

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH

HAMPSHIRE No. SJC-10866

On Appeal From a Judgment of
the Northampton District Court

Robert O'Brien,
Appellant

v.

Alan Borowski,
Appellee

**BRIEF AMICI CURIAE OF THE VICTIM RIGHTS LAW CENTER,
BOSTON AREA RAPE CRISIS CENTER AND JANE DOE, INC.**

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INTERESTS OF THE AMICI CURIAE

Amici Curiae, The Victim Rights Law Center ("VRLC"), the Boston Area Rape Crisis Center ("BARCC") and Jane Doe, Inc., submit this brief in response to the Court's invitation. Amici all have an interest in this appeal because of its potential implications on limiting or denying access to protection for victims of sexual assault, harassment and/or stalking.

The VRLC works to improve and expand the community's response to rape and sexual assault. Through close partnerships with BARCC, Suffolk County District Attorney's Office, the Boston Police Department, over fifteen Boston area universities, and others, the VRLC has worked to weave a broad safety net of sexual assault services in Boston, including educational and training services.

The Boston Area Rape Crisis Center ("BARCC") was one of the first rape crisis centers in the United States to advocate for and support survivors of sexual assault. First initiated as a grassroots, activist endeavor, the organization has spearheaded best practices program models that have been replicated nationwide. Currently, twenty-two (22) staff and over one hundred and forty (140) volunteers provide hotline

crisis counseling, medical accompaniments to local hospitals, legal advocacy and violence prevention education to community groups, organizations and institutions. BARCC serves the twenty-nine (29) cities and towns of greater Boston and helps approximately 4,000 victims and their families each year.

Jane Doe Inc., ("JDI") the Massachusetts Coalition Against Sexual Assault and Domestic Violence is a statewide organization of 60 member programs that provide direct services to victims and survivors of sexual and domestic violence. Guided by the voices of survivors, JDI brings together organizations and people committed to ending domestic violence and sexual assault, creating social change by addressing the root causes of this violence, and promote justice, safety and healing for survivors. JDI advocates for responsive public policy, promotes collaboration, raises public awareness, and supports our member organizations to provide comprehensive prevention and intervention services.

SUMMARY OF THE ARGUMENT

Amici urges the Supreme Judicial Court to uphold the constitutionality of Chapter 258E of the

Massachusetts General Laws. Without taking any position on the particular merits of the order granted to Mr. Borowski in this case, amici submit that Chapter 258E is constitutional on its face and that the Commonwealth has a legitimate interest in protecting its citizens from the dangers of stalking, sexual assault and harassment. As this Court has recognized, harassment can properly be restrained in order to provide a remedy to victims before such behavior escalates into life-threatening assault. *Commonwealth v. Welch*, 444 Mass. 80, 100 (2005). Amici submit that Chapter 258E is appropriately tailored to meet this goal.

I. INTRODUCTION

In 2000, Sandy Berfield, a waitress from Everett, was killed by a package bomb sent by a customer who was stalking her. Ms. Berfield had previously sought judicial protection from her killer, but was unable to obtain a restraining order under Chapter 209A because that statute required the victim to have an existing familial, intimate social or household relationship with the defendant. G.L. c. 209A, §1. Several years

later, "Hillary,"^{1/} an eighth grade student, was sexually assaulted by two neighborhood boys in a suburb of Boston. Although the boys pleaded guilty to the crime under Massachusetts' youthful offender law and were permanently expelled from school, they continued to threaten Hillary. Like Sandy Berfield, Hillary sought a Chapter 209A protective order against her tormentors. But she, too, was unable to obtain protection because she lacked a qualifying relationship with her attackers - who were neighbors but not household or family members.

Chapter 258E of the Massachusetts General Laws was born out of the danger caused by this gap in protection for many victims of sexual assault, harassment and stalking. For several years, a team of attorneys worked to close this loophole by empowering the courts to protect such victims regardless of their relationship with the perpetrator.^{2/} This collaborative effort produced legislation that unanimously passed both the Senate and House of Representatives and, on February 9, 2010, Governor Patrick signed into law

^{1/} The victim's name has been altered to protect her identity.

^{2/} Similar efforts to implement legislation to protect victims of harassment, stalking, and abuse began in the late 1980s. See MASS. GEN. LAWS. ch. 265, §43 (enacted 1992).

S.2212, "An Act Relative to Harassment Prevention Orders." The Act, codified as Chapter 258E, became effective on May 10, 2010.

II. CHAPTER 209A OFFERED PROTECTION TO SOME VICTIMS OF DOMESTIC VIOLENCE BUT CONTAINED A LOOPHOLE THAT LEFT NUMEROUS VICTIMS OF STALKING, HARASSMENT AND SEXUAL VIOLENCE WITHOUT ADEQUATE LEGAL RECOURSE.

Sandy Berfield and Hillary are just two of many victims who were left exposed by the statutory scheme before the enactment of Chapter 258E. Under Chapter 209A, only victims of abuse who were "family or household members" of their abuser could obtain a civil restraining order. Chapter 209A defines family or household members to include: 1) persons who are or were married to one another; 2) persons who are or were residing together in the same household; 3) persons who are or were related by blood or marriage; 4) persons who have a child in common regardless of whether they have ever married or lived together; or 5) persons who are or have been in a substantive dating or engagement relationship, as adjudged by the court. G.L. c. 209A, §1. Chapter 209A thus protects victims of purely *domestic* violence, but offered no parallel relief to victims of stalking, sexual assault

and harassment who did not have a qualifying relationship with their perpetrator.

Many victims were left exposed by this gap. In Massachusetts, for example, 14.6% of women and 5.3% of men will be sexually assaulted in their lifetime.

Massachusetts Department of Public Health, *Rape and Sexual Assault in Massachusetts, 2009-2010: Services Provided by Rape Crisis Programs* (Feb. 2011),

http://www.mass.gov/Eeohhs2/docs/dph/com_health/violence/rcc_factsheet_09_10.pdf. But of the

reported sexual assault cases in 2008-2009, 27% were committed by friends or acquaintances of the victim, 17% were committed by strangers and 7% were committed by persons whom the victim had known for less than

twenty-four hours. Massachusetts Department of Public Health, *Rape and Sexual Assault in Massachusetts, 2008-2009: Incidents Reported by Survivors Who Seek Help from Rape Crisis Programs* (Sept. 2010),

http://www.mass.gov/Eeohhs2/docs/dph/com_health/violence/survivor_factsheet_08_09.pdf. Nationally, 10.1% of

victims of stalking or harassment know their perpetrator from work or school, 9.4% of victims are mere acquaintances with the defendant and 10.6% do not know their assailant at all. Katrina Baum, Shannan

Catalano, Michael Rand and Kristina Rose, *Stalking Victimization in the United States*, Bureau of Justice Statistics, January 2009, at 4.^{3/} No matter how severe the level of harassment or abuse, however, none of these victims could qualify for a protective order under Chapter 209A.

Victims who lacked a qualifying relationship under Chapter 209A were left with only flawed and limited remedies. For example, prior to the enactment of Chapter 258E, the only civil remedy available to victims who lacked a qualifying relationship to the perpetrator was filing for injunctive relief in Superior Court pursuant to Mass.R.Civ.P. 65(a). That process is likely time-consuming and costly, often requiring the victim to obtain counsel in order to file a motion for a civil protective order and the accompanying memorandum of law, draft a complaint, complete the civil cover sheet, draft a proposed order and pay the filing fee. Moreover, the violation of an order for injunctive relief is not criminally enforceable and thus violations lead only to a contempt of court charge, providing a weak deterrent

^{3/} The vulnerability that these victims feel not only impacts them personally, but also affects them professionally, with 10.8% of victims in the United States taking time off from work or school as a result of stalking or harassment. *Id.*, at 6.

at best and leaving the victim with little recourse. Further, this process exposes the victim to greater contact with the perpetrator without any commensurate protection.

Hillary's situation provides a good illustration of the primary obstacles facing victims who were not statutorily authorized to obtain protection under Chapter 209A. Hillary was a middle school student when she was sexually assaulted by her classmates. She reported the crime and the two offenders plead guilty under the Massachusetts youthful offender statute. They were expelled from the school system, placed on probation for one year, and ordered to stay away from Hillary for a year as well. When the stay-away order expired, however, the perpetrators began taunting Hillary and her family. They would appear at school sporting events, even where she was participating, call her names and intimidate her. The harassment persisted for three years, even though the offenders had been permanently expelled and were nominally barred from school grounds. Although she endured this torment, Hillary asked a lawyer to help her obtain a restraining order that would prevent her attackers from continuing to harass her with the primary goal of

preventing her attackers from attending her prom and graduation. But, because Hillary did not qualify for a Chapter 209A order, her lawyer could do no better than to negotiate a civil settlement agreement that the defendants could disregard without fear of criminal sanctions.

Massachusetts, of course, also has a criminal harassment statute, but Chapter 265, §43A offers only limited protection to victims of criminal harassment and is not tailored to the realities of most stalking and harassment scenarios. Many victims do not report such crimes to the police, and even where a criminal prosecution goes forward and a stay-away order is entered as part of the defendant's probation, bail or parole, such orders are generally limited in time. Once the period of probation is complete, the perpetrator can return to their old ways without fear of violating probation.

III. CHAPTER 258E CLOSES THE LOOPHOLE LEFT OPEN BY CHAPTER 209A.

When it enacted Chapter 209A in 1978, Massachusetts was at the forefront of combating domestic violence and affording protection to its victims. Thirty years later, however, Massachusetts

lagged behind other states that had already passed legislation which closed the gap left open by Chapter 209A. By the time Massachusetts enacted Chapter 258E in 2010, thirty-nine (39) other states^{4/} and the District of Columbia offered civil protection orders to victims of stalking/harassment and/or sexual assault.^{5/} *Stalking/Harassment Civil Protection Orders (CPOs) By State*, ABA Commission on Domestic Violence, June 2009; *Sexual Assault Civil Protection Orders (CPOs) By State*, ABA Commission on Domestic Violence

^{4/} At the time that Chapter 258E was enacted, states that had enacted legislation granting civil protection orders to victims of stalking or harassment included: Alabama (ALA CODE §30-5-1); Alaska (ALASKA STAT. §18.65.850); Arizona (ARIZ. REV. STAT. ANN. §12-1809); California (CAL. CIV. PRO. CODE §527.6); Colorado (COLO. REV. STAT. ANN. §13-14-102); Delaware (DEL. CODE ANN. tit. 10, §1041); Florida (FLA. STAT. ANN. §784.046); Georgia (GA. CODE ANN., §16-5-90); Hawaii (HAW. REV. STAT. § 604-10.5); Illinois (740 ILL. COMP. STAT. ANN. 22/101); Indiana (IND. CODE ANN. §34-26-5-2); Kansas (KAN. STAT. ANN. §60-31a01); Louisiana (LA. REV. STAT. ANN. §46:2131); Maine (ME. REV. STAT. ANN. tit. 5 §4651); Maryland (MD. CODE ANN. CTS. & JUD. PRO. §3-1501), MD CODE ANN., FAM LAW §4-501); Michigan (MICHIGAN COMP. LAWS §600.2950a); Minnesota (MINN. STAT. ANN. §609.748); Missouri (MO. ANN. STAT. §455.005); Montana (MONT. CODE ANN. §40-15-116), MONT. CODE ANN. §40-15.102); Nebraska (NEB. REV. STAT. §28-311.02); Nevada (NEV. REV. STAT. ANN. §200.591); New Hampshire (N.H. Rev. STAT. ANN. §173-B:1); New Mexico (N.M. STAT. ANN. §40-13-3); New York (N.Y. FAM. CT. ACT §821); North Carolina (N.C. GEN STAT. ANN. §50C-1); Ohio (OHIO REV. CODE ANN. §2903.214); Oklahoma (OKLA. STAT. ANN. tit. 22 §60.2); Oregon (OR. REV. STAT. ANN. §163.730); Rhode Island (R.I. GEN LAWS §15-15-1); South Carolina (S.C. Code ANN. §16-3-1750); South Dakota (S.D. CODIFIED LAWS §22-19A-8); Tennessee (TENN. CODE ANN. §36-3-601); Texas (TEX. CODE CRIM. PROC. ANN. ART. 7A.01); Texas (TEX. CODE CRIM. PROC. ANN. art. 17.292); Utah (UTAH CODE ANN. §77-3A-101); Vermont (VT. STAT. ANN. tit. 12, §5131); Virginia (VA. CODE ANN. §19.2-152.10); Washington (WASH. REV. CODE ANN. §7.90.005), WASH REV. CODE ANN. §10.14.010); Wisconsin (WIS. STAT. ANN. §813.125); and Wyoming (WYO. STAT. ANN. §7-3-506).

June 2009. Chapter 258E thus put Massachusetts back on track with the majority of its sister states and filled a critical gap in the law by protecting victims of harassment, sexual assault and stalking, regardless of their relationship with the perpetrator.^{6/}

Section 3 of the new statute allows a person suffering from "harassment" to file a complaint with the appropriate court seeking protection. The statute defines harassment as:

"(i) 3 or more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse or damage to property; or (ii) an act that: (A) by force, threat or duress causes another to involuntarily engage in sexual relations; or (B) constitutes a violation of section 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43 or 43A of chapter 265 or section 3 of chapter 272."^{7/}

^{6/} While many of these statutes have since been either amended and/or are subject to pending proposed amendments, the Maine statute which G.L. c. 258E is modeled after, has not been amended nor has it been the subject of a similar constitutional challenge.

^{7/} Enumerated violations include: indecent assault and battery on a child under the age of 14; indecent assault and battery on a mentally retarded person; indecent assault and battery on persons 14 years or older, rape, rape of a child with the use of force; rape and abuse of a child; assault with intent to commit rape; assault of a child with intent to commit rape; enticement of a child; criminal stalking; criminal harassment; or drugging persons for sexual intercourse respectively. G.L. c. 258E, §1.

Chapter 258E, §1. Stated another way, the statute protects against three acts of harassment, or one act of sexual assault or criminal stalking. With respect to the first prong, a victim is required to demonstrate three acts of "willful and malicious conduct." Since the complainant must prove that the defendant's conduct was *both* willful and malicious, Chapter 258E actually imposes a stricter legal standard than both Chapter 209A and the criminal harassment statute, which requires only the "willful doing of an unlawful act without justification or mitigation." G.L. c. 265, §43A. Malicious conduct is defined as an act "characterized by cruelty, hostility or revenge." *Id.*

Other key distinctions between Chapter 258E and Chapter 209A include: (i) eligibility for relief, (ii) relief available, (iii) jurisdiction and (iv) venue. See Hon. Lynda M. Connolly, *Memorandum to District Court Judges, Clerk-Magistrates and Chief Probation Officers on Harassment Prevention Orders* (G.L. c. 258E) (April 13, 2010). As discussed above, under Chapter 209A, relief is available only to victims who have been abused or are in fear of imminent abuse by a family or household member. In contrast, Chapter 258E

does not contain any relationship component and offers relief to victims suffering from harassment. Under Chapter 209A, the court has wide discretion to grant relief, including but not limited to an order to refrain from abusing the plaintiff, refrain from contacting the plaintiff, remain away from the household, dwelling and workplace, pay temporary child support to the plaintiff, pay monetary compensation to the plaintiff for losses suffered as a result of such abuse. *See id.* In contrast, the remedies available under Chapter 258E include an order that defendant refrain from abusing or harassing the plaintiff, refrain from contacting the plaintiff, remain away from the plaintiff's household or workplace, pay the plaintiff monetary compensation for the losses suffered as a result of such harassment. *See id.* Unlike Chapter 209A, Chapter 258E does not permit a judge to authorize firearms-surrender orders or temporary child custody, visitation or support orders. *See id.* As for jurisdiction, the Probate and Family Court was not included in Chapter 258E, while it is in Chapter 209A, as Chapter 258E orders do not require family or household relationships. *See id.* Finally, venue under Chapter 258E is based on the plaintiff's

current residence, whereas Chapter 209A also permits venue to be determined based on the plaintiff's former residence if they left in order to avoid abuse. See *id.*

**IV. CHAPTER 258E IS TAILORED TO ACHIEVE A
LEGITIMATE PURPOSE AND IS CONSTITUTIONAL ON
ITS FACE BECAUSE IT CONTAINS LIMITING
CHARACTERISTICS THAT RESTRICT ITS
APPLICATION TO "FIGHTING WORDS," WHICH ENJOY
NO FIRST AMENDMENT PROTECTION.**

The Court must evaluate Mr. O'Brien's facial (or "overbreadth") attack on Chapter 258E against this background. Amici do not understand Mr. O'Brien to have challenged what might be called the "relational" scope of Chapter 258E - *i.e.*, the fact that, unlike Chapter 209A, it protects victims who are not members of the same "family or household" as their abusers. The constitutionality of the statute depends, rather, on whether it is appropriate for the Commonwealth to offer its citizens protection from harassment that may be initiated or accomplished by means of *speech*.

Without taking any position on the particular merits of the order granted to Mr. Borowski in this case, amici submit that Chapter 258E is constitutional on its face. The Commonwealth has a legitimate interest in protecting its citizens from the all-too-

real dangers that attend stalking and other forms of harassment. Such harassment is frequently carried out through speech and, as this Court has recognized, "may begin with words, but tragically end with violence." *Commonwealth v. Welch*, 444 Mass. at 100, citing Kirkman, *Every Breath You Take: Massachusetts Steps Up Its Efforts To Stop Stalkers*, 85 Mass. L. Rev. 174, 181 (2001) ("stalkers who become lethal move from non-threatening behavior to direct threats and property destruction"). Many courts - including this Court - have therefore held that harassment can properly be restrained, or even criminally punished, in order to provide "a remedy to victims before 'nonthreatening' harassment escalates into life-threatening assault." *Commonwealth v. Welch*, 444 Mass. at 100. Anti-harassment statutes can achieve this important societal goal without offending the First Amendment (or cognate free-speech provisions in state constitutions), so long as they are limited to the restraint of "fighting words."

Chapter 258E is appropriately circumscribed. This Court explained in *Commonwealth v. Welch* that fighting words "have been described by the Supreme Court as words 'which by their very utterance inflict injury or

tend to incite an immediate breach of the peace' and words 'plainly likely to cause a breach of the peace by the addressee.'" *Id.* at 94, quoting *Cohen v. California*, 403 U.S. 15, 20 (1971). State laws that proscribe harassing conduct or speech have been upheld under the fighting-words doctrine when they "contain some combination of the following limiting characteristics: a 'willful,' 'malicious,' or specific intent element; a requirement that the conduct be 'directed at' an individual; a reasonable person standard; a statutory limitation that the conduct have 'no legitimate purpose'; and a savings clause excluding from the statute's reach constitutionally protected activity or communication." *Commonwealth v. Welch*, 444 Mass. at 97 (citations omitted).

At issue in *Welch* was the Massachusetts statute that criminalizes "stalking," defined as "willfully and maliciously engag[ing] in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress." G.L. c. 265, § 43A. This Court upheld the statute against constitutional challenge, holding that "[t]o the

extent the statute implicates harassing speech, it appears intended to reach primarily what would be considered 'fighting words.'" *Welch*, 444 Mass. at 98-99.

The statute's constitutionality was traceable to its "limiting characteristics." "For example," this Court said, "the requirement that the harassment must be 'directed at specific persons' comports with the rule that where words are not 'directed to the person of the hearer' and 'no individual actually or likely to be present could reasonably . . . regard the words . . . as a direct personal insult,' even offensive words are not 'fighting words.'" *Id.* at 99 (citations omitted). "Likewise, the 'serious alarm' and 'substantial emotional distress' requirements are closely tailored to punishing only 'fighting words,' which are words that 'by their very utterance inflict injury.'" *Id.* (citation omitted).

It should be noted, moreover, that *Commonwealth v. Welch* upheld the criminal harassment statute even though it did not contain every "limiting characteristic" enumerated by the Court in its survey of the case law. *Welch*, 444 Mass. at 97. For example, the lack of a "savings clause" was not fatal because

the statute's other limiting characteristics gave sufficient evidence that "the Legislature, in carefully crafting the statute, intended the statute be applied solely to constitutionally unprotected speech." *Id.* at 99. Insofar as a constitutionally-infirm application of Section 43A remained *possible*, this Court held that, "[s]hould the Commonwealth attempt to prosecute an individual for speech that is constitutionally protected, we would have no hesitation in reading into the statute such a narrowing construction to ensure its application only to speech that is accorded no constitutional protection." *Id.* at 100.

The principles elucidated in *Welch* determine the outcome of Mr. O'Brien's facial, overbreadth challenge to the constitutionality of Chapter 258E. "Harassment," as defined by Chapter 258E, is functionally indistinguishable, for these purposes, from "stalking" as defined by Chapter 265, Section 43A. To be sure, Chapter 258E slightly alters the mix of limiting characteristics, omitting the "reasonable person" requirement but adding an equally stringent specific intent restriction that is absent from Section 43A. Both statutes, however, apply only to (1)

repeated conduct, engaged in (2) willfully and maliciously, that is (3) aimed at a specific person and that (4) causes some manner of fear, alarm or intimidation in its intended victim.

Like Section 43A, therefore, Chapter 258E reflects the Legislature's intent "to extend protections to victims of harassment, providing a remedy to victims before 'nonthreatening' harassment escalates into life-threatening assault." *Commonwealth v. Welch*, 444 Mass. at 100. Like Section 43A, Chapter 258E aims to accomplish that goal with adequate circumspection, limiting the Commonwealth's reach "solely to constitutionally unprotected speech." *Id.* at 99. Arguments that the statute may be misused to restrain protected speech are, if not speculative, then certainly fact-specific: should such misuse be demonstrated in any given case, this Court retains the power, expressed in *Welch*, to read the statute in such a manner as to "ensure its application only to speech that is accorded no constitutional protection." *Id.* at 100. Doing so, however, does not require this Court to throw out the baby with the bathwater, in the process depriving numerous victims of unprotected conduct the legitimate protection that the Legislature intended,

"from harassment that may begin with words, but tragically end with violence." *Id.*

V. **THIS COURT SHOULD EXTEND THE RULE OF ZULLO
V. GOGUEN TO APPEALS UNDER CHAPTER 258E.**

Because the statute itself provides no explicit avenue of appeal, a petition under G.L. c. 211, §3 is currently the only mechanism for obtaining review of the grant or denial of a Chapter 258E order. This was once true of appeals under Chapter 209A as well. See, e.g., *Flynn v. Warner*, 421 Mass. 1002, 1003 (1995). However, in *Zullo v. Goguen*, 423 Mass. 679, 682 (1996), this Court determined that henceforth, and "[u]nless and until the Legislature decides otherwise, litigants seeking judicial review of an order made pursuant to Chapter 209A are directed to the Appeals Court." This Court assigned jurisdiction to the Appeals Court in order to advance "the policies of providing a '[u]niformity of treatment of litigants and the development of a consistent body of law.'" *Id.*, quoting *Department of Revenue v. Jarvenpaa*, 404 Mass. 177, 181 (1989).

This Court should extend the rule of *Zullo v. Goguen* to appeals under Chapter 258E. Like Chapter 209A plaintiffs, complainants under Chapter 258E may

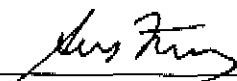
choose to petition for a restraining order in a number of different courts, including the Superior Court; the District and Boston Municipal Court Departments of the Trial Court; and, in some circumstances, the Juvenile Court. G.L. c. 258E, §2. The avenues and procedures for appeal differ depending on which court a victim petitions for a restraining order. For example, pursuant to Rule 3 of the District/Municipal Courts Rules for Appellate Division Appeals, appeals in the District Court or Boston Municipal Courts are taken by the Appellate Division of the District Court or the Appellate Division of the Boston Municipal Court respectively. This lack of uniformity in appellate procedure can potentially lead to the inconsistent development of case law. The existence of the new statute, moreover, raises the possibility that a complainant may seek remedies in the same proceeding under both Chapter 209A (for abuse committed by a family or household member) and Chapter 258E (for related misconduct by another person such as a friend of the abuser). Unless this Court acts, such proceedings would have to generate two appeals - one to the Appeals Court under *Zullo*, and one to this Court under c. 211, § 3 - even though they might

concern identical legal and factual issues.^{8/} Thus, judicial economy, along with all of the other "practical considerations for having all appeals go to the same court," *Zullo v. Goguen*, 423 Mass. at 682, favors the creation of a uniform venue for both Chapter 209A and Chapter 258E appeals.

Respectfully submitted,

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^{8/} See, e.g. *Spillane v. Chipello*, 2001-P-1115 and *Spillane v. Mistalski*, 2011-SJ-0389.