

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Docket No.: 25-10886-JDH

STOUGHTON MEDIA ACCESS
CORPORATION,

Plaintiff,

v.

THE TOWN OF STOUGHTON,
MASSACHUSETTS, THOMAS CALTER III,
STEPHEN CAVEY, and JOSEPH MOKRISKY,
in their individual and official capacities,

Defendants

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The Defendants, the Town of Stoughton, Thomas Calter III, Stephen Cavey, and Joseph Mokrisky, in their individual and official capacities ("Defendants"), submit this opposition to Plaintiff's Emergency Motion for Temporary Restraining Order and Preliminary Injunction. The Plaintiff, Stoughton Media Access Corporation's ("SMAC") motion should be denied as it will not be able to establish a likelihood of success on the merits as fundamentally, at the heart of this matter is a contractual dispute, not a constitutional violation.

Pursuant to the 2023 Access Corporation Agreement, SMAC is an agent of the Town tasked with providing Public Educational and Governmental Access ("PEG") channel (Public Access Cable Channel) for the Town. SMAC has repeatedly and egregiously violated the applicable Access Corporation Agreement (Exhibit A), executed on 2023, with the Town of Stoughton by

refusing to comply with accountability and transparency requirements, provide required financial documents under the Agreement, as well as violating their of contractual and statutory obligations to provide unbiased PEG access programming by not acting in favor or against any particular political issue or candidate.

On October 1, 2024, the Town, faced with non-compliance with the 2023 Agreement, issued a formal Article VII notice of breach to SMAC. In response, SMAC, through counsel, sent a November 27, 2024, letter accusing the Town of violating its First Amendment rights, and provided some, but not all, of the documentation required by the Agreement. After receipt of SMAC's response, the Town sent two Selectboard members to negotiate a resolution to the issues with SMAC. While these negotiations were ongoing, SMAC sent the Town a copy of its Federal complaint – clearly in response and in retaliation for October 1, 2024, notice of breach. The plaintiff never cured its breach, as a result on September 11, 2025, the Town noticed an October 9, 2025, hearing to determine if a breach of the agreement has occurred, and if so, to decide what should be the remedy.

The Court should not issue injunctive relief or a temporary restraining order as this matter is a garden variety contractual dispute. SMAC will not be able to establish a likelihood of success on the merits as no matter how they cast this contractual dispute it simply is not a constitutional violation or retaliation for exercising First Amendment rights. Furthermore, the October 9 hearing is dictated and required by the terms of the very agreement under which SMAC operates. The balance of the equities favors the Town in this instance, so that it may enforce the Agreement and that the public will receive the benefit of the bargain. Accordingly, Plaintiff's motion should be denied.

I. Standard for issuance of a Preliminary Injunction

As the moving party, the Plaintiff bears a heavy burden. “A preliminary injunction is an extraordinary remedy never awarded as of rights.” Winter v. Natural Res. Def. Council, 555 U.S. 7, 24 (2008). To succeed here it must show “(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the likelihood of success on the merits, the risk of irreparable harm outweighs the potential harm in granting the injunction.” Tri-Nel Mgmt. v. Barnstable Board of Health, 433 Mass. 217, 219 (2001); see also GTE Products Corp. v. Stewart, 414 Mass. 721, 722-723 (1993). Additionally, before issuing the preliminary injunction, a judge is required to determine that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public. Commonwealth v. Mass. CRINC, 392 Mass. 79, 89 (1984). SMAC cannot meet this high burden.

II. The Court Should Not Issue a Preliminary Injunction or a Temporary Restraining Order

A. SMAC Cannot Establish Likelihood of Success of the Merits

1. This is a contractual dispute, not a constitutional violation.

SMAC has repeatedly and egregiously violated the applicable Access Corporation Agreement (Exhibit A) with the Town of Stoughton by refusing to comply with accountability and transparency requirements, provide the required financial documents under the Agreement, as well as violations of contractual and statutory obligations to provide unbiased PEG access programming by not acting in favor or against any particular political issue or candidate. To wit- SMAC has refused to provide copies of its Bylaws or meet with the Selectboard as required by §§ of Access Corporation Agreement; failed to provide required inventories, capital management plans and annual financial audits. Further, during the time that the citizens of Stoughton were considering whether the Town should construct a new South Elementary School, SMAC violated its

contractual requirement to provide unbiased programming by broadcasting much more anti-School than pro-School programs (and refused to provide programming logs). While admittedly, the Town finally received an inventory and some financial documents for the *very first time* in July of this year (some ten months after the notice of breach), SMAC remains in breach of other important contractual obligations.

a. SMAC has a long history of violating its Agreement with the Town.

SMAC is a Massachusetts 501 (c) (3) non-profit corporation formed for the purpose of operating public access television channels in the Town of Stoughton (SMAC Bylaws, Article I (a), (d)). SMAC derives its authority from being "designated" by the Stoughton Select Board as the town's access provider as provided for in the town's current Comcast cable television license (December 1,2022), sec. 1.1 (a). Being thus designated entitles SMAC to receive the PEG Access funding grants in the Comcast license (Exhibit B).

The Town and SMAC first entered into an Access Agreement, confirming the town's designation and specifying the rights and responsibilities of each party, in December 2009, and the agreement was renewed up to August 2, 2022. SMAC operated without a contract thereafter, until the renegotiation of the rights duties and responsibilities of the parties, cumulating in the present, operative Access Corporation Agreement. The current agreement was intended to address the serious contractual performance issues that occurred during the pendency of the previous contract. During that ten plus year timeframe, SMAC did not adhere to its contractual obligations and was unable to provide the required paid membership lists, documentation related to notice of SMAC's annual meetings, other SMAC meeting notices, evidence of proper notice of public meetings, failed to maintain proper financial records and failed to ask the Selectboard appoint a new board member – leaving the seat vacant.

In 2020, the SMAC Board of Directors commissioned the “Hausammann Report” to review SMAC operations and procedures. The Report found express violations of SMAC’s own bylaws, as well as ineffectiveness in administration, management, and oversight in an organization that received hundreds of thousands of dollars annually by way of the Access Agreement.

As a result of these contractual violations and Town concerns, in 2023 the Selectboard and SMAC renegotiated the terms of the previous contract, resulting in the current agreement, attached hereto as Exhibit A.

b. SMAC’s contractual violations continued under the 2023 Access Corporation Agreement

Despite significant efforts from the Town to reform and reset the relationship with SMAC with adoption of the new, revised Access Corporation Agreement, SMAC continued to remain in non-compliance with its obligations. As such, on October 1, 2024, the Selectboard sent an Article VIII Notice of Breach, notifying SMAC of the breach of its obligations and its right to cure. (Exhibit C). Relevantly the Notice delineated violations of Article XI, §4, and multiple violations of Article V, §§5,9 and §11. That same day, Town Counsel sent SMAC a demand for records and litigation hold notice related to the ongoing breach. (Exhibit D).

Subsequently, the Town decided to not proceed with the public hearing at that time and sent Selectboard members Roberts and Carrara to negotiate with SMAC. During the negotiations after the notice of breach of contract, SMAC sent a draft copy of its federal complaint, clearly in response and in retaliation to the notice of breach. The Town waited almost a year to notice the hearing on SMAC’s breach of contract as it was trying to resolve the underlying issues with SMAC and bring SMAC into compliance with its obligations under the Access Corporation Agreement.

The timing is relevant, the Town's notice to SMAC of its breach long predated the instant litigation. Further it's clear that the notice of breach was the precipitating event triggering the lawsuit; and that the lawsuit was filed in retaliation to the notice of breach.

c. The Notice of Breach and Notice of Hearing were as result of SMAC's breach of contract.

SMAC attempts to deflect from its contractual deficiencies by correlating its bar from the Elementary School Building Independent Working Group ("Working Group") meeting with the October 1, 2024, Notice of Breach of Contract. However, the cause of the Town's concerns with SMAC's performance under the Agreement was SMAC's ongoing failure to perform its obligations. As set forth in that letter SMAC's breaches included:

Under Article XI, Section 4, the Agreement requires SMAC to, within forty-five (45) days of the full execution of the Agreement, i.e. by September 23, 2023, update and amend its Bylaws as may be necessary or advisable to be consistent with this Agreement. The Select Board has no evidence SMAC has complied with Article XI, Section 4 despite the passage of over a year since the Agreement was executed. Under Article V, Section 5, the Agreement requires that the president of the S.M.A.C. Board of Directors or his or her designee shall provide the Select Board with a quarterly update on the status of operations and capital planning. No such update has ever been provided despite the passage of over a year since the Agreement was executed.

Under Article V, Section 9 of the Agreement, "[r]eviews, reports or audits of its finances and operations shall be conducted and provided annually by S.M.A.C. to the Issuing Authority and MUNICIPALITY within ninety (90) days after the close of S.M.A.C.'s fiscal year or within sixty (60) days after the filing of its state and federal tax returns...The Select Board has no evidence SMAC has complied with Article V, Section 9 despite the passage of over a year since the Agreement was executed.

Article V, Section 11 of the Agreement requires that, at the time of filing the Annual Review, Report and/or Audit, SMAC shall provide an inventory of its equipment and facilities together with a statement of its condition and corrective action, if any needed, taken or recommended to be taken to maintain all items in satisfactory condition. The Select Board has no evidence SMAC has complied with Article V, Section 11 despite the passage of over a year since the Agreement was executed.

Article V, Section 11 of the Agreement requires that SMAC shall prepare and approve annually a revolving three-year capital budget which shall be included in the President's quarterly update to the Select Board. The Select Board has no

evidence SMAC has complied with Article V, Section 11 despite the passage of over a year since the Agreement was executed.
(Exhibit C)

The noted contractual deficiencies above are wholly unrelated to the Working Group and are emblematic of the ongoing issues with SMAC's performance.

2. SMAC's Claims Are Barred by the Neutrality Requirements It Contractually Accepted

SMAC's First Amendment claims are barred because it contractually agreed to limit its editorial discretion through the Access Corporation Agreement's neutrality provisions (*see* Article v §13)¹. The Agreement's provisions are voluntary restrictions that SMAC accepted in exchange for government funding, reasonable content-based (but viewpoint-neutral) restrictions. Further, the neutrality provision is consistent with the government's interest in providing balanced community programming, and subject to judicial enforcement like any contract term. SMAC cannot invoke the First Amendment to escape obligations it voluntarily assumed. Board of County Commissioners v. Umbehr, 518 U.S. 668, 677 (1996) (government may impose restrictions on independent contractors that it could not impose on general public). See also Anderson v. City of Bos., 376 Mass. 178, 200 (1978) (Use of public facilities improper on issue of public concern unless each side had equal representation and access).

3. SMAC Has No First Amendment Right to Forum Access

The Working Group meetings were not public forums, and as such SMAC's claims fail because it has no constitutional entitlement to forum access.² The Town Manager prohibited

¹ Section 13 "Political Activities Prohibited"

No funds nor facilities nor equipment provided hereunder shall be used for any partisan political activity or to further the election or defeat any particular candidate for public office. Such prohibition shall not apply to public interest forums, public presentations or the like where the facilities are available for the expression of all points of view for informational purposes.

² Although the initial vote on the debt exclusion to construct the new school failed, it later passed on April 10, 2025.

videoing the Working Group meeting as he wanted to assure candid discussion amongst the group members, and some of the members joined the group with the condition that they would not be filmed. SMAC had no First Amendment right to record the Elementary School Building Independent Working Group meetings. The Working Group was a temporary advisory body, convened by the Town Manager for a specific purpose, not subject to Open Meeting Law requirements (see Exhibit E, Open Meeting Law Decision) and accordingly, not a traditional or designated public forum.

Reasonable restrictions on the right to film may be imposed when the circumstances justify them. Gericke v. Begin, 753 F.3d 1, 7 (1st Cir. 2014). See Houchins v. KQED, Inc., 438 U.S. 1, 16 (1978) (no constitutional right of access to government information or facilities); see also Pitta v. Medeiros, 90 F.4th 11, 23 (1st Cir.), cert. denied, 144 S. Ct. 2631, 219 L. Ed. 2d 1269 (2024). The Town Manager's decision to exclude cameras from Working Group meetings to facilitate candid discussion constitutes a reasonable time, place, and manner restriction, not viewpoint discrimination.

Further, SMAC has conflated access rights with editorial control. The Agreement granted SMAC editorial control over content it produces, not unrestricted access to all government meetings. The Town has broad discretion to determine which meetings to open to recording and which to conduct without cameras present. Article V §3, entitled “Coverage of Local Meetings” requires SMAC to provide live coverage of all regularly scheduled meetings of the Selectboard, School Committee and Town Meeting. SMAC shall provide coverage of other meetings at the request of the Town. By the plain language of the Access Corporation Agreement, SMAC’s ability to broadcast non-specified meetings is at the request of the Town. Accordingly, it is the Town that decides what additional meetings, if any, are broadcast by SMAC.

4. SMAC Cannot Establish Actionable Retaliation Under First Amendment Standards

To prevail on a First Amendment retaliation claim, SMAC must prove: (1) it engaged in constitutionally protected conduct; (2) the defendants took adverse action against it; and (3) the protected conduct was a substantial or motivating factor for the adverse action. Nieves v. Bartlett, 139 S. Ct. 1715, 1722 (2019). SMAC cannot satisfy this standard for multiple reasons.

a. SMAC's Conduct Was Not Protected Speech

SMAC's attempt to record the Working Group meeting was not constitutionally protected activity. As explained above, there is no First Amendment right to *record* the Working Group meeting. Moreover, SMAC's alleged editorial decisions (what to air, how to edit) may not constitute "speech" by SMAC itself, but rather facilitation of third-party speech through a government-funded forum.

b. The Town's Actions Were Not Adverse.

Enforcement of contractual obligations does not constitute adverse action. The Town issued a default notice after SMAC failed to provide required financial documentation and failed to perform other obligations under the 2023 Access Corporation Agreement. The Town only scheduled the October 9th hearing after negotiations with SMAC failed and the breaches were still outstanding. Further, Town officials expressing concerns about programming does not violate the First Amendment, nor does concerns over SMAC's breaches of the Access Corporation Agreement.

c. SMAC Cannot Establish a Causal Connection to any protected activity.

SMAC cannot show that any protected speech was a substantial motivating factor for the Town's actions. To prevail on such a claim, a plaintiff must establish a "causal connection"

between the government defendant's "retaliatory animus" and the plaintiff's "subsequent injury." Hartman, 547 U.S. at 259. It is not enough to show that an official acted with a retaliatory motive and that the plaintiff was injured—the motive must *cause* the injury. Specifically, it must be a "but-for" cause, meaning that the adverse action against the plaintiff would not have been taken absent the retaliatory motive. Id., at 260, 126 S.Ct. 1695 (recognizing that although it "may be dishonorable to act with an unconstitutional motive," an official's "action colored by some degree of bad motive does not amount to a constitutional tort if that action would have been taken anyway"). Nieves v. Bartlett, 587 U.S. 391, 398–99, (2019).

The Town's concerns focused on SMAC's ongoing contractual breaches (see Exhibits C and F). These are all legitimate, non-retaliatory reasons for the Town's conduct. SMAC bears the burden to prove retaliation was the "but-for" cause, which it cannot do. Nieves, 139 S. Ct. at 1722.

d. No Chilling Effect

SMAC continued to operate and produce programming throughout the relevant period. The fact that one videographer now avoids Select Board meetings does not establish a constitutional violation—personal preferences about work assignments do not rise to constitutional magnitude.

5. SMAC does not have standing to assert violations of the Massachusetts Ethics Law

Massachusetts General Laws c. 268A governs the conflict-of-interest laws, and the State Ethics Commission, as set forth in G.L. c. 268B, or the Attorney General are the only entities authorized to investigate and enforce the relevant law. There is no private right of action under either c. 268A or c. 268B, therefore SMAC has no standing to enforce alleged violations of that law. Furthermore, as a practical matter, a litigant should not be able to file a lawsuit against a public official in order to preclude that official from performing her official public duty. The sole case that SMAC relies on, Nantasket Beachfront Condominiums, LLC v. Hull Redevelopment

Auth., 87 Mass. App. Ct. 455, (2015), is not supportive of SMAC's position. In fact, that court determined where a public official's potential conflict of interest may have been in play, plaintiff's "failure to follow the statutorily prescribed procedures prevents it from now asking a court to invalidate the" result. Accordingly, SMAC's conflict of interest argument is without merit and should be disregarded by this Court.

B. No irreparable harm will result to SMAC if the preliminary injunction is denied.

On October 9, 2025, the Selectboard will conduct a hearing pursuant to Article VIII as to whether there has been a breach of the Agreement, and whether that breach has been cured or otherwise excused or waived. (Exhibit F). The Board will then decide and advise SMAC within ten (10) days of any remedy the Board elects to impose.

The remedies identified in the Agreement are:

- (1) withdraw its Designation of SMAC granted under Article III of this Access Agreement, and thereby terminate this Access Agreement;
- (2) impose Liquidated Damages as set forth in Section 2 of this Article;
- (3) impose any other sanction as may be lawfully determined to be reasonable under the circumstances; or
- (4) excuse or waive the breach for good cause shown.

The outcome of the hearing is not preordained, and SMAC will have the opportunity to present its case with evidence. "Mere financial loss is not irreparable harm." Do Corp. v. Stoughton, 2013 WL 6383035 at *9 (United States District Court, D. Massachusetts, Dec. 6, 2013)⁷, see also Charlesbank Equity Fund II v. Blinds To Go, Inc., 370 F.3d 151, 162 (1st Cir. 2004) (finding that pecuniary harm resulting from loss of control of business is not irreparable

harm). “Economic loss alone does not usually rise to the level of irreparable harm which a party must establish to obtain a preliminary injunction.” Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co., 399 Mass. 640, 643 (1987). Accordingly, SMAC will not be able to show irreparable harm to the Town going forward with the October 9 hearing.

C. The Balance of the Equities tips strongly in the Town’s Favor

Before issuing a preliminary injunction, a judge must determine “that the requested order promotes the public interest, or, alternatively, that the equitable relief will not adversely affect the public.” Mass. CRINC, 392 Mass. at 89. “What matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm considering the party's chance of success on the merits. Only where the balance between these risks cuts in favor of the moving party may a preliminary injunction properly issue.” Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 617 (1980), quoting Abner A. v. Massachusetts Interscholastic Athletic Ass'n, 490 Mass. 538, 545 (2022).

In the instant matter, the balance clearly favors allowing the Town to go forward with the October 9 hearing so that the long standing contractual issues with SMAC can be addressed and assure that the public receives the benefit of the bargain. Accordingly, the Preliminary injunction should be denied.

D. The Individual Defendants are protected by Qualified Immunity

Even if Town Manager Calter and Selectboard members Mokriskey and Cavey had violated the Plaintiff’s constitutional or statutory rights—which they did not, the Plaintiff’s 1983 claim against them still fails (as would the MCRA claim by implication) because they are protected by qualified immunity since it has not been clearly established through existing precedent that their conduct would violate the First Amendment.

Qualified immunity provides public officials, including town officials like the Town Manager and Selectboard members, protection from civil liability for actions taken under color of state law. Gray v. Cummings, 917 F.3d 1, 9–10 (1st Cir. 2019). The Court has reiterated the importance of deciding qualified immunity issues promptly, i.e., at the earliest stage of the litigation. Littles v. Comm’r of Correction, 444 Mass. 871, 879 (2005), citing Gutierrez v. Massachusetts Bay Transp. Auth., 437 Mass. 396, 403 (2002). The qualified immunity analysis has two facets: (1) whether the defendant violated the plaintiff’s constitutional rights; and, if so, (2) whether the allegedly abridged right was “clearly established” at the time of the defendant’s alleged misconduct. Gray, 917 F.3d at 10. This second inquiry also has two facets. First, the plaintiff must identify either controlling authority or a consensus of cases of persuasive authority sufficient to send a clear signal to a reasonable official that certain conduct falls short of the constitutional norm. Gray, 917 F.3d at 10, citing Alfano v. Lynch, 847 F.3d 71, 75 (1st Cir. 2017). Second, the plaintiff must demonstrate that “an objectively reasonable official in the defendant’s position would have known that his conduct violated that rule of law.” Significantly, the doctrine of qualified immunity is meant to give government officials breathing room to make reasonable but mistaken judgments and protects all but the “plainly incompetent or those who knowingly violate the law.” Hunt v. Massi, 773 F.3d 361, 367 (1st Cir. 2014).

Once an official invokes qualified immunity, the plaintiff bears the “heavy” burden of demonstrating that the law in the particular context of the plaintiff’s case was clearly established at the time of the alleged violation. Mitchell v. Miller, 790 F.3d 73, 77 (1st Cir. 2015). Because the individual defendants have claimed qualified immunity, the burden is now on the Plaintiff to show that the protection does not apply. Lopera v. Town of Coventry, 640 F.3d 388, 395-96 (1st

Cir. 2011) (“[W]hen a movant raises qualified immunity, the non-movant bears the burden of demonstrating that qualified immunity does not apply.”).

Here, as addressed above, SMAC does not allege any facts that clearly establish that the individual defendants violated any of its constitutional rights, so they are protected by qualified immunity. In addition, the second step of the qualified immunity analysis further establishes that qualified immunity protects the individual defendants because based on the allegations in SMAC’s Complaint, there is no controlling authority or a consensus of cases of persuasive authority sufficient to send a clear signal to all reasonable town officials in the shoes of the individual defendants that their alleged conduct would violate SMAC’s constitutional rights. Gray, 917 F.3d at 9–10; Alfano v. Lynch, 847 F.3d 71, 75 (1st Cir. 2017). In other words, the individual defendants are protected because SMAC cannot meet its burden to identify any case law to establish that SMAC’s allegations constitute clearly established constitutional violations of which reasonable town officials would have known.

CONCLUSION

For the foregoing reasons, the Defendants respectfully request that the Court issue an Order denying the Plaintiff’s motion for a Preliminary Injunction.

Respectfully submitted,

The Defendants,
By their attorneys,

/s/ Crystal Huff

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system and will therefore be sent electronically to the registered participants as identified on the Notice of Electric Filing (NEF) and paper copies will be sent to those participants indicated as non-registered participants.

/s/ Crystal Huff

Crystal Huff, BBO #681860

Dated: October 8, 2025