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Hillsborough Superior Court Northern District
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THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
NORTHERN DISTRICT

SUPERIOR COURT

STATE OF NEW HAMPSHIRE

v.

ADAM MONTGOMERY

Docket No. 216-2022-CR-02372

PETITION AND MOTION OF UNION LEADER CORPORATION AND THE NEW ENGLAND FIRST AMENDMENT COALITION TO INTERVENE AND TO UNSEAL COURT RECORDS

Union Leader Corporation, (hereinafter "Union Leader"), and the New England First Amendment Coalition, (hereinafter "NEFAC"), through counsel, move to intervene in this case, and to unseal court records. In support of this Motion, Union Leader and NEFAC state as follows:

1. Union Leader is a corporation organized and existing under the laws of the State of New Hampshire with a principal office located in Manchester, Hillsborough County, and is the publisher of newspapers of general circulation, and other media, throughout the state of New Hampshire, and elsewhere;

2. The New England First Amendment Coalition is a non-profit corporation organized and existing under the laws of the Commonwealth of Massachusetts and it is dedicated to advancing protection for First Amendment and Right-to-Know rights in the six New England states.

3. As the New Hampshire Supreme Court has explained:

> "The right of a party to intervene in pending litigation in this state has been rather freely allowed as a matter of practice." Brzica v. Trustees of Dartmouth College, 147 N.H. 443, 446, 791 A.2d 990 (2002) (*quotation omitted*). A trial court should grant a motion to intervene if the party seeking to intervene has a right involved in the trial and a direct and apparent interest therein. Snyder v. N.H.

> Savings Bank, 134 N.H. 32, 35, 592 A.2d 506 (1991). It is within the trial court's discretion to grant intervenor status. Samyn–D'Elia Architects v. Satter Cos. of New England, 137 N.H. 174, 177, 624 A.2d 970 (1993).

Lamarche v. McCarthy, 158 N.H. 197, 200 (2008).

4. The Union Leader Corporation seeks to advance the public interest in access to governmental proceedings . . . "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*). Union Leader Corporation and the public at large have "a right involved in the trial and a direct and apparent interest therein," Lamarche, 158 N.H. at 200

5. On March 31, 2023, WMUR-TV filed a motion to unseal a Probable Cause Statement which was filed in this case on October 25, 2022. The defendant, Adam Montgomery, filed an Objection to the Motion to Unseal on April 3, 2023. This Court (Messer, J.) granted the Motion to Unseal the Probable Cause Statement on April 20, 2023. Defendant filed a Motion to Reconsider the April 20th Order, on April 28, 2023, which, on information and belief, is currently pending before this Court. Union Leader and NEFAC seek access to that Probable Cause Statement, as well as any and all other case records under seal.

6. "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)). 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." AP v. State, 153 N.H. 120, at 130 (2005). *See also* Petition of Keene Sentinel, 136 N.H. 121, at 129-130 (1992).Id. at 130.

7. The Petitioners hereby assert that the records remain under seal without a compelling interest justifying such closure. The processes of the Court and the role of the County Attorney's Office in cases of this nature are matters grave public interest and concern. Nowhere within the field of governmental accountability is the light of public scrutiny more critical than when it shines within our courts of law. None of the alleged interests advanced by the defendant in his Objection to the Motion to Unseal or in his Motion to Reconsider justify keeping the requested records sealed, for all of the reasons articulated by this Court's April 20, 2023 Order.

8. Undersigned counsel has attempted to contact counsel for the defendant, Caroline Smith, Esq., to inquire as to the defendant's position regarding the relief requested in this Petition and Motion. The Attorney General's Office takes no position on this Petition and Motion. WMUR-TV has assented to the allowance of this Petition and Motion. No response has been received from Attorney Smith.

WHEREFORE, Union Leader and NEFAC now pray that the motion to intervene and unseal be granted, and for such other and further relief as the Court deems just.

Respectfully submitted,
Union Leader Corporation and the
New England First Amendment
Coalition,
by their attorneys,

/s/ Gregory V. Sullivan
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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2023, I served the foregoing Motion to Intervene and to Unseal Records through the Court's e-filing system to all registered counsel of record.

/s/ Gregory V. Sullivan
Gregory V. Sullivan