

THE STATE OF NEW HAMPSHIRE

MERRIMACK COUNTY, ss.

6TH CIRCUIT COURT
PROBATE DIVISION—CONCORD

VALERIE C. SANTILLI, INDIVIDUALLY, AND AS EXECUTRIX OF
THE ESTATE OF JOHN C. CHAKALOS, ELAINE CHAKALOS
AND CHARLENE GALLAGHER,
PETITIONERS

v.

NATHAN JAMES CARMAN,
RESPONDENT

313-2017-EQ-00396

**MEMORANDUM IN SUPPORT OF UNION LEADER CORPORATION'S
MOTION TO INTERVENE AND TO UNSEAL ALL PETITIONS,
MOTIONS, EXHIBITS AND OTHER DOCUMENTS**

This memorandum is filed on behalf of Union Leader Corporation, (hereinafter "Union Leader"), and the New England First Amendment Coalition, (hereinafter "NEFAC"). 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. NEFAC is a non-profit corporation organized and existing under the laws of the Commonwealth of Massachusetts formed for the purpose of the

promotion of social welfare by defending and enlarging citizen access to governmental information. On March 29, 2018, Mark Hayward, reporter employed by Union Leader filed a Motion to Unseal all Petitions, motions, exhibits, and other documents in this case.

The New Hampshire Constitution provides: "Free speech and liberty of the press are essential to the security of freedom in a state: They ought, therefore, to be inviolably preserved." N.H. CONST. pt. I, art. 22. Our constitution also states that "[g]overnment ... should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted." N.H. CONST. pt. I, art. 8.

In the case of Thomson v. Cash, 117 N.H. 653, 377 A.2d 135 (1977), the Supreme Court stated that "[t]he courts of New Hampshire have always considered their records to be public, absent some overriding consideration or special circumstance," *id.* at 654, 377 A.2d at 136, and held that the burden of proving the overriding consideration or special compelling circumstance rests with the party seeking nondisclosure. In the case of In re Keene Sentinel, 136 N.H. 121, (1992), the Supreme Court gave further specific guidance to our Courts when a party to pending or concluded litigation seeks to deny public access to documents filed in court. The Court explained that in the case of Keene Publishing Corp. v.

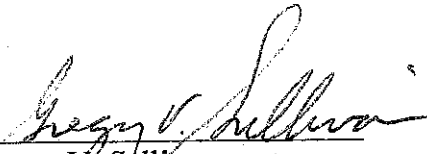
Keene District Court, 117 N.H. 959, 380 A.2d 261, “we placed the burden of proof on the party seeking nondisclosure, because the “presumption is strongly in favor of open judicial proceedings and unsealed records.” *Id.* at 962, 380 A.2d at 263.

The burden is on the Petitioners to articulate and demonstrate with specificity the compelling need for nondisclosure and sealing. In the present case the Petitioners attempt to invoke a privacy consideration to “protect the confidential personal information” of a decedent. A decedent has no valid claim to confidential personal information that can outweigh the public’s constitutional rights of access to court records. Secondly, the Petitioners cite “federal and state murder investigations” and their own “concurrent investigation” in to Mr. Chakalos’ untimely death. The Petitioners attempt to articulate justifications related to “murder investigations” in this probate action is without a valid basis. In order to properly invoke such an exemption from the public’s right to know, the Petitioners must prove actual interference with law enforcement proceedings, and that the records were compiled for such law enforcement proceedings. See Lodge v. Knowlton, 118 N.H. 574, (1979).

WHEREFORE, Union Leader and NEFAC now pray that the motion to unseal filed on behalf of Union Leader be allowed, and for such other and further relief as the Court deems just.

**UNION LEADER AND NEFAC RESPECTFULLY REQUEST THE
OPPORTUNITY TO PRESENT ORAL ARGUMENT IN SUPPORT
OF UNION LEADER'S MOTION TO UNSEAL ALL PETITIONS,
MOTIONS, EXHIBITS AND OTHER DOCUMENTS**

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



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Dated: April 10, 2018

CERTIFICATE OF SERVICE

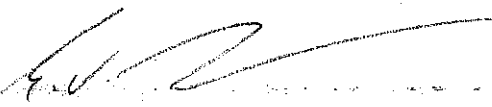
I, Gregory V. Sullivan, do hereby certify that a copy of the foregoing memorandum was served on all parties on April 10, 2018, by mailing same via first class mail, postage pre-paid, to:

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and to counsel of record for the petitioners:

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