

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, ss.

NO.SJ2024-0018  
Cambridge District Court

TRUSTEES OF BOSTON UNIVERSITY AND  
BOSTON GLOBE MEDIA PARTNERS LLC,

v.

CLERK-MAGISTRATE OF THE CAMBRIDGE DISTRICT COURT

MOTION OF  
MASSACHUSETTS NEWSPAPER PUBLISHERS ASSOCIATION  
AND  
NEW ENGLAND FIRST AMENDMENT COALITION  
FOR LEAVE TO SUBMIT A BRIEF AS AMICUS CURIAE AND TO PARTICIPATE  
IN ORAL ARGUMENT

NOW COME the Massachusetts Newspaper Publishers Association and the New England First Amendment Coalition and move, pursuant to Rule 17 of the Massachusetts Rules of Appellate Procedure for leave to file a brief as amici curiae in this matter to support the petition of the Trustees of Boston University and Boston Globe Media Partners, LLC, and to participate in the oral argument to the extent such argument is held.

In support thereof of this motion it is stated:

1. The Clerk-Magistrate of Cambridge District Court has allowed the show cause hearing to be open to the public.

2. This Court has allowed the Association of Magistrates and Assistant Clerks of the Trial Court of the Commonwealth to intervene and to file a brief as amicus curiae.

3. This Court has recently allowed individuals identifying themselves as John Does #1-13 involved in the clerk-magistrate's show cause hearings to intervene and to file joint responses by today, January 22, 2024.

4. This Court has previously allowed Massachusetts Newspaper Publishers Association leave to submit as amicus curiae in *Eagle-Tribune v. Clerk-Magistrate*. See, *Eagle-Tribune v. Clerk-Magistrate* 448 Mass. 647(2007).

5. Both proposed amici hereunder count newspapers and other media companies as members whose interests are directly affected by the issues presented in this matter.

6. In two Supreme Judicial Court cases involving press challenges to closed Clerk-Magistrate show cause hearings, this Court established a standard that requires clerk magistrates to consider "not only the potential drawbacks of public access, but its considerable benefits." *Eagle-Tribune v. Clerk-Magistrate* 448 Mass. 647, 656 (2007). "Where an incident has already attracted public attention prior to a show cause hearing, the interest in shielding the participants from publicity is necessarily diminished, while the public's legitimate interest in access is correspondingly stronger." *Id.*

7. Such a balance prompted the clerk-magistrate of the Cambridge District Court to open to the public the show cause hearings for 28 potential sex-for-hire charges arising out of the United States Attorney's recent prosecutions of a multi-state prostitution enterprise in Virginia and Massachusetts.

8. However, inexplicably, the clerk-magistrate elected to suppress evidence and submitted materials for such open hearings, thus frustrating the open nature of the hearings.

9. This sex-for-hire matter has attracted wide public attention and media coverage. The matter, unlike neighbor disputes and other minor matters of low public interest typically before a clerk-magistrate, cries out for open proceedings and open access to named individuals and evidence submitted during the hearing. This matter is of significant public importance and interest. Many of the applicants have been identified as individuals serving the public: an attorney, a doctor, a scientist, and governmental employees.

10. The privacy interests in such named individuals alleged to have participated in the sex-for-hire enterprise are further diminished by their own actions. Allegedly, each individual was required to submit to a verification process listing their personal qualifications to complete an application for brothel privileges, including: "their full names, email address, phone number, employer and *reference if they had one.*"

Emphasis supplied (See Appendix 4 in Boston Globe brief). Any privacy considerations are outweighed by the public interest in disclosure.

11. In considering the significant criminal applications, the clerk-magistrate needs to review not only the application by the government, but all submitted papers as evidence to allow a reasoned and informed determination of whether a complaint should issue. There may be witnesses in support of each applicant. The content of all this evidence, in whatever form, cannot be a secret to the public. The integrity of the judicial process is paramount.

12. Given the John Does' position in society as individuals serving the community in important positions, such as legal counsel, medical professionals, or governmental employees, the public may question whether their positions or their potential influence affects the issuance of a criminal complaint or a dismissal of the application. Transparency into the hearing and the evidence to be considered provides the public the tools to evaluate the judicial process. Secrecy simply erodes confidence in the process.

13. There are no compelling interests to override the strong and legitimate public interests in an open proceeding to justify the drastic remedies of secret evidence (during the hearings) or future impoundment. The need for transparency is

amplified should a criminal complaint not issue. See, *Eagle-Tribune, supra* at 657 (“The transparency that open proceedings afford may be especially important if a well-publicized show cause hearing results in a decision not to bring charges. In such cases, the public may question whether justice has been done behind the closed doors of the hearing room.”)

14. “People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980).

15. As Justice Holmes observed more than a century ago, “[i]t is desirable that [judicial proceedings] should take place under the public eye . . . because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.” *Cowley v. Pulsifer*, 137 Mass. 392, 394 (1884). Such a standard applies equally to evidence proffered in a public hearing.

16. The press’s ability to keep the public informed is premised in large part on open access to the court system, and on its ability to examine and report on submitted judicial documents. Non-disclosure (whether before, during, or after any such hearing) to the public would inhibit the public’s

understanding of the process and serve to diminish or undermine the credibility, authority, and integrity of the Clerk-Magistrate's decision.

17. The amici play an important role in offering access and clarity into the process, often serving as the sole, or most accessible, connection between the judicial process and the public. The interest in ensuring that the balancing test be affirmed, and further refined if needed, is of tantamount importance to the numerous members of each amicus.

18. The amici suggest that their brief will consider important issues surrounding the denial of disclosure and its impact on the ability to now, and in the future, accurately and transparently report on significant public criminal matters.

19. The amici will address reasons for disclosure even if a request for a criminal complaint is denied by a clerk-magistrate. The need for complete disclosure to support such a decision is essential to public confidence in the judicial system, and serves as an appropriate and important check and balance of the process.

20. Should the Court allow the amici's motion, the amici request: (i) to review briefs submitted by all parties and intervenors, (ii) to file a brief supporting the amici's position no later than January 26, 2024, and (iii) that the

proceedings in the district court be stayed until this Court has ruled on these issues.

January 22, 2024

Respectfully Submitted,  
Massachusetts Newspaper Publishers  
Association and  
New England First Amendment  
Coalition  
By their attorney,

/s/ Peter J. Caruso

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CERTIFICATE OF SERVICE

I, Peter J. Caruso, certify that I have made service of this Motion to Intervene upon the following by e-mail on January 22, 2024:

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