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March 24, 2014

The Honorable Cambridge City Council
795 Massachusetts Avenue
Cambridge, MA 02139
By HAND DELIVERY

Re: Manager's Agenda #11: *Paula Soto v. Cambridge*

Dear Mayor Maher and City Councillors:

I write to express concerns regarding the City's handling of *Paula Soto v. Cambridge*, a federal civil rights lawsuit for which the Manager has requested an executive session at tonight's meeting.

Merits

Beyond the public Complaint and the City's Answer, there is not a lot of the information on this case and the City's position. Soto alleges the City has told her she may not place leaflets advertising nonprofit events on parked cars.

Based on that information, which is necessarily incomplete, I suggest the Council encourage the Manager to settle the suit in favor of Ms. Soto and to amend the City's ordinance and enforcement practice in a consistent fashion.

Process

I am more concerned with Process here, because the City has had a number of lawsuits (*e.g.* those regarding employment discrimination) where there has not been much transparency, and public confidence has been damaged to a certain degree.

- The Manager's letter did not provide enough information for the Council or the citizenry to easily determine what this lawsuit was about. The complaint and the city's answer are part of the federal court's public docket file; they should have been made available as supporting materials for the agenda item, so Councillors can understand what they are being asked to vote on. I have attached them here so they are part of the record.
- The Open Meeting Law constrains the situations under which the Council may enter Executive session, and the Manager's text, "discussing pending litigation," is not quite sufficient. 30A MGL §21(a)(3) allows executive session "to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;" (emphasis mine). Prior to the vote on CMA#11, the Manager and Mayor should be required to affirm that discussion in an open meeting will have a detrimental effect on the City's position.
- This case is scheduled for its first court appearance, a scheduling conference, on April 2, 2014¹. Today's Council meeting is the last regular meeting prior to that conference. This does not give the Council very much time to do anything, and certainly limits your ability to take anything under advisement. That is unfortunate.

Very truly yours,


John A. Hawkinson

Enclosures:

1. Complaint
2. City's Answer

¹Pursuant to Local Rule 16.1(c), Soto has submitted a written settlement proposal to the City, and City attorneys are required to confer with their client and be prepared to respond at the meeting.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
PAULA F. SOTO,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 13-10822
)	
CITY OF CAMBRIDGE,)	
)	
Defendant.)	
_____)	

COMPLAINT

INTRODUCTION

This action is brought by Paula Frances Soto (“Soto”), a Cambridge resident, to challenge a City of Cambridge policy that interferes with and restricts her public leafleting on political and social issues. Soto, a political and social activist, distributes leaflets on parked automobiles on public streets to advise the Cambridge community about significant issues that in her view are not adequately addressed in the mainstream media, and to invite participation at monthly film screenings to discuss those issues. Cambridge, through its police and law departments, has told Soto that she will be subject to arrest unless she stops placing leaflets for her film screenings on parked automobiles. The City has a policy of prohibiting such leafleting, which it claims is based on a 20-year-old letter written by a former City Solicitor which addressed solely commercial leafleting.

Soto brings this action under 42 U.S.C. § 1983 for violation of her First Amendment rights under the United States Constitution and under Article XVI of the Massachusetts Declaration of Rights to challenge the City’s interference with her right to freedom of

expression. She requests this Court to follow the majority of other federal courts that have found similar restrictions on leafleting activity to be an unconstitutional restriction of speech under the First Amendment. *See, e.g., Klein v. City of San Clemente*, 584 F.3d 1196 (9th Cir. 2009); *Horina v. The City of Granite City*, 538 F.3d 624 (7th Cir. 2008); *Krantz v. City of Fort Smith*, 160 F.3d 1214 (8th Cir. 1999); *Robinson v. Town of Kent*, 835 F. Supp. 2d 1 (S.D.N.Y. 2011); *Ramsey v. City of Pittsburgh*, 764 F. Supp. 2d 728 (W.D. Pa. 2011); *Traditionalist American Knights of the KKK v. City of Cape Girardeau*, 2012 WL 4464868 (E.D. Mo. Sept. 27, 2012).

PARTIES

1. Plaintiff Soto is a resident of Cambridge, Massachusetts.
2. Defendant City of Cambridge is a municipal corporation in Middlesex County, Massachusetts.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 42 U.S.C. § 1983 over Soto's claims of a deprivation, carried out under color of state law, of a federal constitutional right.
4. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 over Soto's civil action arising under the Constitution of the United States.
5. In addition, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over Soto's cause of action arising under the Massachusetts Constitution.
6. The Court may grant declaratory and injunctive relief pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and 42 U.S.C. § 1983.

7. Venue lies in this District because a substantial part of the acts or omissions giving rise to Soto's claims occurred in the City of Cambridge. 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

8. Soto is the founder of UPandOUT, an organization created to raise awareness and understanding about a variety of important political and social issues that Soto believes are not being adequately addressed by the mainstream media. Soto, through UPandOUT, organizes and hosts a free film series on the third Thursday of every month. These films range in subject matter. For example, past films have included Death of a Nation: The Timor Conspiracy (about the Indonesian military occupation of East Timor), Lumumba (about the roles of the United States and Belgium in the assassination of Patrice Lumumba, the first legally elected prime minister of the Democratic Republic of the Congo), Our Daily Bread (about industrial food production and high-tech farming) and Burning The Future (about rising global warming emissions as a result of alleged "clean coal" technology).

9. The films are screened in the community room of Soto's apartment building, an affordable housing complex. The screenings are free to the public, and attract an audience that can range from 20 – 40 individuals every month. Soto pays for all of the costs associated with these events through her own limited financial means.

10. The primary way that Soto promotes the film screenings is by leafletting automobiles parked on public streets in the City of Cambridge, typically during the week leading up to the screening.

11. In the six years that Soto has been involved in organizing the monthly film series, she has found that leafleting parked neighborhood automobiles is the most effective way to advertise the film screenings to a wide range of individuals not limited to solely local residents.

12. The leaflets not only inform the community about the monthly film series, but provide educational information about relevant political and social issues.

13. An example of one of Soto's leaflets is attached as Exhibit 1.

14. Soto leaflets hundreds of parked automobiles every month for the purpose of promoting the monthly film series and educating the community about political and social issues. Soto limits her leafleting to parked automobiles on public streets, and does not leaflet automobiles on driveways or other private property.

15. On December 12, 2011, Soto was leafleting parked automobiles in her neighborhood when she was approached by a City of Cambridge police officer. The officer told her that she could not put leaflets on automobiles, that she needed a permit to leaflet, and that her actions constituted littering.

16. Soto ceased leafleting that day as a result of her conversation with the police officer.

17. The next day, Soto contacted the American Civil Liberties Union of Massachusetts ("ACLUM") about her encounter with the Cambridge police. In early January of 2012, an ACLUM attorney contacted the then-Cambridge City Solicitor and informed him that the organization had been contacted by an individual who had been ordered by a police officer to stop placing leaflets on parked automobiles. ACLUM suggested that this order was

unconstitutional, with many courts having so ruled, and asked that the police be told to stop giving such orders. The City Solicitor noted that he would investigate the matter.

18. On January 11, 2012, the City Solicitor responded by sending ACLUM a letter written nearly two decades earlier, in 1994, which had the subject heading: “Re: Placement of *Commercial Advertising* on Car Windows.” (emphasis added) (“Opinion Letter”). In that Opinion Letter, a former City Solicitor advised the City Manager that it was illegal for a business in Harvard Square to place advertisements on parked automobiles.

19. The Opinion Letter purported to rely on Mass. Gen. Laws ch. 266, § 126, which governs the “defacement” of public or private property (the “Defacement Statute”). With respect to any “object which is public property or the property of another,” the Defacement Statute prohibits “paint[ing],” “put[ting] upon,” or “affix[ing]” “any . . . advertising or notice which is not required by law to be posted” without first obtaining the consent of the property owner. The offense is punishable by a fine of up to one hundred dollars, and the offender is also subject to a tort action for “the cost of removing or obliterating such defacement.”

20. The Defacement Statute does not define “object” or “property,” does not say what kinds of conduct constitute “putting upon” or “affixation,” and does not explicitly prohibit objects from being placed on parked automobiles. Nor does the statute purport to apply to activities constituting the exercise of free speech.

21. The Opinion Letter also cited a City of Cambridge Ordinance, § 9.04.050, which governs the defacement of public or private property (the “Defacement Ordinance”). The Defacement Ordinance prohibits the “post[ing]” or “attach[ing]” of “any handbill, poster, advertisement or notice . . . on private property” without the consent of the owner or occupant.

The offense is punishable by a fine up to \$300 per illegal advertisement, or if punished by noncriminal ticketing, \$25 for the first violation, \$100 for the second violation, and \$200 for the third and subsequent violations.

22. The Defacement Ordinance does not define “handbill,” “poster,” “advertisement,” “notice of any kind,” or “private property,” does not say what conduct constitutes “posting” or “attaching,” and does not explicitly prohibit objects from being placed on automobiles. Nor does it purport to apply to activities constituting the exercise of protected speech.

23. The scope of the Opinion Letter was limited to addressing the placement of *commercial advertising* on automobiles, as evidenced by the subject heading of the letter.

24. Along with sending the Opinion Letter to ACLUM, the City Solicitor also stated by email that the City would reconsider its legal opinion in light of court decisions issued after the 1994 Opinion Letter.

25. Despite receiving from ACLUM references to numerous court decisions since 1994 holding that it is a violation of the First Amendment to prohibit individuals from leafleting automobiles, in subsequent discussions with ACLUM a new acting City Solicitor informed ACLUM in May 2012 that the City stood by its policy and would continue to enforce it in Cambridge. In so doing, the City has ratified the actions of its police officer who threatened Soto when he stopped her from placing leaflets on parked automobiles.

26. On February 21, 2013, counsel for Soto sent a letter to the now officially appointed City Solicitor seeking to resolve the matter and provided further references to court decisions that support Soto’s claim that the City’s interpretation of both the statute and local law violate Soto’s First Amendment rights.

27. In response, by letter dated March 13, 2013, the City Solicitor maintained the City's "position that its ordinance is presumptively valid and as such the City is *required* to enforce it." (emphasis added). The City's response letter is attached as Exhibit 2.

28. The City's threat to continue enforcing its prohibition on the placement of leaflets on parked automobiles interferes unnecessarily with Soto's First Amendment rights because such leafletting is an efficient and cost-effective method of reaching a large number of persons living in, or found in, the City. No comparable alternative exists.

29. The City's policy has unconstitutionally chilled, and will continue to chill, advocacy by Soto and other members of UPandOUT. They have suffered ongoing irreparable injury because they reasonably fear that they will be arrested or fined if they distribute leaflets, and feel in danger of being stopped by the police every time that they engage in these actions.

30. Soto and other members of UPandOUT have been and are being harmed by the violation of their constitutional rights caused by the Cambridge policy and practice.

31. Upon information and belief, no other municipality in the Commonwealth of Massachusetts has interpreted the Defacement Statute as prohibiting the placement of political leaflets on parked automobiles, nor has any other municipality in Massachusetts enforced a city ordinance prohibiting such conduct.

COUNT 1: Cambridge's Blanket Prohibition on Placing Non-Commercial Leaflets on Parked Cars Violates The First Amendment To The United States Constitution

(42 U.S.C. § 1983 and First Amendment)

32. Soto repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

33. The City of Cambridge's policy of prohibiting the placement of non-commercial leaflets on parked automobiles violates Soto's right to free speech under the First Amendment to the United States Constitution.

34. The City's policy is allegedly based on a nearly 20-year old Opinion Letter, which addresses only the "placement of *commercial advertising* on car windows." (emphasis added). Even if the City's ban on the placement of commercial advertising on car windows is itself constitutional—a point that Soto does not concede—its extension of that ban to non-commercial leafleting is still unconstitutional. Soto's leaflets concern political and social issues, and are indisputably non-commercial in nature. Given that non-commercial speech receives the greatest level of First Amendment protection, Cambridge's ban on placing non-commercial leaflets on parked cars violates Soto's First Amendment rights.

35. In addition, neither the Defacement Statute nor the Defacement Ordinance apply to the conduct in question because they do not explicitly prohibit objects from being placed on automobiles, nor do they purport to apply to activities constituting the exercise of speech protected by the First Amendment.

36. To the extent that the Defacement Statute and Defacement Ordinance are interpreted to apply and prohibit and/or criminalize Soto's exercise of free speech, they would be unconstitutional on their face and as applied to Soto.

COUNT 2: Cambridge's Blanket Prohibition on Placing Non-Commercial Leaflets on Parked Cars Violates the Free Speech Guarantee of Article XVI of the Massachusetts Declaration of Rights

37. Soto repeats, re-alleges, and incorporates by reference the allegations in the foregoing paragraphs of this Complaint as fully set forth herein.

38. The City of Cambridge's policy of prohibiting the placement of non-commercial leaflets on parked automobiles violates Soto's right to free speech under Article XVI of the Massachusetts Declaration of Rights.

39. The City's policy is allegedly based on a nearly 20-year old Opinion Letter, which is inapplicable to the facts at hand because it solely addressed the "placement of *commercial advertising* on car windows." (emphasis added). Even if the City's ban on the placement of commercial advertising on car windows is itself constitutional – a point that Soto does not concede – its extension of that ban to non-commercial leafleting is still unconstitutional. Soto's leaflets concern political and social issues, and are indisputably non-commercial in nature. Therefore, Cambridge's policy does not apply to Soto's non-commercial leafleting.

40. In addition, neither the Defacement Statute nor the Defacement Ordinance apply to the conduct in question because they do not explicitly prohibit objects from being placed on automobiles, nor do they purport to apply to activities constituting the exercise of speech protected by the First Amendment.

41. To the extent that the Defacement Statute and Defacement Ordinance are interpreted to apply and prohibit and/or criminalize Soto's exercise of free speech, they would be unconstitutional on their face and as applied to Soto.

42. Soto has no adequate remedy at law.

CLAIM FOR RELIEF

WHEREFORE Soto requests this Court:

43. Enter declaratory judgment pursuant to 42 U.S.C. § 1983, finding that the City's policy and practice of forbidding the placing of non-commercial leaflets on parked automobiles violates the First Amendment and Article XVI of the Massachusetts Declaration of Rights.

44. Issue preliminary and permanent injunctions enjoining the City from enforcing a prohibition on placing non-commercial leaflets on parked automobiles;

45. Award Soto nominal damages for violation of her constitutional rights;

46. Award Soto her costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

47. Award Soto such other relief as the Court deems just and proper.

Dated: April 10, 2013

Respectfully submitted,

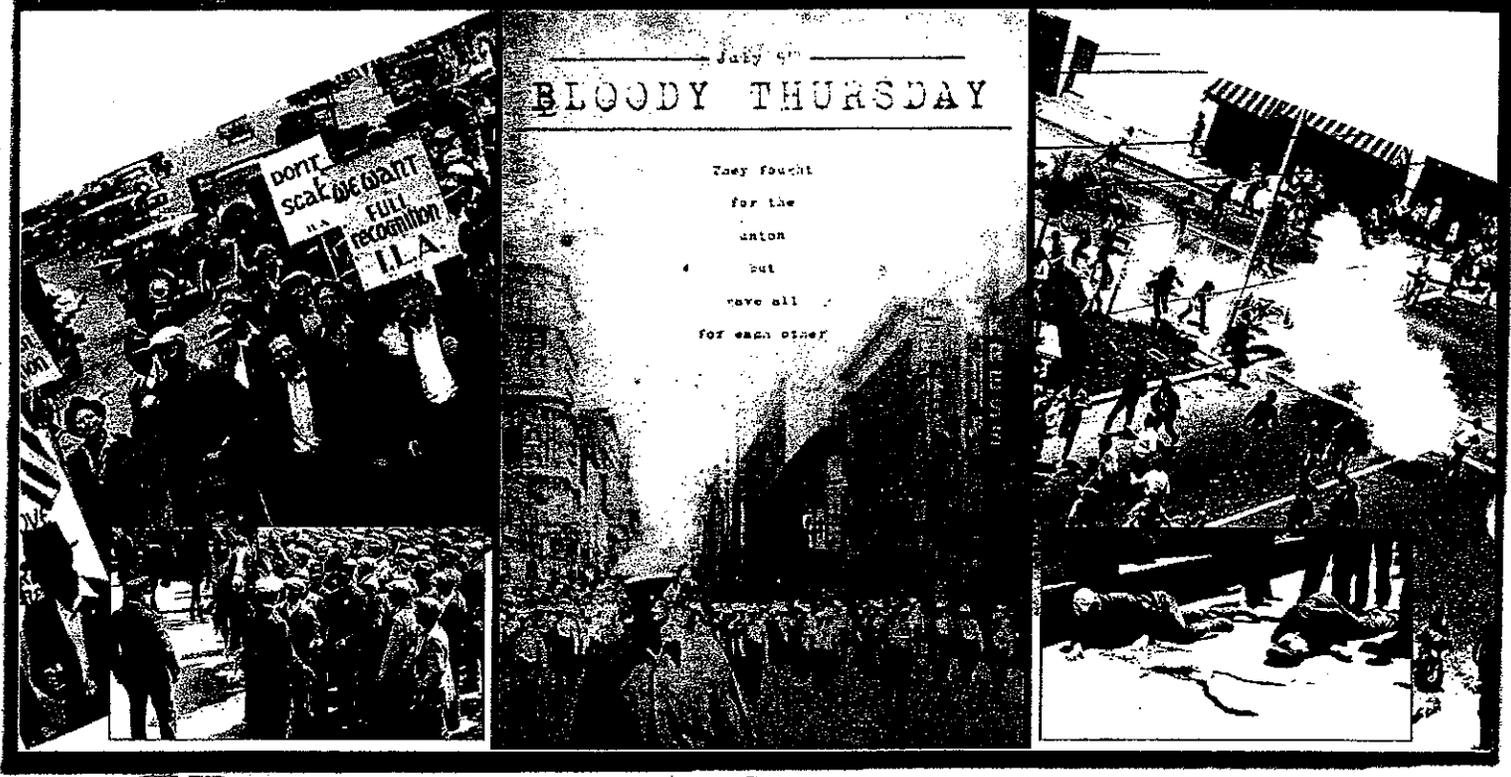
/s/ Kevin S. Prussia

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Attorneys for Plaintiff Paula F. Soto



FREE

Refreshments

Door prizes

UPandOUT 3rd Thursdays, free film series

Showing Thursday, July 19

6:40pm doors open
7pm film starts promptly

243 Broadway, Cambridge
corner of Broadway & Windsor, entrance on Windsor



Next up, Aug 16: *Burning the Future: Coal in America*
(the devastating impact of our addiction to coal)

Bloody Thursday

[60 min]

S *Bloody Thursday* tells the story of how West Coast dockworkers overcame huge obstacles to form their union, the ILWU.

Y Set in the midst of the Great Depression, the film shows how longshoremen were fighting for their rights at the same time that most of their families weren't sure where their next meal would come from. The odds were stacked against the longshoremen.

N Mainstream newspaper publishers, fearful of unionization efforts at their own papers, launched brutal attacks against the dockworkers and drove public sympathy against them. In addition, politicians and the police openly used their resources to side with the shipping companies against the striking dockworkers.

O *Bloody Thursday* tells the human stories of the dockworkers who stood up against these odds and changed the course of American labor history.

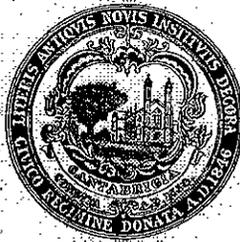
"This strike is the best thing that ever happened to San Francisco. We have lost millions on the waterfront in the last few months. But it's a good investment, a marvelous investment. It's solving the labor problem for years to come. Mark my words. When this nonsense is out of the way and the men have been driven back to their jobs, we won't have to worry about them anymore." ~William H. Crocker, prominent SF banker

"An Injury to One is an Injury to All" Rallying cry of the Wobblies [IWW], and the name of a sculpture at the corner of Mission & Steuart Streets, San Francisco

Nancy E. Glowa
City Solicitor

Arthur J. Goldberg
Deputy City Solicitor

Vali Buland
First Assistant City Solicitor



Assistant City Solicitors

Paul S. Kawai
Elizabeth A. Lashway
Samuel A. Aylesworth
Amy L. Witts

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

March 13, 2013

Richard A. Johnston, Esq.
WILMERHALE
60 State Street
Boston, MA 02109

Re: Leafleting on Motor Vehicles
Response to Threatened Challenge to Cambridge Ordinance §9.040.050

Dear Attorney Johnston:

I am in receipt of your letter and draft Complaint dated February 21, 2013 wherein you allege that on behalf of your client, Paula F. Soto, you intend to bring a legal challenge to the constitutional validity of Cambridge Ordinance §9.040.050 that prohibits leafleting in the City of Cambridge absent authorization from the City Manager or his or her designee. Having reviewed your letter and draft Complaint the City maintains its position that its ordinance is presumptively valid and as such the City is required to enforce it.

Thank you and if you have any further questions, please feel free to contact me.

Very truly yours,

Nancy E. Glowa

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Paula F. Soto v. City of Cambridge

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.
- III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Kevin S. Prussia, Wilmer Cutler Pickering Hale and Dorr, LLP

ADDRESS 60 State Street, Boston, MA 02109

TELEPHONE NO. 617-526-6000

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>Paula F. Soto</p> <p>(b) County of Residence of First Listed Plaintiff <u>Middlesex County</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)</p> <p>See attachment</p>	<p>DEFENDANTS</p> <p>City of Cambridge</p> <p>County of Residence of First Listed Defendant <u>Middlesex County</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAMO CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAMO INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td style="text-align: center;">1</td> <td style="text-align: center;">1</td> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td style="text-align: center;">2</td> <td style="text-align: center;">2</td> <td></td> <td style="text-align: center;">5</td> <td style="text-align: center;">5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/></td> <td style="text-align: center;">3</td> <td style="text-align: center;">3</td> <td></td> <td style="text-align: center;">6</td> <td style="text-align: center;">6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF	<input checked="" type="checkbox"/>	1	1		<input type="checkbox"/>	<input type="checkbox"/>	Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	2	2		5	5	Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	3	3		6	6
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<input type="checkbox"/>	3	3		6	6																																

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p>	<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 OWB/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983

Brief description of cause:
Violation of plaintiff's First Amendment rights under the United States Constitution

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

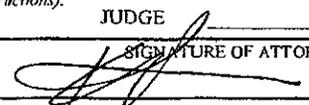
DEMAND \$ Declaratory Judgment

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 4/10/2013

SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUOGE _____ MAG. JUOGE _____

Attachment to Civil Cover Sheet

Paula F. Soto v. City of Cambridge

I. (c) Attorneys for Plaintiff:

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Boston, MA 02110
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
)	
PAULA F. SOTO,)	
Plaintiff,)	
)	
v.)	C.A. No. 13-10822
)	
CITY OF CAMBRIDGE,)	
Defendant.)	
_____)	

ANSWER OF DEFENDANT, CITY OF CAMBRIDGE

The Defendant, City of Cambridge (“City”) submits this Answer in response to the Complaint filed in this action.

INTRODUCTION

This section is an introduction and states conclusions of law and requires no response. However, to the extent the Introduction makes any allegations they are all denied by the City.

PARTIES

1. The City lacks knowledge of information sufficient to form a belief about the truth of the allegation contained in Paragraph 1 of the Complaint.
2. The City admits the allegations contained in Paragraph 2 of the Complaint.

JURISDICTION AND VENUE

3. The statement contained in Paragraph 3 of the Complainant is an assertion of jurisdiction of this Court, which the City is not contesting. To the extent Paragraph 3 contains any allegations, they are denied by the City.

4. The statement contained in Paragraph 4 of the Complaint is an assertion of jurisdiction of this Court, which the City is not contesting. To the extent Paragraph 4 contains any allegations, they are denied by the City.
5. The statement contained in Paragraph 5 of the Complaint is an assertion of jurisdiction of this Court, which the City is not contesting. To the extent Paragraph 5 contains any allegations, they are denied by the City.
6. Paragraph 6 states a legal conclusion to which no response is required.
7. The statement contained in Paragraph 7 is an assertion of venue of this Court, which the City is not contesting.

FACTUAL ALLEGATIONS

8. The City lacks knowledge of information sufficient to form a belief about the truth of the allegation contained in Paragraph 8 of the Complaint.
9. The City lacks knowledge of information sufficient to form a belief about the truth of the allegation contained in Paragraph 9 of the Complaint.
10. The City lacks knowledge of information sufficient to form a belief about the truth of the allegation contained in Paragraph 10 of the Complaint.
11. The City lacks knowledge of information sufficient to form a belief about the truth of the allegation contained in Paragraph 11 of the Complaint.
12. The City lacks knowledge of information sufficient to form a belief about the truth of the allegation contained in Paragraph 12 of the Complaint.
13. Exhibit I to the Complaint speaks for itself and therefore no further answer is required.
14. The City lacks knowledge of information sufficient to form a belief about the truth of the allegation contained in Paragraph 14 of the Complaint.

15. The City lacks knowledge of information sufficient to form a belief about the truth of the allegation contained in Paragraph 15 of the Complaint.
16. The City lacks knowledge of information sufficient to form a belief about the truth of the allegation contained in Paragraph 16 of the Complaint.
17. The City admits that it was contacted by an ACLUM attorney regarding the issue of placing leaflets on parked automobiles and that the City Solicitor at the time informed the ACLUM attorney that he would look into the issue. The City lacks knowledge of information sufficient to form a belief about the truth of Ms. Soto's contact with the ACLUM. Inasmuch as any further response is required, any and all other allegations contained in Paragraph 17 are denied.
18. The City admits that it sent the ACLUM an opinion issued by the Cambridge City Solicitor in 1994 (the "Opinion"). The City denies the remainder of the allegations contained in Paragraph 18 as they are a characterization of the Opinion and the Opinion speaks for itself.
19. The City denies the allegations contained in Paragraph 19 of the Complaint as they are characterizations of the Opinion and of Massachusetts General Laws Chapter 266 Section 126 (the "Statute") and the Opinion and the Statute speak for themselves and the allegations state conclusions of law to which no response is required.
20. The City denies the allegations contained in Paragraph 20 of the Complaint as they are characterizations of the Statute and the Statute speaks for itself and the allegations state conclusions of law to which no response is required.
21. The City denies the allegations contained in Paragraph 21 of the Complaint as they are characterizations of the Opinion and of Cambridge City Ordinance Section 9.04.050 (the

- “Ordinance”) and the Opinion and the Ordinance speak for themselves and the allegations state conclusions of law to which no response is required.
22. The City denies the allegations contained in Paragraph 22 of the Complaint as they are characterizations of the Ordinance and the Ordinance speaks for itself and the allegations state conclusions of law to which no response is required.
23. The City denies the allegations contained in Paragraph 23 of the Complaint as they are characterizations of the Opinion and the Opinion speaks for itself and the allegations state conclusions of law to which no response is required.
24. The City denies the allegations contained in Paragraph 24 of the Complaint.
25. The City admits that the ACLUM sent the City several court decisions but the City denies the characterization of those court decisions as they speak for themselves. The City admits that it informed the ACLUM in May 2012 that it would continue to enforce the presumptively valid Ordinance and the presumptively valid Statute. The City denies the allegations in the final sentence of Paragraph 25 because it states a legal conclusion that requires no response. The City further denies that any City police officer “threatened” the Plaintiff.
26. The City admits that the City received correspondence from Plaintiff’s counsel along with a draft Complaint (“Plaintiff’s Letter”). The City denies the remainder of the allegations contained in Paragraph 26 as they are characterizations of the Plaintiff’s Letter and court cases and the Plaintiff’s Letter and the court cases speak for themselves and the allegations state conclusions of law to which no response is required.
27. The City admits that the City Solicitor sent a letter to the Plaintiff’s counsel on March 13, 2013 (“Solicitor Letter”) but the City denies the remainder of the allegations contained in

Paragraph 27 of the Complaint as they are characterizations of the Solicitor Letter and the Solicitor Letter speaks for itself.

28. The City denies the allegations contained in Paragraph 28 of the Complaint.

29. The City denies the allegations contained in Paragraph 29 of the Complaint.

30. The City denies the allegations contained in Paragraph 30 of the Complaint.

31. The City lacks knowledge of information sufficient to form a belief about the truth of the allegation contained in Paragraph 31 of the Complaint and the allegations state conclusions of law to which no response is required.

COUNT 1

32. The City repeats, re-states and incorporates by reference its responses to the Complaint in the foregoing paragraphs as fully set forth herein.

33. The City denies the allegations in Paragraph 33 of the Complaint.

34. The City denies the allegations contained in Paragraph 34 of the Complaint.

35. The City denies the allegations contained in Paragraph 35 of the Complaint.

36. The City denies the allegations contained in Paragraph 36 of the Complaint.

COUNT 2

37. The City repeats, re-states and incorporates by reference its responses to the Complaint in the foregoing paragraphs as fully set forth herein.

38. The City denies the allegations of Paragraph 38 of the Complaint.

39. The City denies the allegations of Paragraph 39 of the Complaint.

40. The City denies the allegations of Paragraph 40 of the Complaint.

41. The City denies the allegations of Paragraph 41 of the Complaint.

42. The City denies the allegations of Paragraph 42 of the Complaint.

CLAIM FOR RELIEF

The remainder of the Complaint is a Claim for Relief to which no response is required.

FIRST AFFIRMATIVE DEFENSE

The Ordinance is presumptively valid as a matter of law.

SECOND AFFIRMATIVE DEFENSE

The Ordinance as applied and on its face is constitutional and does not violate the Plaintiff's First Amendment Rights under the Federal Constitution.

THIRD AFFIRMATIVE DEFENSE

The Ordinance as applied and on its face is constitutional and does not violate the Plaintiff's rights under the Massachusetts Declaration of Rights.

FOURTH AFFIRMATIVE DEFENSE

The Statute as applied is constitutional and does not violate the Plaintiff's First Amendment Rights under the Federal Constitution.

FIFTH AFFIRMATIVE DEFENSE

The Statute as applied is constitutional and does not violate the Plaintiff's rights under the Massachusetts Declaration of Rights.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff's leaflets constitute commercial speech.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff's admitted actions of placing leaflets on parked motor vehicles without the owner's consent is "posting" or "attaching" an "advertisement or notice" on "private property" without the consent of the owner and therefore is done in violation of the Ordinance.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff's admitted actions of placing leaflets on parked motor vehicles without the owner's consent is "affixing" or "putting upon" an "advertisement or notice which is not required by law

to be posted” on “the property of another” without first obtaining the consent of the property owner and is therefore done in violation of the Statute.

NINTH AFFIRMATIVE DEFENSE

The Plaintiff has failed to state a claim upon which relief can be granted.

Respectfully submitted,
CITY OF CAMBRIDGE,
By its attorney,

/s/ Amy L. Witts
Amy L. Witts, Esq. (BBO# 657466)
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Cambridge, MA 02139
(617) 349-4121
awitts@cambridgema.gov

DATED: May 7, 2013

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was filed through the Electronic Case Filing (ECF) system and thus copies will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF); paper copies will be mailed to those indicated on the NEF as non-registered participants on or before May 7, 2013.

/s/ Amy L. Witts