played (constitutionally protected) music *on her own property.* Her husband mowed the lawn *on their own property*. That Ms. Gordon found this "odd," "offensive," and "vulgar" does not provide the basis for a PPO.

Nor can Ms. Carravallah's Tik Tok videos and comments provide the basis for a PPO because they did not do not come close to satisfying the *Brandberg* requirement that they "incit[e] or produc[e] imminent lawless action," were not "fighting words," and were not "true threat[s]." Quite simply: Ms. Carravallah did nothing more than engage in protective speech online.

Turning first to the alleged call to action, Petitioner states only that Ms. Carravallah "wants someone to come to her home and do some" unidentified "thing to me" at some unspecified time. First, note that this allegation concerns what Ms. Carravallah *wants*—something Petitioner has no way of knowing—not what Ms. Carravallah has actually said. There is no allegation that Ms. Carravallah said anything *remotely* as threatening as what she is alleged to "want[]." Using the analysis in *Bagdasarian*, *supra*, this falls far short of unprotected speech meant to "incit[e] or produc[e] imminent lawless action" because it fails "urg[e] others to commit violent acts" and fails to specify a "[ ]definite time in the future" to act."

As for the remaining content, directly on point is the Michigan Court of Appeals decision in *TM v. MZ*, 326 Mich.App. 227, 926 N.W.2d 900 (2018), which considered the propriety of a PPO enjoining respondent from continuing to post on facebook "highly inflammatory and negative

[ ] comments . . . about petitioner and her family." The petition included eights dates, spanning approximately one year, on which the respondent, either through publicly posted comments or private messages to undisclosed recipients, shared images of petitioner's yard and address; shared a court case number and instructed viewers to "look [petitioner] up in the court docket"; accused the petitioner and her family of engaging in criminal activity, such as abductions, theft, drugs and "severe blight and health violations"; and "saying things about the death of [her] son," including that he died as a result of her parenting.

In holding the trial court abused its discretion by refusing to terminate the PPO, the court, in relevant part, reasoned:

> The trial court abused its discretion by refusing to terminate the PPO. Respondent's Facebook posts and messages, quite clearly, were not "fighting words," did not "incit[e] or produc[e] imminent lawless action," and were not "true threat[s]." *Id.* Fighting words include " 'those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction ....' " *Id.*, quoting *Cohen v. California*, 403 U.S. 15, 20, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971). There is nothing in the record to support that when respondent made any of the foregoing statements, he did so in a situation in which it was "inherently likely to provoke violent reaction," considering he made the statements on the Internet, in a public forum, far removed from any potential violence. See *Black*, 538 U.S. at 359. A "true threat," meanwhile, "encompass[es] those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Id.*, 123 S.Ct. 1536. While respondent's posts were undoubtedly in poor taste and offensive, they did not reach the level of intending the commission of an unlawful act of violence. See *id.*

The allegations against Ms. Carravallah come nowhere near the ominous statements held to be constitutionally protected in *TM.* First, the actual Tik Tok videos and Ms. Carravallah's associated online comments provide no support for the Petitioner's representations that Ms. Carravallah shared her neighbors' names, places of employment, the City and State in which they reside, or commented that she "wants someone to come to [Petitioner's] home." Nevertheless, assuming *arguendo* Petitioners representations are true, applying *TM*, this content "did not amount

to fighting words, words inciting imminent lawless action, or true threats. It was not enough to show that respondent's words amounted to harassment or obnoxiousness."

CONCLUSION

For the reasons set forth above, Ms. Carravallah respectfully submits that this Court must terminate the PPO in above-captioned matter.

Respectfully Submitted,

/s/ Philip Mayor
Philip Mayor (P81691)
Daniel S. Korobkin (P72842)
American Civil Liberties Union Fund of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6803
pmayor@aclumich.org
dkorobkin@aclumich.org

/s/ Allison L. Kriger
Allison L. Kriger (P76364)
Mark J. Kriger (P30298)
LaRene & Kriger, P.L.C.
645 Griswold Street, Suite 1717
Detroit, MI 48226
(313) 967-0100
allison.kriger@gmail.com
mkriger@sbcglobal.net

DATED: July 7, 2022

EXHIBIT A

WRIT
OFF MY
CLIT

FUCK your
GOD

THIS MY PUSSY
I CAN DO WHAT I WANT

California Flowers
ABORT THE COURT

RAGE
with the
VAGINE

EXHIBIT B

WHEN YOUR NEIGHBORS CALLED
THE COPS YESTERDAY BC THEY
DON'T LIKE YOUR GARDEN SIGNS
SO YOUR HUSBAND TREATS THEM
TO 7 AM MOWING FOLLOWED BY A
PORCH CONCERT OF THIS SOUND
ON A LOOP