

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

MASSACHUSETTS ASSOCIATION OF
PRIVATE APPOINTED COUNSEL, INC.
(MAPAC), SEAN DELANEY, KATHERINE
C. ESSINGTON, DANA GOLDBLATT,
PETER ALEXANDER SLEPCHUK,
VICTORIA C. SPETTER, AND PHILIP
WEBER

Plaintiffs,

v.

ATTORNEY GENERAL OF THE
COMMONWEALTH OF
MASSACHUSETTS,
Defendant.

Docket Number:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action for declaratory relief arises from the Commonwealth’s August 2025 enactment of a punitive amendment to G. L. c. 211D, § 11, the statute that governs the compensation rates of private assigned counsel who represent indigent clients in courts across the Commonwealth.¹ *See* G. L. c. 211D, § 11 (a)(2), as amended through St. 2025, c. 14 § 49 [hereinafter § 11 (a)(2)]. The amendment’s sole purpose is to impose civil and criminal antitrust penalties on private assigned counsel who cease taking new assignments due to

¹ This Complaint uses the term “private assigned counsel” to refer accurately to the group of attorneys impacted by § 11 (a)(2). The Committee for Public Counsel Services uses of the term “assigned counsel” to refer to all attorneys who provide representation for indigent clients pursuant to G. L. c. 211D, §§ 6, 11. *See* CPCS, *Assigned Counsel Manual Policies and Procedures* (Mar. 5, 2026), <https://www.publiccounsel.net/wp-content/uploads/2025/12/Assigned-Counsel-Manual.pdf>.

unconscionably low rates and engage in protected speech to advocate for fair and adequate compensation for their labor.

2. Without the labor of private assigned counsel—client counseling, legal research, motion practice, trial advocacy, and much more—the Commonwealth would be unable to meet its constitutional obligation to provide effective legal counsel to the indigent accused.
3. Despite their indispensable role in the Commonwealth’s criminal justice system, private assigned counsel are woefully underpaid. They have substantial unfunded overhead costs mandated by the Commonwealth and make significantly less than their peers in neighboring states despite the high costs of living in Massachusetts. The Legislature has been on notice of their low rates for decades and has repeatedly refused to raise them in line with inflation, rendering the work economically impossible for many private assigned counsel and dissuading new attorneys from considering indigent defense work.
4. Meanwhile, the attorneys who continue to perform this critical function are saddled with the costs of college and law school debt, the costs of traveling to and from courts and jails, the costs of doing basic work in a complex legal system, and the costs of living and taking care of themselves and their families in one of the most expensive regions in the country.
5. The object of antitrust enforcement is to regulate business, not labor. Over a century ago, Federal antitrust law codified this principle in no uncertain terms: “[t]he labor of a human being is not a commodity or article of commerce” subject to antitrust enforcement.

15 U.S.C. § 17.
6. Plaintiffs seek this action for declaratory and injunctive relief to strike this punitive amendment because it violates that foundational principle of Federal antitrust law—a body of law with which Massachusetts law “shall be construed in harmony.” G. L. c. 93, § 1. The

provision of legal counsel to the indigent accused is labor highly individualized by both practitioner and client and therefore cannot be reduced to a mere commodity or article of commerce.

7. Furthermore, § 11 (a)(2) violates the due process clauses of the Massachusetts Declaration of Rights and the United States Constitution because it is written so vaguely that it does not provide sufficiently clear notice of the conduct it prohibits.
8. Section 11 (a)(2) is also an unconstitutionally overbroad restriction on private assigned counsel's free speech and expression rights.
9. And lastly, § 11 (a)(2) is an unconstitutional content-based restriction on private assigned counsel's free speech and expression rights.²

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this matter under G. L. c. 214, § 1 because this Court has original jurisdiction in all matters of equity.
11. This Court also has subject matter jurisdiction under G. L. c. 231A, § 1 because it satisfies the requirements for a declaratory judgment action in that there are actual controversies between the Plaintiffs and the Attorney General because Plaintiffs seek to engage in lawful conduct and constitutionally-protected speech proscribed by § 11 (a)(2) and they face a credible threat of criminal prosecution or civil enforcement under the same statute.

² This is the text of the provision in question:

An agreement between private bar advocates to refuse to compete for or accept new appointments or assignments unless the rates of pay under this section are increased shall be evidence of a violation of section 4 of chapter 93; provided, that evidence of an agreement between private bar advocates to refuse to compete for or accept new appointments or assignments unless the rates of pay under this section are increased shall include, but shall not be limited to, any county where not less than 25 per cent of private bar advocates are refusing to compete for or accept new appointments or assignments. G. L. c. 211D, § 11 (a)(2), as amended through St. 2025, c. 14 § 49.

12. This Court has statewide jurisdiction and therefore has personal jurisdiction over the Attorney General.
13. As this Court has jurisdiction throughout the Commonwealth, venue as to the Plaintiffs is proper in this Court. G. L. c. 214, § 1; G. L. c. 231A, § 1 et seq.

PARTIES

14. Plaintiff Massachusetts Association of Private Appointed Counsel, Inc. (MAPAC) is a non-profit charitable corporation pursuant to G. L. c. 180, § 1 et seq. MAPAC represents the interests of private assigned counsel by engaging in public education, lobbying, and advocacy to promote justice, preserve and protect the right to counsel, and improve working conditions, terms of service, and rates of remuneration for private assigned counsel commensurate with their crucial role within the justice system. MAPAC, by and through its board of directors and membership, is deeply concerned that the organization and its membership will be subject to civil and criminal liability due to their public advocacy for fair rates of pay for private assigned counsel.
15. Plaintiff Sean T. Delaney has served as private assigned counsel in the Commonwealth for twenty-nine years. He serves on the District Court, Superior Court, Post-conviction, and Juvenile Panels. In these roles, Attorney Delaney has taken cases in Middlesex and Barnstable counties. He has taken over 1,000 cases as private assigned counsel for indigent defendants. Attorney Delaney has active contracts with Middlesex Defense Attorneys, Inc. and Barnstable County Bar Advocates, Inc. permitting him to take assignments representing indigent defendants in exchange for hourly rates set by the Legislature. Immediately prior to May 27, 2025, Attorney Delaney was active on only the District Court Panel. On May 27, 2025, Attorney Delaney stopped taking new District Court

appointments because the pay rate offered was tarnishing the quality of representation available to indigent defendants in the Commonwealth. Because of § 11 (a)(2), Attorney Delaney believes that he is subject to an elevated risk of civil and criminal liability under state antitrust law for his public statements in support of raising the pay rates of private assigned counsel. Despite § 11 (a)(2), Attorney Delaney would be willing to participate in a future work stoppage to advocate for better pay for private assigned counsel but he would be unwilling to speak publicly about his participation in such a work stoppage because of the consequences raised by the statute.

16. Plaintiff Katherine C. Essington has served as private assigned counsel in the Commonwealth for sixteen years. She serves on the Post-conviction Panel and has been certified by the Committee for Public Counsel Services to take murder appeals. As a member of the Post-conviction Panel, Attorney Essington takes cases originating from all counties in the Commonwealth. She has taken fifty-five appeals as private assigned counsel for indigent defendants. On May 27, 2025, Attorney Essington decided to stop taking new murder appeals from the Post-conviction Panel in solidarity with private assigned attorneys in the District Court taking the same action. Because of § 11 (a)(2), Attorney Essington fears being held civilly and criminally liable under state antitrust law for her public statements in support of raising the pay rates of private assigned counsel. Attorney Essington would be willing to participate in a future work stoppage to advocate for better pay for private assigned counsel but for the enactment of § 11 (a)(2).

17. Plaintiff Dana Goldblatt has served as private assigned counsel in the Commonwealth for eleven years. She serves on the Murder and Post-conviction Panels. In her roles, she has taken cases across the Commonwealth. On May 27, 2025, Attorney Goldblatt stopped

taking new appointments from the Murder and Post-conviction Panels due to the insufficient hourly rate offered for that work. Attorney Goldblatt fears being held civilly and criminally liable under state antitrust law for her public statements in support of raising the pay rates of private assigned counsel, and she fears retaliatory referrals by prosecutors to the Attorney General for investigation pursuant to § 11 (a)(2) for her zealous advocacy in the courtroom. Attorney Goldblatt has not resumed taking appointments and intends on withdrawing from the Murder and Post-conviction Panels upon resolution of her remaining open cases. She is doing so to avoid liability and to protect her ability to provide zealous representation to her current clients. Attorney Goldblatt would be willing to participate in a future work stoppage to advocate for better pay for private assigned counsel but for the enactment of § 11 (a)(2).

18. Plaintiff Peter Alexander Slepchuk has served as private assigned counsel in the Commonwealth for thirteen years. He serves on the Murder and Superior Court Panels. As a member of those Panels, Attorney Slepchuk has taken cases in Hampden County. Attorney Slepchuk has taken 440 cases as private assigned counsel for indigent defendants. Attorney Slepchuk has an active contract with Hampden County Lawyers for Justice, Inc. permitting him to take assignments representing indigent defendants in exchange for hourly rates set by the Legislature. On May 27, 2025, Attorney Slepchuk stopped taking new appointments due to the insufficient hourly rate offered for that work. Attorney Slepchuk has not resumed taking appointments.
19. Plaintiff Victoria C. Spetter has served as private assigned counsel in the Commonwealth for ten years. She serves on the District Court Panel and handles Superior Court cases until indictment. She also serves on the Children and Family Law Panel, taking guardianship

appointments. As a member of the District Court Panel, Attorney Spetter has taken cases in Suffolk and Middlesex counties. Attorney Spetter has taken approximately 1,200 cases as private assigned counsel for indigent clients. Attorney Spetter has active contracts with Suffolk County Lawyers for Justice, Inc. and Middlesex Defense Attorneys, Inc. permitting her to take assignments representing indigent defendants in exchange for hourly rates set by the Legislature. On May 27, 2025, Attorney Spetter stopped taking new District Court appointments because the pay rate offered was unjust. Because of § 11 (a)(2), Attorney Spetter fears being held civilly and criminally liable under state antitrust law for her public statements in support of raising the pay rates of private assigned counsel.

20. Plaintiff Philip Weber has served as private assigned counsel in the Commonwealth for ten years. He serves on the Post-conviction, Alternative Commitment and Registration Support, and District Court Panels. As a member of the District Court Panel, Attorney Weber has taken cases in both Middlesex and Hampden counties. Attorney Weber has taken 278 cases as private assigned counsel for indigent defendants. Attorney Weber has an active contract with Middlesex Defense Attorneys, Inc. permitting him to take assignments representing indigent defendants in exchange for hourly rates set by the Legislature. On May 27, 2025, Attorney Weber stopped taking new appointments on the District Court Panel due to the insufficient hourly rate offered for that work. Attorney Weber fears being held civilly and criminally liable under state antitrust law for refusal to take cases on any of the panels of which he is a member.

21. Defendant Andrea Joy Campbell is the Attorney General for the Commonwealth of Massachusetts. Per G. L. c. 93, § 10, Defendant Campbell is responsible for the prosecution

of criminal and civil violations of G. L. c. 93, § 4. Her usual place of employment is located at 1 Ashburton Place, 20th Floor, Boston, MA 02108.

ALLEGATIONS

A. Private Assigned Counsel Serve an Essential Role in the Commonwealth's efforts to Fulfill Its Constitutional Obligation to Provide Effective Assistance of Counsel.

22. The Commonwealth is required under the United States Constitution and the Massachusetts Declaration of Rights to provide effective assistance of counsel to indigent defendants. *See Lavalley v. Justices in the Hampden Superior Court*, 442 Mass. 228, 234 (2004) (“There is no question that the right to counsel in a criminal prosecution is a fundamental constitutional right”), citing *Commonwealth v. Appleby*, 389 Mass. 359, 366, cert. denied, 464 U.S. 941 (1983), *Commonwealth v. Fuller*, 394 Mass. 251, 256 n.3 (1985). This right is imperative “to insure fundamental human rights of life and liberty. It is a right accorded to every defendant, rich or poor.” *Appleby*, 389 Mass. at 366.
23. Massachusetts recognized the fundamental right to counsel five years before it was enshrined by the Supreme Court in *Gideon v. Wainwright*, 372 U.S. 335 (1963). In 1958, this Court adopted Rule 10, which mandated that the Superior Courts assign counsel to indigent defendants in all non-capital felony cases. S.J.C. Rule 10, 337 Mass. 813 (1958). This Court has repeatedly found that the Declaration of Rights provides broader rights to the assistance of counsel than federal law. *See, e.g., Commonwealth v. Hodge*, 386 Mass. 165, 169-70 (1982) (Article 12 does not require defendant to show actual prejudice from ineffective assistance); *Commonwealth v. Hurley*, 391 Mass. 76, 82 (1984) (same).

24. Pursuant to the Commonwealth's broad safeguards for indigent defendants, the Legislature created the Committee for Public Counsel Services (CPCS),³ the state agency responsible for “plan[ning], oversee[ing], and coordinat[ing] the delivery of criminal and certain noncriminal legal services by salaried public counsel, bar advocate and other assigned counsel programs and private attorneys serving on a per case basis.”⁴ G. L. c. 211D, § 1.
25. CPCS is divided into two divisions: the Public Defender Division and the Private Counsel Division. G. L. c. 211D, § 6. The Public Defender Division consists of the Committee's staff of attorneys and the Private Counsel Division consists, in general terms, of private assigned counsel and the associated administrative apparatus required to run such a program.
26. Massachusetts is unique in the fact that it created a public agency to assign both public defenders and private counsel to cases, to closely train, mentor, and supervise private counsel, and to review and approve of private counsel's billing vouchers. Other states have different systems that are primarily public or private in nature or rely on judicial oversight of private attorneys.⁵

³ Notably, CPCS was formed to supplant an underfunded and disjointed system wherein a state agency (Massachusetts Defenders Committee), county agencies, and individual judges (via compulsory appointment of counsel) would provide counsel to indigent defendants. Goodwin, *Massachusetts' Struggle to Adhere to the Gideon Mandate: Will the Lavalley Decision, Coupled with Legislative Reform, Finally Establish a State Indigent Criminal Defense System That is Constitutionally Sound?*, 32 New Eng. J. on Crim. & Civ. Confinement 77, 88-89 (2006). The defining feature of the pre-CPCS system was the chronically low rates of pay offered to private appointed attorneys. *Id.*

⁴ The term “bar advocate” is defined neither in this statute nor anywhere else in the Massachusetts General Laws. Though this Court appeared to define “bar advocate” for the first time recently, *Committee for Public Counsel Services v. Middlesex & Suffolk County District Courts*, No. SJC-13824, 2026 WL 719666 at *1, n. 3 (Mar. 16, 2026), it did so without citing to statute or other sources.

⁵ See Norman Lefstein, *Securing Reasonable Caseloads: Ethics & Law in Public Defense*, ABA Standing Committee on Legal Aid & Indigent Defendants 215 (2011),

27. This system has successfully managed the caseloads of notoriously overworked staff attorneys. Outside observers at the American Bar Association have noted that “CPCS in Massachusetts would not be able to maintain control of the caseloads of its public defenders without substantial participation of private defense lawyers throughout the state.” Norman Lefstein, *Securing Reasonable Caseloads: Ethics & Law in Public Defense*, ABA Standing Committee on Legal Aid & Indigent Defendants 215 (2011), https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads.authcheckdam.pdf.
28. This system has also ensured the delivery of effective counsel free of conflicts of interest. The originating statute prohibits the appointment of staff attorneys to represent co-defendants or to any case where appointment would create a conflict of interest with an existing Public Defender Division client. G. L. c. 211D, § 6 (a). Without private assigned counsel, neither indigent co-defendants nor indigent defendants with interests adverse to other indigent defendants would be guaranteed counsel free of conflicts of interest.
29. Overall, private assigned counsel represent approximately eighty percent of indigent defendants in the state, with the remaining twenty percent represented by CPCS’s Public Defender Division.⁶

https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads.authcheckdam.pdf.

⁶ The Legislature appears to have tried to shift this proportion in coming years, but its efforts are unlikely to succeed. Another section of the legislative package that included the statutory provision at issue here provided CPCS with an additional Fiscal Year 2026 appropriation of \$40 million to use “best efforts . . . to hire approximately 160 new attorneys in the public defender division by the end of fiscal year 2026 and an additional 160 new attorneys in said division by the end of fiscal year 2027.” St. 2025, c. 14 § 2. This appropriation is insufficient because CPCS’s other basic operating expenses were not fully funded in Fiscal Year 2026 and is therefore unlikely to cover a likely exodus of attorneys from the private assigned counsel program due to the specter of civil and criminal prosecution raised by § 11(a)(2).

B. Private Assigned Counsel Are Subject to Extensive Requirements Dictating the Terms and Conditions of Their Work.

30. The originating statute sets forth detailed requirements for the certification, training, supervision, and compensation of private assigned counsel. *See* G. L. c. 211D, §§ 9-12.⁷
31. Administration and supervision of lawyers in the private counsel division is overseen by CPCS in cooperation with private “bar advocate groups,” which have been established in each of the fourteen counties in Massachusetts. G. L. c. 211D, § 6 (b). The bar advocate groups are not-for-profit corporations, each of which contracts with private assigned counsel on certain panels⁸ and hires an administrator to coordinate duty day assignments of private lawyers who have been certified by CPCS to provide representation. CPCS contracts with Supervisory Attorneys for each of the bar advocate groups to provide oversight of the representation furnished by private counsel division lawyers. The duties of supervisory attorneys include the assessment of any complaints filed against assigned counsel, training, and performance evaluations.
32. CPCS and the bar advocate groups exert extensive control over the terms and conditions of private assigned counsel’s work.
33. This control begins long before a prospective private assigned counsel takes their first case. For example, prospective District Court Panel members must first apply for and be

⁷ *See also* CPCS, *Assigned Counsel Manual: Policies and Procedures* (448-page manual “inform[ing] attorneys representing indigent clients through the Committee for Public Counsel Services, pursuant to G. L. c. 211D of the qualification, training, and performance requirements, the billing process, audit and evaluation procedures, and other policies and procedures related to assignment and compensation).

⁸ Private assigned counsel on the District Court, Superior Court, and Juvenile panels must apply for and be members of a bar advocate program. Other private assigned counsel, including those only on the murder or post-conviction panels, need not be members of a bar advocate program but are subject to the statutory rates established in G. L. c. 211D, § 11 (a)(1).

accepted into the panel of attorneys of “a county bar advocate program” run by a CPCS contractor. CPCS, *Assigned Counsel Manual Policies and Procedures* 3.3.B.1 (Mar. 5, 2026), <https://www.publiccounsel.net/wp-content/uploads/2025/12/Assigned-Counsel-Manual.pdf> [hereinafter *Assigned Counsel Manual*]. Following acceptance, District Court Panel members must complete the “Zealous Advocacy Training,” a CPCS-run program which requires approximately fifty-six hours of in-person training and forty-to-fifty hours of self-directed work. To receive compensation for this training, which takes nearly three weeks to complete, District Court Panel members must bill at least six-hundred hours on at least thirty separate dockets within an eighteen-month period. *Assigned Counsel Manual*, 3.3.B.1.a.

34. CPCS and bar advocate programs’ control of private assigned counsel continues past the initial onboarding process. For the District Court Panel, acceptance to the Panel and completion of the initial training provides only a provisional certification to take appointed cases. This certification is subject to “performance evaluation(s) of the private attorney by the county bar advocate program conducted within 12 to 24 months, or a longer period if deemed necessary.” *Assigned Counsel Manual*, 3.3.B.1.b. These performance evaluations are not perfunctory, as the *Assigned Counsel Manual* requires the reviewee to provide a body of at least twenty-five cases for review. *Id.* The panel attorney must cooperate with this evaluation, and failure to do so may result in revocation of the provisional certification. *Id.*

35. CPCS and bar advocate programs’ control of private assigned counsel permeates through individual cases, as well. These performance standards often wade into areas where a private attorney would typically have discretion. This is true even where the manner of

counsel's advocacy is not dictated by statute. In fact, the Assigned Counsel Manual provides detailed and often mandatory instructions for criminal trial attorneys to follow at every stage of litigation—from bail hearings to post-trial motion practice. *See Assigned Counsel Manual*, 4.4-4.35.

36. CPCS outlines similarly extensive performance standards for all private assigned counsel panels, tailored to the specific panel's forum. *See Assigned Counsel Manual*, 4.1-4.307.
37. Even after a case reaches disposition, CPCS reviews the work of private assigned counsel through its audit and oversight department. Per statute, G. L. c. 211D, § 12 (a), the audit and oversight department has the authority to audit bills submitted by any private assigned counsel, and during such an audit, the department is permitted to withhold payment. The department withholds payment for weeks until the auditee can “provide detail as to every single minute” they have worked on a case. *Committee for Public Counsel Services v. Middlesex and Suffolk County District Courts*, SJC-13824, Brief of Amicus Curiae 328 Massachusetts Bar Advocate Attorneys at 66 (affidavit of Attorney Philip Weber). *See id.* at 108 (“CPCS conducts frequent audits requiring additional unpaid hours of meticulous record-keeping multiple times per year. During these audits, payment is suspended, compounding the financial strain on already under-compensated counsel”) (affidavit of Attorney Veronica White).
38. Though the substance of private assigned counsel work has long been under CPCS control, the time, place, and frequency of such work is now subject to additional control under the new statutory provisions. Pursuant to G. L. c. 211D, § 6 (b), as amended through St. 2025, c. 14 § 48, private assigned counsel must sign independent contractual agreements drafted by CPCS that “prescribe requirements for the minimum coverage and availability to be

required for private counsel.” Those requirements include six yearly duty days for the District and Juvenile Court panels and two yearly duty days for the Superior Court panels.

C. Private Assigned Counsel Have Suffered Substantial Economic Harm Due to Unconscionably Low Rates Set by Statute.

39. The Commonwealth is among the highest cost of living states in the country. The Commonwealth’s rates for private assigned counsel fail to cover basic living expenses, especially in a high-cost area like Greater Boston.
40. Private assigned counsel operate as independent contractors because they are statutorily excluded from the benefits of state employment. G. L. c. 211D, § 6(b) (“No individual, member or participant in a group, corporation or association with whom the committee may contract under this paragraph shall be considered to be or have any rights as a state employee”). Consequently, the Commonwealth does not provide private assigned counsel with collective bargaining rights, health insurance, malpractice insurance, life insurance, disability insurance, unemployment benefits, vacation pay, sick pay, pension benefits, retirement benefits, or a 401K match. Because they are classified as independent contractors, private assigned counsel must pay both the employee and employer share of FICA taxes on their earnings.
41. CPCS requires private assigned counsel to incur numerous unrecoverable overhead costs, including, but not limited to, office space, malpractice insurance (listing the “Bar Advocate Program” as the insured), computer equipment, cell phones, printers and fax machines, legal research database subscriptions, practice management software, file storage space, cloud storage space, and video conferencing software. *See Assigned Counsel Manual*, 2.1-2.7, 5.30.

42. Private assigned counsel must meet the high demands of the courts on their cases, yet CPCS limits compensable hours to ten per day, often insufficient for what cases require. While exceptions exist, requesting waivers demands additional paperwork that is simply not feasible when all energy has already been extracted completing work for clients facing significant time in prison.
43. Private assigned counsel must pay for these expenses out of the low hourly rate set forth by the Legislature. And they must also pay for college and law school debts and their living expenses within these rates.
44. As inflation increased costs dramatically, including overhead and vendor expenses, and the cost of living exploded in Massachusetts, many private assigned counsel have been unable to make ends meet.

D. Despite Private Assigned Counsel’s Essential Role, the Legislature Has Routinely Refused to Pay Them Adequate Rates.

45. Pay for private assigned counsel is set by statute, and for decades, the Legislature has paid a wage insufficient to guarantee the availability of counsel for all indigent defendants in the Commonwealth. *See Lavalley*, 442 Mass. at 229 (counsel shortage “caused by the low rate of attorney compensation authorized by the annual budget appropriation”); *Carrasquillo v. Hampden County District Courts*, 484 Mass. 367, 392 (2020) (low rates of compensation “a major factor in discouraging private attorneys from accepting court appointments”); *Committee for Public Counsel Services v. Middlesex and Suffolk County District Courts and Boston Municipal Court*, Order, No. SJ-2025-0244 (Suffolk County July 3, 2025) (Wendlandt, J.) (statutory rate of \$65 per hour “proven inadequate to secure the representation by bar advocates of indigent defendants”).

46. In 2022, CPCS warned that the insufficient pay had once again plunged the system of private assigned counsel into existential crisis. In its budget request to the Legislature, CPCS stated that “[w]ithout higher rates, attorneys who are just entering the practice of law will not have sufficient incentive to work with CPCS due to the high cost of opening and running a practice, and increasing student loan debt, while our older attorneys begin to take less and less cases.” CPCS, *FY2023 Budget Request*, <https://www.publiccounsel.net/wp-content/uploads/2025/05/FY-23-Budget-Request-Powerpoint.pdf>. The Legislature responded by raising the District Court, Juvenile Court, and Mental Health hourly rates from \$60 to \$65, the Superior Court, Children and Family Law, and Post-conviction hourly rates from \$75 to \$85, and the Murder hourly rate from \$110 to \$120. *Id.*; CPCS, *FY2024 Budget Request*, <https://www.publiccounsel.net/wp-content/uploads/2025/05/FY24-Budget-Request.pdf>.
47. In 2023, CPCS indicated that the Legislature’s raises in the previous year were insufficient to ward off the existential threat it had described in the year prior. In its budget request, CPCS explained that rates in the Commonwealth lagged behind other eastern states, such as Maine, New Hampshire, New York, and Delaware. In testimony to the Joint Committee on Ways and Means, CPCS Chief Counsel Anthony Benedetti elaborated further:
- We have an aging bar . . . Meanwhile, law school admissions are down, with fewer students aspiring to go into social justice work . . . These new attorneys are frequently saddled with six-figure debts, and while the Legislature has generously provided funding for us to raise staff salaries and private counsel hourly rates in recent years, it is in this area that we look to make further progress. Benedetti, *CPCS Fiscal Year 2024 Budget Request Testimony of Chief Counsel Anthony Benedetti*, <https://www.publiccounsel.net/wp-content/uploads/2025/05/FY24-Budget-Testimony.pdf>.

The Legislature did not raise rates in 2023.

48. In 2024, CPCS reiterated its concern that the 2022 raises were insufficient to ward off the existential threat it had described in prior years. Testifying again, Chief Counsel Benedetti warned:

Despite the implementation of these positive measures . . . we simply do not have enough attorneys currently joining the panels, or if they already take cases, not taking enough of them . . . Unfortunately, factors such as lingering law school debt, the overall cost of practicing law, and the general cost of living in Massachusetts have diminished the perceived value of taking cases within our system. Benedetti, *CPCS Fiscal Year 2025 Budget Request Testimony of Chief Counsel Anthony Benedetti*, <https://www.publiccounsel.net/wp-content/uploads/2025/05/Budget-Materials-FY25-Hearing-.pdf>.

The Legislature did not raise rates in 2024.

49. On March 28, 2025, CPCS again reiterated its concern that the 2022 raises were woefully insufficient. Through testimony, Chief Counsel Benedetti emphasized, “[D]espite these increases, already depressed rates have not kept pace with inflation, disincentivizing attorneys to join panels and attorneys who are on panels to take more cases.” Benedetti, *CPCS Fiscal Year 2026 Budget Request Testimony of Chief Counsel Anthony J. Benedetti*, <https://www.publiccounsel.net/wp-content/uploads/2025/05/Final-FY26-Budget-Testimony-5.23.25.pdf>.

50. Between fiscal years 2021 and 2025, the ranks of private assigned counsel dropped by 16%—a net loss of four hundred and eighty-eight attorneys. Benedetti, *CPCS Fiscal Year 2025 Budget Request Testimony of Chief Counsel Anthony Benedetti*; CPCS, *FY2027 Budget Request Viewbook*, <https://www.publiccounsel.net/wp-content/uploads/2026/03/View-Book-2026-March-26.pdf>. During the same time span, the Trial Courts experienced a 27.76% increase in criminal caseload. Massachusetts Trial Court, Department of Research and Planning, *FY2025 Year-End Case Filings*,

<https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtFY2025Year-EndCaseFilings/Tab5YrFiingsbyTypeDept>.

51. The Legislature did not raise rates in the budget it passed in 2025, even though the rate of inflation Massachusetts residents experienced between 2022 and 2025 was 8.49% and state employees received multiple cost of living increases and pay raises.⁹

E. After Years of Advocating for Better Wages, Private Assigned Counsel Elect to Stop Taking New Cases.

52. By early 2025, the years-long crisis had reached an inflection point. The conversations amongst private assigned counsel about insufficient rates of pay had turned into talk about a potential work stoppage.

53. Plaintiffs Delaney and Weber first heard plans for a work stoppage in the District Court, where they both had spent years advocating for indigent defendants and commiserating with their peers about a shared struggle to pay bills for rent, mortgage, health insurance, and other personal and professional expenses.

54. Plaintiffs Essington, Spetter, Slepchuk, and Goldblatt first heard plans for a work stoppage through word-of-mouth or on email listservs for criminal defense attorneys and attorneys affiliated with CPCS. The insufficient rate of pay for private assigned counsel work has often been a topic of discussion on these listservs.

55. In spring 2025, with the calls for a work stoppage amongst private assigned counsel reaching a fever pitch, the individual plaintiffs turned to informal networks of communication—courthouse lobbies, private email chains, and eventually, video

⁹ Inflation rate calculated using the Bureau of Labor Statistics CPI Inflation Calculator using June 2022 as the starting value and May 2025 as the ending value. Bureau of Labor Statistics, *CPI Inflation Calculator*, https://www.bls.gov/data/inflation_calculator.htm.

conferences—to coordinate and devise a course of action to best advocate for increased rates of pay.

56. By May 2025, private assigned counsel settled on a plan. They would cease taking new cases on May 27, 2025—a work stoppage. By choosing a work stoppage, as opposed to a strike, private assigned counsel committed to continuing to serve their existing indigent clients.
57. On May 22, CPCS Chief Counsel Benedetti wrote to Hon. Heidi Brieger, Chief Justice of the Trial Court, stating, “As you may have heard, some bar advocates plan to stop taking duty days, starting next week. If this occurs—and by all accounts it is probable that it will—it will impact CPCS’s ability to provide counsel at arraignment, and possibly to provide counsel at all.”
58. On May 27, 2025, individual plaintiffs, alongside hundreds of other private assigned counsel, stopped taking new appointments. That day, Plaintiff Delaney joined a group of private assigned counsel at the State House to speak with local press. He told reporters, “The crisis is here . . . Hundreds and hundreds of bar advocates throughout the state have left being bar advocates because they could no longer justify receiving the low hourly rate. And it’s across all panels—District Court, Superior Court, homicides, appeals and mental health.” Becker & La, *Massachusetts private attorneys, seeking pay raise, refuse criminal defense work*, WBUR (May 27, 2025), <https://www.wbur.org/news/2025/05/27/attorney-criminal-defense-work-stoppage>.
59. In the following weeks and months, the access to counsel crisis washed over the Commonwealth with effects most acute in Suffolk and Middlesex counties.

60. As a result, on July 3, the single justice of the Supreme Judicial Court implemented the *Lavallee* protocol in Suffolk and Middlesex counties, mandating that defendants without counsel “may not be held more than seven days and the criminal case against such [defendants] may not continue beyond forty-five days.” *Committee for Public Counsel Services*, Supreme Judicial Ct., Order, No. SJ-2025-0244 (Suffolk County July 3, 2025) (Wendlandt, J.), citing *Lavallee*, 443 Mass. at 232.

61. Meanwhile, the individual plaintiffs engaged in various forms of speech to advocate for a rate increase, including speaking to the press, organizing rallies at the State House and other venues, and petitioning their Legislators.¹⁰

F. The Commonwealth Enacted a Punitive Statute Intended to Punish Private Assigned Counsel for Advocating for Reasonable Pay.

62. State House leaders responded aggressively to private assigned counsel’s speech and petitioning activity.

63. On July 10, 2025, Representative Aaron Michlewitz, Chair of the House Ways and Means Committee, stated, “We weren’t given any indication that this was hitting a boiling point . . . Some of my colleagues aren’t happy with [private assigned counsel’s] tactics and think it would be a terrible precedent to acquiesce.” Olson, *Need for quick end to bar advocate work stoppage widely seen*, Massachusetts

¹⁰ See, e.g., McColgan, *Bar advocates stand firm against Massachusetts bill that boosts pay by \$20 per hour*, Boston Herald (July 31, 2025) <https://www.bostonherald.com/2025/07/31/bar-advocates-stand-firm-against-massachusetts-bill-that-boosts-pay-by-20-per-hour/>; Zayatz, *Case dismissals likely as bar advocate pay negotiations at standstill*, The Shoestring (July 26, 2025), <https://theshoestring.org/2025/07/26/case-dismissals-likely-as-bar-advocate-pay-negotiations-at-standstill/>; Jochem, *Defendants still without court-appointed attorneys in Hampden County amid work stoppage*, MassLive (July 25, 2025), <https://www.masslive.com/westernmass/2025/07/defendants-still-without-court-appointed-attorneys-in-hampden-county-amid-work-stoppage.html>.

Lawyers Weekly (July 10, 2025),

<https://masslawyersweekly.com/2025/07/10/massachusetts-bar-advocate-strike-legal-crisis/>.

64. On July 28, Senate President Karen Spilka told reporters that she was surprised by many private assigned attorneys' decisions to cease taking appointments, claiming—contrary to years of advocacy by private assigned counsel, CPCS, and even this Court—that “[n]obody raised anything about the need for more funding or the concern about the funding.” Kuznitz, Lisinski, and Adams, *Bar advocates dispute claim that effort to end work stoppage is in the works*, GBH (July 28, 2025), <https://www.wgbh.org/news/local/2025-07-28/bar-advocates-dispute-beacon-hills-contention-that-effort-to-end-work-stoppage-is-in-the-works>.
65. On the same day, Senate President Spilka told reporters that a Legislative resolution to the work stoppage would be ready “soon.” Kuznitz, Lisinski, and Adams, *supra*. Shortly thereafter, Plaintiff Delaney, a public leader of the work stoppage and a natural point of contact for any legislative negotiations, told reporters that “[n]o information to that effect has made its way to the bar advocates.” *Id.*
66. On July 30, State House and Senate leaders proposed a resolution to the private assigned counsel crisis. Under the proposal, hourly rates for private assigned counsel would increase by ten dollars immediately and ten more dollars in 2026. However, this raise came with a catch, a new provision stating:

An agreement between private bar advocates to refuse to compete for or accept new appointments or assignments unless the rates of pay under this section are increased shall be evidence of a violation of [the Massachusetts Anti-Trust Act, G. L. c. 93, § 4]; provided that evidence of an agreement between private bar advocates to refuse to compete for or accept new appointments or assignments unless the rates of pay under this section are increased shall include, but shall not

be limited to, any county where not less than 25 per cent of private bar advocates are refusing to compete for or accept new appointments or assignments.

67. The Massachusetts Antitrust Act is enforced by the Attorney General's Office and includes the potential of being investigated for and charged with civil and criminal penalties, including a fine of up to \$25,000 and a year of imprisonment. G. L. c. 93 §§ 8-10.
68. On July 31, the supplemental appropriations bill containing the provision at issue was debated on the house floor. Chair Michlewitz, referencing the rate increases in the bill, made statements equating private assigned counsel with other state labor: "I don't know of any other *workforce* in state government currently that has received a 30 percent raise in the middle of these difficult fiscal times" (emphasis added). The 194th General Court of the Commonwealth of Massachusetts, *Formal House Session 70*, 1:07:00 (July 31, 2025), <https://malegislature.gov/Events/Sessions/Detail/7510/Video2> [Hereinafter *Formal House Session 70*].
69. Chair Michlewitz also made clear that the antitrust provision was enacted in response to private assigned counsel's advocacy efforts, falsely asserting that the work stoppage resulted in "some bar advocates holding people's constitutional rights to counsel hostage." *Formal House Session 70*, 1:07:00. Private assigned counsel do not have a constitutional obligation to provide counsel to indigent defendants. Instead, they engage in this work due to their commitment to the rule of law and indigent communities. The Commonwealth, however, does have this constitutional obligation, and it is the only entity capable of holding such a right "hostage"—something it has done repeatedly due to its failure to provide reasonable rate increases.
70. Representative Christopher Markey also indicated that the antitrust amendment was enacted to target private assigned counsel's advocacy efforts, stating, "This is one of those

things that you get massive amounts of emails and outrage by very few people who have, I would suggest, an unreasonable request—a very unreasonable request.” *Formal House Session 70*, 1:12:42.

71. Rep. Markey further justified the Legislature’s passage of the punitive amendment by falsely suggesting private assigned counsel panels were dominated by “young lawyers” gaining experience in court to “become better lawyers because they are getting paid while they are in court” and “people like him” who are “older” and “are going in for the sole purpose for [sic] giving back to the community.” *Formal House Session 70*, 1:12:42. Rep. Markey’s assertions lie in stark contradiction to CPCS’s reports about the decline of young attorneys able to afford to do indigent defense work and its repeated requests for higher rates for all private assigned counsel.
72. The bill was passed by the Legislature and signed into law by the Governor on August 5, 2025. St. 2025, c. 14. Upon the bill’s passage, the Legislature issued a press release recognizing that private assigned counsel’s services constitute labor similar to state public defenders. Specifically, leadership in both houses of the Legislature recognized that the bill “bolsters the state’s public defense *workforce*” and that the package of legislative amendments “shifts a greater share of the *work burden* from the private bar to state public defenders by providing increased resources to the Committee on Public Counsel Services (CPCS)” [emphasis added]. *Legislature Sends Midyear Supplemental Budget to Governor*, Senate Press Room (July 31, 2025), <https://malegislature.gov/PressRoom/Detail?pressReleaseId=237>.

G. Pay for Private Assigned Counsel remains unconscionably low, and alternative avenues of advocacy have proven unfruitful.

73. Plaintiffs continue to be concerned that private assigned counsel are being significantly underpaid by the Commonwealth. The rate increase barely covers the cost of inflation and is still far less than what private counsel are paid in neighboring states. *See McKenna, Mass. Legislature proposal to hike bar advocates' pay a 'slap in the face,' lawyer says*, MassLive (July 31, 2025), <https://www.masslive.com/news/2025/07/mass-legislature-proposal-to-hike-bar-advocates-pay-a-slap-in-the-face-lawyer-says.html>.
74. Despite their legitimate concerns, plaintiffs are fearful of the prospect of civil and criminal enforcement of the Massachusetts Antitrust Act. As a result, some of them have felt pressured to abandon their advocacy efforts and take new cases, while others intend to leave the state panels altogether to avoid the specter of prosecution.
75. Efforts to seek relief through other methods of advocacy at all three branches of government have been unsuccessful thus far.
76. On October 24, 2025, 328 private assigned counsel—including all individual plaintiffs—submitted an amicus brief to this Court in favor of CPCS's position in *Committee for Public Counsel Services v. Middlesex and Suffolk County District Courts*, No. SJC-13824, 2026 WL 719666 (Mar. 16, 2026). That case considered whether “State court judges are authorized to increase compensation rates for [private assigned counsel] above levels set by the Legislature.” *Id.* at *1. CPCS advocated in favor of that position.
77. This amicus brief detailed the indispensable role private assigned counsel play in the Commonwealth's system of indigent defense, the extraordinary financial challenges private assigned counsel face while running their practices, and the decades-long shortage of available counsel for indigent defendants. *See generally Committee for Public Counsel*

Services v. Middlesex and Suffolk County District Courts, SJC-13824, Brief of Amicus Curiae 328 Massachusetts Bar Advocate Attorneys. Plaintiffs Essington, Goldblatt, and Weber submitted affidavits in support of the amicus brief. *Id.* at 66-70, 154-157.

78. Though this Court reiterated the Single Justice’s finding that the summer 2025 “shortage of available defense counsel [was] caused in large part by inadequate compensation rates,” it declined to authorize individual judges to increase compensation rates for private assigned counsel because “[CPCS] has not provided evidence that the current statutory rates for bar advocates are insufficient to maintain a constitutionally adequate judiciary capable of protecting indigent criminal defendants’ right to counsel.” *Committee for Public Counsel Services*, 2026 WL 719666 at *4, *8 quoting *Committee for Public Counsel Services*, Order, No. SJ-2025-0244.
79. In reaching its holding, this Court relied on the fact that, as of February 2026, the summer 2025 work stoppage had functionally ceased. *See Committee for Public Counsel Services*, 2026 WL 719666 at *5 (“In late February 2026, there were eight unrepresented indigent defendants in the respondent courts due to the counsel shortage. None of those defendants was in custody for more than seven days, and no defendants in custody have required a seven-day *Lavallee* hearing since mid-October”). Plaintiffs contend that the provision at issue here ended the work stoppage because it has dissuaded new lawyers from joining panels and encouraged experienced lawyers to leave if they are able to.
80. Eight days after this Court’s decision in *Committee for Public Counsel Services*, CPCS Chief Counsel Benedetti again testified to the Legislature’s Joint Committee on Ways and Means. Though Chief Counsel Benedetti agreed with this Court that the Commonwealth’s system of indigent defense is now in “a period of stability,” he warned that “the underlying

challenges have not disappeared.” To that end, he requested “authorizing language . . . for a \$15 per hour increase to take effect [July 1, 2027].” Reiterating concerns he first raised in 2022, Chief Counsel Benedetti noted that a guaranteed raise in 2027 is necessary to assist “with efforts to retain experienced attorneys and encourage new lawyers to enter this work, particularly in specialized and high-need areas where we are seeing an aging bar and ongoing recruitment challenges.” Benedetti, *CPCS Fiscal Year 2027 Budget Request Testimony of Chief Counsel Anthony Benedetti*, <https://www.publiccounsel.net/wp-content/uploads/2026/03/AB-Testimony-Ways-and-Means-Budget-Request-2027.docx>. Compare CPCS, *FY2023 Budget Request* (“Without higher rates, attorneys who are just entering the practice of law will not have sufficient incentive to work with CPCS due to the high cost of opening and running a practice, and increasing student loan debt, while our older attorneys begin to take less and less cases”).

81. Plaintiff MAPAC has engaged the Legislature to advocate for rate increases during this legislative session, as well, to no avail.
82. Plaintiff MAPAC also engaged the executive branch regarding § 11 (a)(2) and received no response.
83. On January 29, 2026, MAPAC delivered a letter to the Governor, which stated, in relevant part:

We also respectfully urge reconsideration of the antitrust provision included in Section 49 (a)(2) of Chapter 14, now codified as G. L. c. 211D, § 11(a)(2). The Commonwealth needs a deep well of dedicated attorneys willing to carry forward its constitutional obligations. Language that treats collective advocacy as a crime does not retain attorneys, it repels them. Removing this provision would signal the Commonwealth's genuine commitment to partnership and help attract the very attorneys it needs to fulfill the mandate of equal justice.

The Governor’s office has not responded to this letter.

84. Despite their reasonable concerns regarding their ability to pay their bills, Plaintiffs are now fearful of the prospect of prosecution under the Massachusetts Antitrust Act should they engage in organizing activity or advocacy that is associated with any work stoppage. Given the apparent unwillingness of the Legislature, Governor, and Attorney General to engage with Plaintiffs and CPCS on pay rates, Plaintiffs believe that a future work stoppage may be necessary to secure reasonable rates.
85. Plaintiffs have suffered ongoing irreparable injury because they reasonably fear that they will be investigated or charged for antitrust violations if they engage in any speech or advocacy associated with a work stoppage or potential work stoppage. As a result, the Attorney General's enforcement of § 11 (a)(2) to enact civil and criminal penalties described in G. L. c. 93, § 4 et seq., has unconstitutionally chilled, and will continue to chill, Plaintiffs' First Amendment and Article 16 rights to free speech and expression.¹¹

CLAIMS FOR RELIEF

CLAIM 1: G. L. c. 211D, § 11 (a)(2) IS FACIALLY INVALID BECAUSE IT CANNOT BE READ IN HARMONY WITH FEDERAL ANTITRUST LAW.

86. Plaintiffs reallege, reassert, and incorporate by reference the facts and allegations stated in the previous paragraphs.
87. Massachusetts antitrust law "shall be construed in harmony with judicial interpretations of comparable federal antitrust statutes insofar as practicable." G. L. c. 93, § 1.

¹¹ Private assigned counsel have an obligation to represent their current indigent clients in court until the completion of their matters unless the court allows withdrawal. Therefore, in order to receive any pay for their current caseloads, private assigned counsel must abide by their contracts with CPCS or county bar advocate groups and cannot choose to withdraw from those contracts entirely. As a result, the amendment puts private assigned counsel who want to stop taking new cases due to low rates between a rock and a hard place: it either requires them to cancel their contracts and work on their current cases without pay to escape antitrust exposure or silences them and compels them to take new cases despite their desire not to.

88. Two federal antitrust statutes—the Clayton Act and Norris-LaGuardia Act—exempt from antitrust liability cases that arise out of labor disputes. *See* 15 U.S.C. § 17 (stating that “[t]he labor of a human being is not a commodity or article of commerce” subject to antitrust regulation and that “antitrust laws shall [not] be construed to forbid the existence and operation of labor . . . organizations [] instituted for the purposes of mutual help . . . or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof”); 29 U.S.C. § 104 (exempting “persons participating or interested in [a labor dispute],” including individuals entering agreements to “refus[e] to perform work,” from antitrust enforcement). This shield extends past the traditional employer-employee relationship, as the Norris-LaGuardia Act protects labor disputes “regardless of whether or not the disputants stand in the proximate relation of employer and employee.” 29 U.S.C. § 113(c).
89. Here, as detailed *supra*, § 11(a)(2) subjects to antitrust liability individuals and organizations involved in any agreement “to refuse to compete for or accept new appointments or assignments unless the rates of pay . . . are increased.”
90. Section 11 (a)(2) cannot be enforced against any individual plaintiff, or persons similarly situated, because such enforcement would run afoul of the Norris-LaGuardia Act’s explicit carveout of agreements to “refus[e] to perform work” from federal antitrust enforcement. 29 U.S.C. § 104. Furthermore, any enforcement action taken under the provision at issue would repudiate the declared public policy of the Norris-LaGuardia Act, which extends the Act’s exemptions from antitrust regulation to “individual unorganized worker[s]” seeking “acceptable terms and conditions of employment” and prohibits court orders “issued contrary to the public policy declared in this chapter.” 29 U.S.C. §§ 101-102.

91. Admissions by legislators that private assigned counsel are a “workforce” reaffirm the fact that private assigned counsel are laborers not subject to antitrust regulation. *See Formal House Session 70* at 1:07:00; *Legislature Sends Midyear Supplemental Budget to Governor*.
92. Section 11 (a)(2) cannot be enforced against any organization representing the interests of private assigned counsel, including Plaintiff MAPAC, because MAPAC is a bona fide labor organization acting unilaterally during a labor dispute (i.e., to advocate to secure higher compensation for labor) and not to stifle market competition. *See Confederacion Hipica de Puerto Rico, Inc. v. Confederacion de Jinetes Puertorriquenos, Inc.*, 30 F.4th 306, 313 (1st Cir. 2022).
93. Because § 11(a)(2) cannot be read in harmony with federal antitrust law, as is required by G. L. c. 93, § 1, it is facially invalid.¹²

¹² This matter is distinguishable from *F.T.C. v. Superior Court Trial Lawyers Association*, 493 U.S. 411, 436 (1990) [hereinafter *SCTLA*], in which the Supreme Court held that private assigned counsel who represented indigent defendants in the District of Columbia Superior Court violated antitrust law by refusing to accept new appointments to advocate for increasing their statutory rates of pay. As observed by the First Circuit, the labor exemption to federal antitrust regulation was never argued in that case. *Confederacion Hipica de Puerto Rico, Inc.*, 30 F.4th at 316 n.4. *See id.* at 315 (“A decision cannot create a precedent on an issue unless the issue was actually decided”). Furthermore, *SCTLA* involved an entirely different system of appointed counsel than the Commonwealth’s system. The panel in *SCTLA* was appointed directly by the judiciary and was subject to far less oversight and supervision than private assigned counsel in Massachusetts, who are managed in substantial aspects of their work consistent with an employer-employee relationship. *Matter of Superior Court Trial Lawyers Association*, 107 F.T.C. 510, 1986 WL 722159 at *11 (1986) (quoting veteran member of private assigned counsel panel at issue in *SCTLA*, who stated that “there was a sense that any lawyer who walked in off the street, if he was a member of the bar, [was] not only qualified to take cases but was entitled to have cases”). The *SCTLA* panel also had a narrower scope—handling only criminal matters—whereas G. L. c. 211 § 11 concerns the rates of compensation for both criminal and civil matters, including Sex Offender Registry Board and Guardianship proceedings. Finally, *SCTLA*

CLAIM 2: G. L. c. 211D, § 11 (a)(2) IS VOID FOR VAGUENESS UNDER THE DUE PROCESS CLAUSES OF THE FIFTH AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION AND ARTICLES TEN AND TWELVE OF THE DECLARATION OF RIGHTS.

94. Plaintiffs reallege, reassert, and incorporate by reference the facts and allegations stated in the previous paragraphs.

95. Section 11 (a)(2) is unconstitutionally vague because it fails to give sufficiently clear notice to those potentially subject to it as to what conduct is prohibited and fails to provide sufficient standards to guide law enforcement, particularly with regard to matters of free expression.

96. Section 11 (a)(2) provides two avenues through which the Attorney General can provide evidence of a violation of G. L. c. 93, § 4.

97. G. L. c. 93 § 10 provides criminal sanctions for “[a]ny person who knowingly violates [G. L. c. 93, §§ 4-5] with specific intent to injure any person, or knowingly aids or participates in such violation with specific intent to injure any person.” Punishment under this section includes fines up to twenty-five thousand dollars and imprisonment up to one year in the house of correction. *Id.*

98. As written, § 11 (a)(2) exposes “private bar advocates” to criminal and civil liability.

99. The text of § 11 (a)(2) fails in at least three ways to meet the constitutional requirement for a criminal statute to “define the criminal offense . . . with sufficient definiteness that

concerned an instance where “90 percent” of private assigned counsel in a given jurisdiction ceased taking new cases, and here, plausible readings of § 11 (a)(2) create *per se* proscriptions against any agreement to cease work—even between just two attorneys—and any cessation of work—even for innocuous reasons—by merely twenty-five percent of private assigned counsel in a given county. *SCTLA*, supra at 416. See *NAACP v. Button*, 371 U.S. 415, 438, (1963) (“Broad prophylactic rules in the area of free expression are suspect”).

ordinary people can understand what conduct is prohibited.” *Commonwealth v. Wilbur W.*, 479 Mass. 397, 406 (2018), quoting *Skilling v. United States*, 561 U.S. 358, 402–403 (2010). These infirmities also implicate due process concerns in regard to civil enforcement.

100. First, the statute does not provide any clarity as to whether it applies to the conduct of all private assigned counsel—including those who serve on civil panels—or to a mere subset of private assigned counsel, who are referred to as “bar advocates.” Neither § 11 (a)(2) nor any other provision of the Massachusetts General Laws define the term “private bar advocates.”¹³ Moreover, many private assigned counsel are not members of any county bar advocate group or program, including those who serve exclusively on any or all of the following panels: Alternative Commitment and Registration Support, Post-conviction, Children and Family Law, Mental Health Litigation, and Parole Advocacy.

101. Second, the statute does not provide guidance for law enforcement to determine how many “private bar advocates” work in a given county. In the Commonwealth, private assigned counsel may join one or multiple of the following panels whose rates are set by G. L. c. 211D, § 11 (a)(1): Alternative Commitment and Registration Support, Post-conviction, Children and Family law, District Court, Superior Court, Murder, Juvenile Criminal Trial, Mental Health Litigation, and Parole Advocacy. Only the District Court, Superior Court, and Juvenile Criminal Trial panels assign attorneys based on county. Furthermore, private assigned counsel are permitted to work highly variable schedules within the minimum coverage requirements prescribed by CPCS pursuant to

¹³ See note 4, *supra*, explaining why this Court’s definition of the term “bar advocate” is not based in the text of any active statute.

G. L. c. 211D, § 6 (b). It is facially impracticable to devise a total number of “private bar advocates” in a given county where any number of those attorneys could be working sporadically within the minimum requirements outlined by CPCS.

102. Third, the statute’s evidentiary provisions are incoherent. The statute provides no guidance to identify who, other than “private bar advocates” generally, shall be liable in counties where twenty-five percent of private assigned counsel are not accepting cases. The statute also provides no mechanism by which an innocent party could rebut the presumption created by a critical mass of private assigned counsel not seeking appointments at a given time, like during a popular vacation period.¹⁴

103. Plaintiff Essington participates exclusively in the Post-conviction Panel—a statewide panel—and therefore cannot discern if she is at risk of criminal and civil liability for participating in a work stoppage. Plaintiff Goldblatt also participates exclusively in statewide panels and, out of an abundance of caution, is operating as if she would be subject to criminal and civil liability for participating in a work stoppage. Plaintiffs Delaney, Slepchuk, Spetter, and Weber are members of both statewide and county-specific panels and cannot discern the extent of their exposure to criminal and civil liability for participating in a work stoppage relating to their statewide panels. All six individual plaintiffs cannot discern whether or in what capacity they are “private bar advocates” for the purposes of § 11 (a)(2) and whether they may face criminal and civil liability for the actions of “private bar advocates” in other counties.

¹⁴ A plausible reading of this statute could subject most private assigned counsel statewide to criminal liability for not taking cases during the week between Christmas Day and New Year’s Day, for example.

104. Because the provision neither defines “private bar advocate,” nor defines how to calculate the 25 percent threshold or acknowledges the possibility that many private assigned counsel do not practice in connection to a specific county, it is unconstitutionally vague and must be struck in its entirety.¹⁵ See *Barron v. Kolenda*, 491 Mass. 408, 422 (2023) (limited construction improper when what would remain would be vague and subject to manipulation); *Commonwealth v. Williams*, 395 Mass. 302, 306 (1985) (limiting construction of unconstitutional ordinance not possible because doing so would “exceed our authority to construe reasonably the ordinance and would result in judicial legislation”).

CLAIM 3: G. L. c. 211D, § 11 (a)(2) IS AN UNCONSTITUTIONALLY OVERBROAD RESTRICTION ON SPEECH AND EXPRESSION IN VIOLATION OF THE FIRST AMENDMENT OF THE CONSTITUTION AND ARTICLE 16 OF THE DECLARATION OF RIGHTS.

105. Plaintiffs reallege, reassert, and incorporate by reference the facts and allegations stated in the previous paragraphs.

106. Section 11 (a)(2) imposes criminal and civil antitrust penalties for engagement in expressive activities, including a work stoppage. The amendment is overbroad and violates Plaintiffs’ right to free speech and expression under the First Amendment of the Constitution and Article 16 of the Declaration of Rights. *United States v. O’Brien*, 391 U.S. 367, 376, 377 (1968).

107. Here, § 11 (a)(2) fails constitutional scrutiny because it does not serve a sufficiently important governmental interest to justify its restriction on expressive activity. One possible government interest—antitrust regulation—is not served here where the provision violates the interests expressed in federal antitrust law, which specifically exempts labor

¹⁵ If the provision does provide any intelligible definition of the term “private bar advocate,” that definition would be overbroad. See Claim 3, *infra*.

from its reach. Another possible government interest—access to counsel for the indigent accused—is also not served here because the amendment has dissuaded lawyers from practicing as indigent defense lawyers, diminishing the overall supply of counsel available for the indigent accused.

108. The Legislature specifically enacted § 11 (a)(2) to target Plaintiffs’ expressive activity—work stoppages—to seek higher rates of pay. The potential criminal and civil liability imposed by the statute is far “greater than [what] is essential to the furtherance” of the Commonwealth’s potential interests in competitive markets or access to counsel. *O’Brien*, 391 U.S. at 377.

109. In this case, the least restrictive solution would be to pay private assigned counsel rates consistent with a living wage. In the alternative, the Commonwealth could enforce G. L. c. 211D § 6 (b), as amended by St. 2025, c. 14 § 48, which requires CPCS “to prescribe requirements for the minimum coverage and availability” of private assigned counsel. Under this provision, an attorney’s failure to meet minimum coverage requirements would lead to termination of their contract and removal from the panel—a penalty less severe than possible criminal or civil liability. The Commonwealth must utilize the suite of less restrictive options it possesses to achieve its desired end. *See O’Brien*, 391 U.S. at 377.

110. Because § 11 (a)(2) regulates protected speech under the guise of advancing the Commonwealth’s interest in antitrust regulation, it is unconstitutionally overbroad.

CLAIM 4: G. L. c. 211D, § 11 (a)(2) IS AN UNCONSTITUTIONAL CONTENT-BASED RESTRICTION ON SPEECH AND EXPRESSION IN VIOLATION OF THE FIRST AMENDMENT OF THE CONSTITUTION AND ARTICLE 16 OF THE DECLARATION OF RIGHTS.

111. Plaintiffs reallege, reassert, and incorporate by reference the facts and allegations stated in the previous paragraphs.
112. Section 11 (a)(2) violates Plaintiffs’ rights to free speech and expression under the First Amendment of the Constitution and Article 16 of the Declaration of Rights because it is a content-based proscription on their speech unable to withstand strict scrutiny. No compelling interest justifies this proscription, and even if such an interest did exist, this proscription is not narrowly tailored to achieve that purported interest. *Massachusetts Coalition for the Homeless v. City of Fall River*, 486 Mass. 437, 441 (2020), quoting *Reed v. Gilbert*, 576 U.S. 155, 163 (2015).
113. Here, § 11 (a)(2) proscribes agreements to cease taking appointments “unless the rates of pay . . . are increased,” but it permits similar agreements for any other end—such as orchestrating a work stoppage to advocate for increased access to courthouse interpreters.
114. The provision’s content-based restriction on speech is further evinced by Rep. Markey’s remarks on the State House floor. He expressed his support of this provision for the purpose of chilling speech—or, in his words, “emails and outrage”—by private assigned counsel who, in his view, made a “very unreasonable request.” *Formal House Session 70* at 1:12:42.
115. This provision does not advance a compelling interest because, as set forth *supra*, it violates antitrust laws and has undermined any governmental interest in ensuring effective indigent defense services. Furthermore, its content-based nature draws its regulatory scope far too narrow since it allows work stoppages for all reasons other than seeking increased

rates of pay. *See Massachusetts Coalition for the Homeless*, 486 Mass. at 444, quoting *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 449 (2015) (statute’s “[u]nderinclusiveness can . . . reveal that a law does not actually advance a compelling interest”).

116. The content-based restriction in § 11 (a)(2) cannot be severed from the rest of the statute. Where “the court is unable to know whether the Legislature would have enacted a particular bill without the unconstitutional provision, it will not sever the unconstitutional provision, but will strike the entire statute.” *Peterson v. Commissioner of Revenue*, 444 Mass. 128, 138 (2005), quoting *Mayor of Boston v. Treasurer & Receiver General*, 384 Mass. 718, 725 (1981). Because § 11 (a)(2) is an unconstitutional content-based restriction on speech, it must be struck in its entirety.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek an order and judgment:

1. declaring that the extension of the Massachusetts Antitrust Act, as set forth in G. L. c. 211D, § 11(a)(2), to punish private assigned counsel who engage in future work stoppages must be struck as facially invalid under the labor exemption to the Massachusetts Antitrust Act and related federal laws and is unconstitutional because it violates the First, Fifth, and Fourteenth Amendments to the United States Constitution and Articles Ten, Twelve, and Sixteen of the Massachusetts Declaration of Rights.
2. permanently enjoining Defendant Campbell from prosecuting, or permitting any employee or agent of the Massachusetts Attorney General’s Office to prosecute, Plaintiffs or others for advocating for or engaging in a work stoppage to secure higher pay rates.
3. awarding to Plaintiffs costs under G. L. c. 231A, § 7; and
4. providing such other and further relief as the Court may deem just and proper.

Respectfully submitted,
The Plaintiffs,
By their attorneys,



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Date: May 6, 2026

CERTIFICATE OF SERVICE

This certifies that on May 6, 2026, a copy of the foregoing document was served upon the Attorney General's Office by electronic mail.

/s/ Monica Shah
Monica R. Shah