

## **Berlin Sun's response to State's Objection to Motion to Unseal Affidavit and Arrest Warrant.**

Now comes Barbara Tetreault, managing editor for the Berlin Sun, responding to the State of New Hampshire's Objection to the Sun's earlier motion to unseal the affidavit and arrest warrant in Circuit Court Case No. 451-2018-CR-297.

In support of its original request to unseal, the Berlin Sun submits the following:

- 1) The public interest in this case is extraordinary with the defendant and alleged victim both candidates for public office in the upcoming November general election. The defendant is seeking his third term in the state Senate, where he serves as one of 24 senators. The alleged victim is chair of the Coos County Democratic party and a candidate for Coos County treasurer.
- 2) The defendant was arrested on August 2, on nine Class A misdemeanor counts, including two domestic violence charges. The date of the arrest was two months before the Sept. 11 primary and approximately four months before the Nov. 6 general election
- 3) The state argues the investigation is still on-going and unsealing the filings "can chill and thwart these investigative leads." It said the affidavit reveals the nature, scope and direction of the state's investigation. And finally it expresses the fear that potential witnesses may tailor their stories if the documents are released.

4) In *Petition of Keene Sentinel*, 136 N.H.121 (1992), the N.H. Supreme Court ruled court records are public and puts the burden of proof on the party seeking non-disclosure.

5) Citing the *Petition of State of New Hampshire (Bowman Search Warrants)*, 146 N.H. 621, 625 (2001) the state argues the Court has held an ongoing pre-indictment criminal investigation is a sufficient basis for non-disclosure. The case cited in *Bowman* was a felony investigation in which no indictment had been returned or arrest made. That does not apply in this case. The defendant has been charged, arrested, and arraigned on misdemeanor charges. There is no actual pending criminal investigation. While the state may be continuing its investigation, it has already decided there is compelling enough evidence to bring charges.

6) The state argues potential witnesses' testimony may be tainted by disclosure and some may "tailor" their stories or "deny" that they possess certain knowledge and information. First, that appears to be a cynical belief that witnesses are easily swayed from providing the truth. In any case, if the Court adopted the state's arguments with regard to witness testimony, it would justify withholding documents in every criminal case. That clearly runs counter to the Court's decision in *Keene Sentinel*, which ruled the presumption is strongly in favor of open judicial proceedings and unsealed records. In that case, the Court ruled the divorce records of a political candidate were open for public inspection.

7) Furthermore, in the *Keene Sentinel* decision the Court said there must be a determination that no reasonable alternative to disclosure exists. The Court must use the least restrictive means possible including sealing parts rather than the entire document(s).

8) The court in *Keene Sentinel* wrote that there has to be some “overriding consideration or special consideration, that is, a sufficiently compelling interest, that would justify preventing public access”. In this instance, there is an overriding interest in making the affidavits public. A candidate for re-election to one of the state’s highest elected positions has been arrested on criminal charges. The public should be allowed to see the arrest warrant and affidavits that resulted in the defendant’s arrest.

Counsel for the defendant, Donna Brown, Esquire, was sent a copy of the Berlin Sun’s motion to unseal and has not responded. By failing to respond, the defense waives its objection to the motion to unseal.

WHEREFORE, the Berlin Sun respectfully requests that this Honorable Court:

(A) Grant the Berlin Sun’s request to unseal the arrest warrant and affidavit

(B) Grant such further relief as may be deemed just and proper.

Respectfully submitted

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I hereby certify that a copy of this response was emailed this day to Geoffrey W.R. Ward, senior assistant attorney general representing the state and Donna J. Brown, Esquire, counsel of record for the defendant.

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