

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY, SS

SUPERIOR COURT

Case No. 218-2022-CV-00803

Eric Spofford

Plaintiff

v.

New Hampshire Public Radio, Inc., et al.

Defendants

**NHPR Defendants' Reply in Support of Motion to Vacate
or Modify the Court's Discovery Order**

Defendants New Hampshire Public Radio, Inc. ("NHPR"), Lauren Chooljian, Jason Moon, and Dan Barrick ("NHPR Defendants") reply as follows in support of their Motion to Vacate or Modify the Court's Discovery Order.

ARGUMENT

Spofford's objection misconstrues the pending motion. The motion does not ask the Court to sanction Spofford, but to reweigh the equities that led it to a novel exercise of its discretionary case-management authority in light of significant new information.¹ The *in camera* discovery the Court ordered even after granting NHPR's motion to dismiss Spofford's complaint is not among "the ordinary and available tools of civil litigation" (Objection ("Obj.") at 2); it is an extraordinary procedure that the Court appeared to recognize diverges from "case law from New Hampshire and other jurisdictions supporting the proposition that pre-discovery dismissal

¹ NHPR Defendants may seek sanctions against Spofford as further information comes to light suggesting that he knew that key allegations in his complaint were false, but do not do so at this time. It is interesting in this regard that Spofford cites *Kukene v. Genuardo*, 145 N.H. 1, 6, 749 A.2d 309, 314 (2000) for the proposition that "[a] plaintiff's motive in bringing an action does not determine whether an action is frivolous." (Obj. at 4.)

of a defamation action for failure to allege actual malice is proper.” (Discovery Order at 2.) The order reflects the Court’s equitable balancing of the circumstances it was aware of when it issued the order. NHPR has explained why the criminal complaint constitutes a material change to those circumstances that may affect the Court’s analysis of the situation. This is not about whether Spofford should be sanctioned; it is about whether he should receive what NHPR believes is unwarranted special treatment.

Spofford accurately notes that “the NHPR Defendants say Eric ‘has been linked to criminal activity designed to punish NHPR personnel for exercising their First Amendment Rights’” *Id.* at 3. Rather than argue otherwise, which he cannot plausibly do, Spofford: (A) accuses NHPR of “*inaccurately* stating that ‘federal investigators have determined that . . . [Subject 2²]’” was part of the conspiracy alleged in the criminal complaint; and (B) suggests that “allegations about Eric . . . are limited to his relationship with an uncharged subject [Subject 2] who, separately, the government alleges, had suspiciously timed phone calls with two of the defendants.” *Id.* at 2, 4 (emphasis added). These statements mischaracterize the affidavit, which states that the criminal defendants did not just “ha[ve] suspiciously timed phone calls” with Subject 2, but in fact *conspired with* (among others) *Subject 2*:

there is probable cause to believe that COCKERLINE, SANIATAN, and WASELCHUCK conspired with each other and with at least one other person, identified below as “Subject 2,” to harass and intimidate two [NHPR] employees . . . in retaliation for a news story that NHPR published in March 2022 detailing allegations of sexual misconduct by a former New Hampshire businessperson and close, personal associate of Subject 2.

(Ex. A to Motion (“Mot.”) ¶ 3.)

² The affidavit does not name Subject 1 or Subject 2, but Spofford does not deny that he is the person identified as Subject 1, and the affidavit itself makes that obvious. (*See* Ex. A to Mot. ¶ 7.) Subject 1 is mentioned in the government’s affidavit more than a dozen times. (*See id.*)

NHPR’s motion correctly states that federal investigators have determined that Subject 2 was part of the conspiracy alleged in the criminal complaint—not just that Subject 2 “had suspiciously timed phone calls” with the defendants. It is true that the government has not specifically alleged that *Spofford* “knew about or joined in [the] conspiracy” (Obj. at 2), but it was not an act of “recklessness” for NHPR to file a motion “suggesting”—based on the totality of what the government has alleged—that he did. That is what the criminal complaint suggests. Why would the government reference “Eric’s communications with Subject 2” in support of the criminal complaint if it had not determined that they were in fact “suspicious”? *Id.*

NHPR does not “press this Court to resolve ‘doubt’ against Eric” *Id.* at 4. *Spofford* is entitled to the benefit of the doubt in the sense that the Court must “assume all facts pleaded in the complaint to be true and construe all reasonable inferences drawn from those facts in the plaintiff’s favor.” *Kurowski v. Town of Chester*, 170 N.H. 307, 310, 172 A.3d 522, 524 (2017). The Court applied that standard when it reviewed NHPR’s motion to dismiss. Now that the Court has granted that motion, he is not entitled to discovery, *in camera* or otherwise, under the ordinary rules of civil litigation. For the Court to conclude that such discovery is no longer warranted or that further cost-shifting is appropriate under the emerging circumstances would not be to resolve doubt against *Spofford*, but simply to decline to give him unprecedented treatment, at NHPR’s expense, that he has not earned.³

³ NHPR explained in its motion to dismiss that its coverage of the vandalism did not in any way “push[] conclusions about Eric without the factual support to substantiate the reporting” (Obj. at 3)—an argument to which *Spofford*, despite continuing to recite the false accusation, has never responded. *See Motion to Dismiss* at 25–27.

WHEREFORE, the NHPR Defendants respectfully request that the Court grant their motion.

Dated this 28th day of June, 2023.

Respectfully Submitted,
New Hampshire Public Radio, Inc., Lauren
Chooljian, Jason Moon, Dan Barrick

By their Attorneys,
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LLP

/s/ Sigmund D. Schutz

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CERTIFICATE OF SERVICE

I hereby certify that on this date this document was copied to all counsel via the electronic filing system.

/s/ Sigmund D. Schutz

Sigmund D. Schutz, Esq.