

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, ss.

SUPERIOR COURT
NORTHERN DIVISION

STATE OF NEW HAMPSHIRE

v.

ALEXANDRA ECKERSLEY

Case No. 216-2022-CR-03011

MEMORANDUM OF UNION LEADER CORPORATION
IN SUPPORT OF ITS PETITION TO INTERVENE
AND MOTION TO UNSEAL COURT RECORDS

Union Leader Corporation, (hereinafter “Union Leader”), through counsel, submits this memorandum in support of its Petition to Intervene and Motion to Unseal Court Records. "The right to open courtrooms and access to court records related to court proceedings is firmly supported by New Hampshire practice and common law principles, Part I, Articles 8 and 22 of our State Constitution and our guidelines for public access." Petition of Union Leader Corp., 147 N.H. 603, 604 (2002). "Such access is critical to ensure that court proceedings are conducted fairly and impartially, . . . and that the judicial process is open and accountable." Associated Press v. State of New Hampshire, 153 NH 120, 129 (2005) (*quotations omitted*). Furthermore, "public access to criminal trials permits the public to participate in and serve as a check upon the judicial process -- an essential component in our structure of self-government." State v. DeCato,

156 NH 570, 577 (2007), (*quoting* Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 606 (1982)).

To that end, New Hampshire Rule of Criminal Procedure 50 states:

(a) Access to Documents.

(1) General Rule. Except as otherwise provided by statute or court rule, all pleadings, attachment to pleadings, exhibits submitted at hearings or trials, and other docket entries (hereinafter referred to collectively as "documents") shall be available for public inspection. This rule shall not apply to confidential or privileged documents submitted to the court for *in camera* review as required by court rule, statute or case law.

(2) Burden of Proof. The burden of proving that a document or a portion of a document should be confidential rests with the party or person seeking confidentiality.

...

(b) Filing a Document Which Is Confidential In Its Entirety.

(1) The following provisions govern a party's obligations when filing a "confidential document" as defined in this rule. A "confidential document" means a document that is confidential in its entirety because it contains confidential information and there is no practicable means of filing a redacted version of the document.

...

(4) A party filing a confidential document shall identify the document in the caption of the pleading so as not to jeopardize the confidentiality of the document but in sufficient detail to allow a party seeking access to the confidential document to file a motion to unseal pursuant to subdivision (f) of this rule.

...

Throughout the course of this highly publicized case, the State has filed numerous motions to seal, and submitted pleadings and other documents under seal. Many of the documents have been filed as confidential in their entirety, despite the fact that the nature

of the pleading indicates that there is likely material information contained therein that is of great public interest and that there is a practicable means of filing a redacted version of the record. For example, the Motion for an Order Prohibiting Additional Trial Publicity, the Objections thereto, and the Order thereon, are sealed in their entirety. While there may be confidential information contained within those pleadings, the relief sought by the motion, the legal arguments for and against the motion, and the reasoning behind the request and Order, should be public information. The Mediation Memoranda, which likely contain facts already known to the public, legal argument, and other non-confidential information, are sealed. A Motion for Services other than Counsel is sealed in its entirety. What services? These are examples of the many Motions, Objections and Orders in this case that are completely sealed, despite the reasonable belief that there are practicable means of redacting confidential information from these important public records.

In many other instances, is impossible for anyone to determine what has been submitted and/or sealed, why the documents might be sealed, or whether there might be any practicable means of filing a redacted version, despite the fact that New Hampshire Rule of Criminal Procedure 50(b)(4), requires that the information available to the public indicate sufficient detail to allow a party seeking access to the confidential document to file a motion to unseal pursuant to the rule. In this case, pleading index # 17, for example, is entitled “Attachments A & B”, and #28 and #29 are captioned: “State’s Motion to Examine Items in Attachments”. These captions do not contain “sufficient detail” for a

member of the public or media to know the nature of the pleading, or the potential issues involved in a motion to unseal the document.

Whenever any member of the public seeks access to sealed court records, the party opposing disclosure must demonstrate that "there is a sufficiently compelling reason that would justify preventing public access to that document"; and that the Court "determine that no reasonable alternative to nondisclosure exists" and "use the least restrictive means available to accomplish the purposes sought to be achieved." Associated Press, 153 at 130. (*quoting* Petition of Keene Sentinel, 136 N.H. 121 (1992)). In this case, it is not at all clear that what, if any, reasons justify preventing public access to particular records, that there is no reasonable alternative to non-disclosure, or that the least restrictive means have been used to accomplish any necessary protection.

In Keene Sentinel, 136 N.H. 121, the New Hampshire Supreme Court mandated the following procedures and standards to be used when a member of the public or the media seeks access to sealed court records:

- I. When a member of the public or the media seeks access to a court record and is denied access because the record has been sealed, the party seeking access shall file a petition with the court requesting access to the record in question (i.e. Petition For Access To Court Records). . .
- II. The court shall separately examine each document in question *in camera* (in chambers with only counsel for the parties and for the petitioner present) on the record. During the *in camera* hearing, it shall rest within the sound discretion of the trial judge, taking into consideration the particular circumstances of the case at hand, to determine whether and to what extent the content of any document is to be revealed to a petitioner. There will be instances where the claimed countervailing rights of a party (for example, constitutional rights of a defendant in a criminal case or statutory

provisions granting or requiring confidentiality in certain cases) must not be rendered moot pending final resolution of the access issue. When appropriate, the document's subject matter, however, can be described in general terms such that persons objecting to closure can present an adequate argument to the court.

- III. The court shall determine if there is some overriding consideration or special circumstance, that is, a sufficiently compelling interest, that would justify preventing public access to the records. Thomson v. Cash, 117 N.H. 653, 377 A.2d 135 (1977) . The party seeking closure or nondisclosure bears the burden of proof under the standard set forth above. There is a presumption that court records are public. The court must determine that no reasonable alternative to nondisclosure exists and must use the least restrictive means necessary to effectuate the purposes sought to be achieved. **For example, instead of sealing an entire document because it has been determined that parts of it should not be accessible to the public, the court should consider if redaction of those parts is the appropriate least restrictive means. (Emphasis added).**
- IV. The court shall issue a general conclusory order setting forth its holding, and in a separate order shall set forth specific findings of fact and rulings of law to support its conclusion. The general conclusory order shall be made public. The specific order together with the record of the in camera proceeding shall be sealed. Keene Sentinel, 136 N.H. 121 at 130-131.

Certain information in this case may be understandably confidential, i.e. medical and mental health records and information, but this case also involves allegations of serious criminality, as well as questions about how the government handled a medical and mental health crisis. The mental health issues of the defendant, the conduct of the defendant that led to subject prosecution, as well as the conduct of the public officers involved, have been the subject of extensive news coverage and reporting that is already

available to the public. The resulting judicial process and records and should be available for the public's viewing and inspection.

“New Hampshire courts have always considered their records to be public, absent some overriding consideration or special circumstance.” Petition of State of New Hampshire (Bowman Search Warrants), 146 N.H. 621, 625 (2001) (quoting Thomson v. Cash, 117 N.H. 653, 654 (1977)). There public has no way of knowing whether there is an overriding consideration or special circumstance that is a sufficiently compelling interest that would justify the continued sealing of the records in this case. The processes and actions of the Court and the roles and actions of the County Attorney's Office and of defense counsel in cases of this nature are matters of grave public interest and concern. Any party seeking to keep documents sealed in this case should be required to file an index detailing the nature of the document, identifying the need for closure, and citing specific reasons why an entire document should remain sealed, and explaining why redaction of specific legitimately confidential portions of a document will not serve the need for partial closure. See Vaughn v. Rosen, 484 F. 2d 820 (1973) and Union Leader Corporation v. New Hampshire Housing Finance Authority, 142 N.H. 540 (1997).

Nowhere within the field of governmental accountability is the light of public scrutiny more critical than when it shines within our courts of law. The Constitution of New Hampshire and long standing Court holdings and practice require the sealing of

documents to be done only when there is a compelling governmental interest mandating such closure.

Respectfully submitted,
Union Leader Corporation
by its attorneys,

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Dated: June 12, 2024

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2024, I served the foregoing Memorandum through the Court's e-filing system to all registered counsel of record.

/s/ Gregory V. Sullivan

Gregory V. Sullivan