

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

4 STOUGHTON MEDIA ACCESS CORPORATION,)
5 Plaintiff,)
6 v.)
7 THE TOWN OF STOUGHTON, MASSACHUSETTS,) Civil Action No.
8 THOMAS CALTER III, STEPHEN CAVEY, and) 1:25-cv-10886-IT
9 JOSEPH MOKRISKY, in their individual)
and official capacities,)
10 Defendants.)

13 BEFORE THE HONORABLE INDRA TALWANT - DISTRICT JUDGE

MOTTON HEARTING

Wednesday, October 8, 2025
3:35 p.m.

21 John J. Moakley United States Courthouse
22 Courtroom No. 9
One Courthouse Way
Boston, Massachusetts

24 Robert W. Paschal, RMR, CRR
25 Official Court Reporter
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PROCEEDINGS

(In open court at 3:35 p.m.)

THE DEPUTY CLERK: United States District Court is now in session, the Honorable Judge Indira Talwani presiding.

This is Case Number 25-cv-10886, Stoughton Media Access Corporation v. The Town of Stoughton, Massachusetts, et al. Will counsel please identify themselves for the record.

9 MR. ZOPPO: Attorney Joseph Zoppo for Stoughton
10 Media Access Corporation.

THE COURT: Good afternoon.

MR. WALLACK: Good afternoon, Your Honor. Zachary Wallack for Stoughton Media Access Corporation.

THE COURT: Good afternoon.

15 MR. RODGERS: Matthew Rodgers for Stoughton Media
16 Access Corporation.

THE COURT: Good afternoon.

MR. KESTEN: Good afternoon, Your Honor. Leonard Kesten for the defendants.

THE COURT: Good afternoon.

MS. HUFF: Crystal Huff, also for the defendants.

THE COURT: Good afternoon.

So we are here on Stoughton Media Access's motion for a TRO and preliminary injunction. I tend to allow the moving party to start. I will go back and forth as I need to

1 to understand the issues. So I'll let you start.

2 MR. ZOPPO: Good afternoon, Your Honor.

3 I'd like to just outline briefly some facts of
4 what's been going on in addition to what I'm sure Your Honor
5 has been able to read of the affidavits. Thank you, by the
6 way, for making time for us this afternoon. I know we just
7 got this matter into court recently.

8 I note, Your Honor, that we've submitted, I think,
9 four affidavits. There's no counter-affidavits filed, nor
10 was I served with any this morning. And in the absence of
11 counter-affidavits, the Court's free to take the complaint
12 and affidavits as true, should you choose to do that. And we
13 think there's enough corroborating --

14 THE COURT: The complaint is -- I know the proposed
15 amended complaint is verified. Is the original complaint
16 verified as well?

17 MR. ZOPPO: The original is -- is not verified, but
18 there's four affidavits which are pretty comprehensive,
19 especially the affidavit of Mr. Stephen Bates, in terms of
20 what's in the complaint. And, yes, the proposed affidavit
21 is -- I'm sorry -- the proposed complaint is verified.

22 THE COURT: Okay. But I'm -- I've got your
23 affidavits.

24 MR. ZOPPO: Okay.

25 THE COURT: You've asked me to take note of the

1 complaint, but that's not verified. And the amended -- the
2 proposed amended complaint is, at this point, only a proposed
3 amended complaint. So for my facts, I have your affidavits.

4 MR. ZOPPO: Correct. And there isn't anything
5 other than -- in counter-affidavits to controvert what's in
6 the complaint, verified or not, is what I meant. I'm sorry,
7 Your Honor. Thank you.

8 In terms of what's contained in the affidavits,
9 it's quite important because it tells the story of why we're
10 here today, but also why it's so important that we get some
11 relief. And I can, of course, review them to the extent that
12 you would like me to spend some time doing that; otherwise, I
13 permit the Court to just go through the affidavits on your
14 own.

15 THE COURT: I have one perhaps fundamental
16 question.

17 MR. ZOPPO: Yes.

18 THE COURT: Your -- all the way through, you keep
19 equating not being allowed to record things as not having
20 access to proceedings.

21 And we're in a courtroom here now. You're not
22 allowed to -- it's a public courtroom. The door is open.
23 Sometimes we have things that the media is interested in, and
24 sometimes they sit there taking notes or they draw. But we
25 don't record in the courtroom, and it's public access.

1 So when you're using those words interchangeably,
2 you're saying, if I'm not allowed to record, that means there
3 is not public access, you confuse me. You've lost me,
4 because I operate in a world where we don't record.

5 MR. ZOPPO: Yes.

6 THE COURT: So --

7 MR. ZOPPO: Well, Your Honor, the thrust of the
8 affidavits isn't that it was an event-driven thing where we
9 were asked to leave a particular meeting and not record, but
10 rather the events thereafter trying to steer what the content
11 was -- excuse me -- that SMAC should be broadcasting. Those
12 are really the events --

13 THE COURT: But throughout -- fair enough. We can
14 focus on the events you want. But just to be clear, as I
15 read through your affidavit, there's repeatedly one statement
16 after another where you say, "We were denied access because
17 we were not allowed to record," or, "This contradicted what
18 the defendant said when they said it was a public meeting,
19 but we were not allowed to record."

20 And I don't understand the equating of recording
21 and being allowed to attend a public meeting.

22 MR. ZOPPO: Well, Your Honor, as it relates to that
23 one event in September of 2024. First of all, we were
24 invited to the event, not -- we didn't just show up at the
25 event. We thought it was newsworthy, asked to leave, left.

1 THE COURT: Asked to leave because you wanted to
2 record it.

3 MR. ZOPPO: I suppose that they could have stayed
4 there to observe because the public was invited.

5 THE COURT: Well, not just observe, but what people
6 do. Anybody back there who wants to be taking notes on this,
7 you take notes on it, you can report on it. Everything is
8 there except running the tape. So that -- that has never
9 been closed off, just to be clear.

10 What you're complaining about is not that you're
11 not allowed to attend these events. What you're saying is
12 that SMAC was prohibited from recording these events.

13 MR. ZOPPO: Actually, Your Honor, as I'm
14 recollecting, I don't -- I don't think that there was any
15 other event we were asked to leave and not record except that
16 one.

17 THE COURT: Okay.

18 MR. ZOPPO: And so -- and so I took the exchange
19 that I heard from my client; and I think, as Mr. Bates'
20 affidavit and Anna Zulawnik's affidavit points out, they were
21 asked to leave. I don't know that it was presented as an
22 option, "Gee, you can stay." So I think they just left.

23 THE COURT: Well, everything that you have in here
24 has the conversation going back and forth that you were told
25 you weren't allowed to record. You equate not recording as

1 not having access. I just want to be very clear here that
2 you'll need to do a lot more work to convince me that not
3 recording and access -- because as I said, as I sit here in
4 this courtroom, that's our rules here, so --

5 MR. ZOPPO: Well, in SMAC's world, they exist to
6 record to broadcast, so --

7 THE COURT: Well, they may do that. That may be
8 their reason. So does the *Boston Globe* when they want to
9 come in here and record, but they're not allowed to.

10 MR. ZOPPO: I'm not familiar with the business
11 model at SMAC that they send people to and then they take
12 notes and then they write about it, so much as that they
13 record it and broadcast it.

14 THE COURT: But just -- that may be their choice of
15 a business model. But right now -- right now, all we're
16 talking about is you are saying throughout your papers that
17 you were denied access. And I just want to be very clear,
18 you were denied the opportunity to record. I don't
19 understand any right that any entity has to record events
20 unless by contract or by something. I don't -- I don't see
21 where you have a right to record events as a part of the
22 First Amendment.

23 MR. ZOPPO: Point well taken, Your Honor, except
24 that the access agreement speaks throughout the contract
25 between the Town and SMAC speaks throughout about their

1 coverage of stories, but not in terms of --

2 THE COURT: But it doesn't say that they are
3 allowed to record whatever they want to record. It says
4 they're obligated to record certain things, right? They're
5 obligated to -- the major meetings, whatever they are,
6 they're obligated to carry those.

7 And they may be permitted to record others, but not
8 that they're allowed to say, "Well, we want to make our
9 business recording things; and, therefore, that's what" -- I
10 mean, you could just as well have Court TV come in here and
11 say they really want to film me, and I'm going to say no, and
12 they're going to say but that's their business model, and I'm
13 going to say no.

14 MR. ZOPPO: True, to the extent, Your Honor, that
15 the practice at SMAC as well as the broadcasting and what
16 they're in business to do is to record and broadcast.

17 THE COURT: But it's not a First Amendment right.

18 MR. ZOPPO: Your Honor, your point is well taken,
19 that we were asked to leave and we left. We think that the
20 incidents well after that that continued, that was just one
21 of -- there are many that preceded it. There are many that
22 followed it. And that's just by way of one example, we
23 think, of the Town trying to steer what the content is that
24 is broadcast by SMAC. First Amendment right, at that point
25 in time, open meeting law aside, the point is well taken.

1 Your Honor, again, I urge you to read the
2 affidavits, if you haven't already. They tell what the
3 company's been through for the past couple of years and why
4 we're here today. And the fact that --

5 THE COURT: Well, let's talk about why we're here
6 today, because this has been pending for a while, and now
7 we're here on an emergency basis. And I -- I understand what
8 you're wanting me to do at this point -- I think I
9 understand -- is you want me to stop a public meeting, a
10 meeting of elected representatives from taking certain
11 action. That's what you want me to do?

12 MR. ZOPPO: To not terminate the access agreement,
13 Your Honor. Correct.

14 THE COURT: So you're asking me to order the
15 elected officials to not terminate the agreement?

16 MR. ZOPPO: One of them I think is appointed, and
17 the other five are elected, two of whom -- three of whom are
18 also defendants in the case.

19 THE COURT: Okay. So assuming that's the relief
20 you want, aren't you premature? Right now, there's nothing
21 that's been terminated.

22 MR. ZOPPO: Well, that's correct, except that we
23 have no idea when that would happen.

24 THE COURT: Okay.

25 MR. ZOPPO: So --

1 THE COURT: So supposing they -- there is a vote
2 and the vote is to terminate the contract, why wouldn't that
3 be the time to ask me for this relief after the decision has
4 been made to say, "No, don't do it; hold that decision in
5 abeyance while we litigate the case," rather than saying to
6 me, "You should not allow them to exercise their judgment"?

7 They may decide not to terminate it -- I don't
8 know -- and then I will have intruded myself where I don't
9 belong.

10 MR. ZOPPO: Well, Your Honor, undoing what they've
11 already done is a different case than trying to stop what
12 seems to us to be inevitable.

18 And you asked me to come in and stop their -- and
19 enacting what they voted; that would be a few steps down the
20 road. Right now you're asking me not to have them -- you
21 know, you could be saying, "We don't even want them to debate
22 this." I think you're saying that. I don't know.

23 MR. ZOPPO: No.

24 THE COURT: Okay. So you're not asking me not to
25 have them debate this issue?

1 MR. ZOPPO: No.

2 THE COURT: Because I thought you said you didn't
3 want these people to be talking at the meeting.

4 MR. ZOPPO: We think that the people that are
5 individual defendants shouldn't be involved in the
6 decision-making or the deliberation, period.

7 THE COURT: Right, but you're asking me to order
8 them to not participate.

15 And I might add the following, Your Honor: My take
16 on reading the notices and the letters is that this hearing
17 is it. There isn't anything that has to happen, and
18 certainly the vote would not be, I don't think, a public
19 vote.

20 So there isn't anything from here between here and
21 termination. It's just after the termination. So there
22 isn't -- there isn't, like, a warning that I take away from
23 it.

24 THE COURT: You can stay -- you can come in here
25 and ask me to stay the termination.

1 MR. ZOPPO: Your Honor, I don't -- whether it's a
2 heavy lift or not a heavy lift, the way we've interpreted,
3 and I think it's the reasonable way of interpreting it, is
4 that this hearing is about the termination. I mean, the
5 defaults have been pending for a year, and no one has said
6 anything about it. We've cured them a year ago and --

7 THE COURT: Well, they wrote to you and said, "We
8 hear what you're saying. We haven't -- we reserve our rights
9 to hold all of these things still over you." That's what
10 their letter says. It doesn't say it's all cured.

11 MR. ZOPPO: No, you're right, Your Honor. But
12 there's never been any -- any notice of why the cure is
13 insufficient or -- I mean, the cure provisions exist in the
14 access agreement for a reason. The select board has liaisons
15 in the access agreement to prevent this sort of thing from
16 happening to begin with.

17 And both of these letters, the 2024 letter and the
18 2025 September 11th letter, just kind of came out of the
19 blue. But if you put it in the context of what has happened,
20 I mean, they're fairly -- it was predictable if what the
21 result was, the objective was, was to control SMAC's
22 programming and content as well as the rest of their
23 operations. And just, if you didn't get that, then just
24 terminate the agreement and do whatever you're going to do
25 with, you know, local broadcasting in Stoughton.

1 So we think that it is ripe because we don't think
2 that the Town, that there's a chance that, with three
3 defendants in this litigation making the decision on whether
4 to terminate the contract, that it's reasonable to assume
5 they will not. They have all the incentive, and they know
6 that the contract is the sole source of revenue of SMAC. And
7 they don't like what we're doing. I mean, that's evident
8 from default letters to the interactions that are in the
9 affidavits.

10 THE COURT: Well, so -- so I have your version of
11 what has happened, and as you point out, they don't have
12 affidavits that are different. So taking your version of
13 what has happened, you have this one dispute about
14 broadcasting the working group, to which SMAC's reaction
15 about this interaction is, "We've had our rights trampled
16 on."

17 And as I said, my read of it is I don't really
18 understand that at all, because as I said, I do the same
19 thing here. I don't let people, the whole district court
20 doesn't let people, film or record. And so I don't see that,
21 and I don't see that as interfering with your First Amendment
22 rights.

23 I think it's their right whether, when they're
24 holding meetings, to allow themselves to be recorded or not.
25 That's their choice. And I don't think I see a problem. So

1 we have that event.

2 After that, what I think you're saying is that one
3 or another of the individual defendants can -- charged you
4 with -- said that you were one-sided on an issue, the school
5 building issue, that you were overly doing that. And your
6 response to that is they were factually incorrect.

7 But if -- do I have in front of me enough reason to
8 suspect that that was asking you -- I think your insistence
9 on it is that they were trying to have you favor the other
10 side as opposed to their coming forward and saying what I
11 think you've quoted them as saying, is "People are
12 complaining to us that you're covering one issue."

13 That complaint may have been accurate. That
14 complaint may have been misguided. It may be that the timing
15 of when things are, it may be what the substance of it, which
16 dates -- who knows. I don't know. But you have them simply
17 saying to you, "We are being told -- people are complaining
18 to us that you are doing one-sided coverage."

19 MR. ZOPPO: Okay. So if you look at this as two
20 events and those are the only two events that happened, I
21 would say, yes, Your Honor, that on the basis of those two
22 events, you probably don't have an emergent matter based on
23 First Amendment rights. But if you put in context of the
24 several events that predated the meeting and the several
25 dates that postdated the meeting, I think it's pretty clear.

1 THE COURT: So let me put to one side and coming
2 back to it, because, obviously, the centerpiece of your
3 motion is going to be First Amendment issues, but let me put
4 that to one side. On the contract issues, tell me what your
5 contract issues are here.

6 MR. ZOPPO: Oh. The contract issues are that we've
7 been through this situation with the Town before. The access
8 agreement is a product of settling that, and there's
9 machinery in it to avoid this in the future. And none of
10 that machinery was employed. It was just default letters.
11 And litigation --

12 THE COURT: So they breached the agreement by --
13 and I don't have the amended complaint yet in front of me,
14 right? I have to rule on this based on the original
15 complaint. So the breach of the contract is what?

16 MR. ZOPPO: The breach of the contract is trying to
17 steer the content. The breach of the contract is --

18 THE COURT: And where's the provision that you're
19 relying on for that?

20 MR. ZOPPO: Hang on.

21 It's Section 2 about editorial discretion,
22 Your Honor.

23 MR. WALLACK: Article V, Section 2, Your Honor.

24 MR. ZOPPO: It's on page 4.

25 MR. WALLACK: Page 5.

1 MR. ZOPPO: Page 5. Thanks.

2 THE COURT: And there is a reference there,
3 notwithstanding the foregoing, the programming is designed to
4 achieve the purposes set forth in the articles of
5 incorporation and bylaws. What are those? Do I have that,
6 or is that not relevant to anything here?

7 MR. ZOPPO: I -- I don't see that the bylaws change
8 the analysis, that it's up to SMAC. And one of the practical
9 reasons it's up to SMAC, and I don't think that's the only
10 reason for having it in there, is the Town doesn't want any
11 liability for what gets broadcast. So it's up to you guys,
12 and, you know, you pick it. And at a minimum, you have to
13 cover this, this, and this; but there's not a provision that
14 says the town manager can order you what to record and what
15 not to.

16 THE COURT: Well, they can order you not to record
17 their own meetings. That, you would have to agree with me.

18 MR. ZOPPO: Not to record their own meetings --

19 THE COURT: Right.

20 MR. ZOPPO: -- yes, their --

21 THE COURT: Their meetings that they don't want
22 anyone to record, you don't get a special right by this
23 contract.

24 MR. ZOPPO: Right. Executive sessions, all of that
25 stuff is off limits.

1 THE COURT: Or this working group if that's what
2 they decided.

3 MR. ZOPPO: That one incident, yes, Your Honor.
4 They can order us to leave. We left.

5 THE COURT: Well, I'm not saying they should have
6 ordered you to leave. I'm just saying you don't have a claim
7 that you had a right to record it.

8 MR. ZOPPO: Your Honor, I think it was newsworthy.

9 THE COURT: I don't see how that gives you a right
10 to record it. I'm going to have somebody right outside there
11 thinks this is newsworthy. Do they have a right to record
12 it?

13 MR. ZOPPO: Well, Your Honor, I agree with you
14 that -- they were asked to leave, but when you put it in the
15 context of the rest of what happened, it was pretty clear
16 that they -- the Town wants certain coverage and doesn't want
17 other coverage.

18 THE COURT: Okay.

19 MR. ZOPPO: So it's an example of that.

20 THE COURT: So breach of contract, you're focusing
21 on Article V, Section 2. Anything else before I turn to the
22 defendants and ask them about the other breach of contracts
23 or this breach of contract?

24 MR. ZOPPO: Yes, the default provisions,
25 Your Honor.

1 THE COURT: Do you have an article or section?

2 MR. ZOPPO: Article VIII, I believe, page -- well,
3 it's actually in two places, but, really, in page -- page 10
4 on termination.

5 THE COURT: Okay. It hasn't been terminated yet.

6 MR. ZOPPO: No.

7 THE COURT: Okay.

8 MR. ZOPPO: No. However, the cure provisions that
9 are in this contract require, in my view, Your Honor, more
10 than having the town officials who are defendants in this
11 action deciding whether or not there's a termination that
12 should happen such that the decisions made by them are made
13 as much to, you know, protect themselves as --

14 THE COURT: So, to be clear, they sent you a notice
15 of deficiency. You turned around and sued them, and now
16 you're saying the people you chose to sue can't decide on the
17 notice of deficiency issues that they served on you?

18 MR. ZOPPO: It wasn't -- they served us notices of
19 deficiency, which we cured, and then there was no claim that
20 they were not cured or cured. And there was no notice.
21 There was discussions with town council, as a matter of fact,
22 and I think a cure, a reasonable one to the very first
23 default. But it didn't matter. They're pressing ahead with
24 this evaluation notwithstanding --

25 THE COURT: Okay. But they're pressing ahead with

1 whatever it is they started when they sent you this notice.
2 They're pressing ahead with it. And maybe they can -- maybe
3 they're correct in pressing ahead or not. But you're saying,
4 after they start this process, you can sue them, and then
5 they can't vote on it or take my action anymore.

6 MR. ZOPPO: Well, no, they can.

7 THE COURT: Well, you're saying they shouldn't be
8 allowed to vote.

9 MR. ZOPPO: Just -- just -- there's a quorum
10 without the two individual defendants. It's two individual
11 defendants that --

12 THE COURT: So you get to pick -- so the people who
13 were the liaison folks are presumably the ones behind the
14 deficiency letter, no?

15 MR. ZOPPO: Yes. Well, Mr. Cavey did sign it,
16 so --

17 THE COURT: Okay.

18 MR. ZOPPO: -- or them.

19 THE COURT: So he starts the process. He's the
20 liaison officer. And you get to now say, "I'm going to then
21 turn around and sue you, and now you can't be in on this
22 picture"?

23 MR. ZOPPO: In on the termination picture?

24 THE COURT: Yeah.

25 MR. ZOPPO: If the consequence is that there's no

1 litigation, yes. I think that's a conflict of interest,
2 Your Honor.

3 THE COURT: A conflict of interest because you
4 turned around and sued him gives them a conflict of interest?

5 MR. ZOPPO: Not because they were sued.

6 THE COURT: I mean, every time an employee gets
7 threatened with firing, they turn around, they file a lawsuit
8 against their employer; and then they say, "Oh, that
9 supervisor can't participate in my actions anymore because I
10 turned around and sued them."

11 MR. ZOPPO: Well, it's a little different, in my
12 view, Your Honor, if those claimed defaults existed prior to
13 the litigation, and in the middle of the litigation, you
14 know, they're pursued even after there's an attempt to cure
15 them and there isn't even discourse except to the first one
16 that they've been satisfied.

17 That combined with --

18 THE COURT: Well, but they didn't write to you and
19 say they've been satisfied.

20 MR. ZOPPO: No, of course. No. But the point is
21 that if -- they have to exercise whatever discretion they
22 have under the contract to terminate in good faith. And I
23 don't think it's good faith to have only two of the people
24 that are making the decision or that get to vote --

25 Mr. Calter is appointed. No matter what his influence is, I

1 don't think he casts a vote -- to decide to terminate the
2 contract.

3 THE COURT: So you get a notice of -- you're in
4 default. You turn around and sue them, and they can't follow
5 up on it?

6 MR. ZOPPO: Well, it's not that they can't follow
7 up. They can't be involved in the decision to terminate the
8 contract.

9 THE COURT: So, again, someone sends you this
10 letter. You choose who you're suing. And then they can't be
11 involved in it anymore?

12 MR. ZOPPO: Well, Your Honor, they -- they -- they
13 can make decisions without those two people that have an
14 interest in the outcome.

15 THE COURT: Well, the fact that the Town can make
16 the decisions without those two people doesn't mean those,
17 particularly the elected representatives, are not permitted
18 to do their elected function.

19 MR. ZOPPO: I -- I think that that's the whole
20 reason that the ethics legislation's around. And although
21 we're not asking --

22 THE COURT: Well, do I have an ethics claim in
23 front of me that I have jurisdiction over?

24 MR. ZOPPO: Your Honor, we think that -- we think
25 that you can pass on whether there's a conflict or not.

1 We're not asking you to do rescission or anything like that,
2 but we think it's pretty fundamental under the law, as we
3 have researched and understand it, that if you have an
4 interest in the outcome and you use your office to get out of
5 hot water, then there's a problem.

6 THE COURT: But they have an interest in the
7 outcome only in that you have sued them.

8 MR. ZOPPO: Well, no.

9 THE COURT: It's a dispute between -- that there's
10 a dispute is a contract dispute between two entities. One's
11 a public entity, and one's your nonprofit. You have a
12 dispute between these two entities.

13 The entity acting through its representatives sends
14 you a letter, and you decide to sue that person individually
15 and then say now they're disqualified from having anything to
16 do with this.

17 MR. ZOPPO: We think -- Your Honor, we think that
18 that's the case because they have an interest in the outcome
19 that's --

20 THE COURT: Because you sued them.

21 MR. ZOPPO: -- above and beyond the default.

22 THE COURT: Because you sued them. That's why they
23 have an interest in the outcome.

24 MR. ZOPPO: There is law, Your Honor, to the effect
25 that you can't --

1 THE COURT: That if you sue someone, that they're
2 then disqualified from participating in elected duties?

3 MR. ZOPPO: When there's -- when there is not a
4 quorum left, yes. I can't get a subdivision approved by
5 knocking off three of the select board members by suing them
6 because --

7 THE COURT: But you can knock off the two who you
8 think might vote against you, and that would be okay?

9 MR. ZOPPO: Well, no, it's not that they voted
10 against me. It's that there's a history of the things that
11 they've done, and they've taken an active role in the
12 termination. That's -- that's why the complaint was filed,
13 and now they're going to decide what happens to the
14 litigation.

15 So we think, yes, if there's enough people to make
16 the decision without them involved that don't have an
17 interest, those are the people that should decide it.

18 THE COURT: Well, they may decide that it's a
19 cleaner way to do it, if they chose to; but you're asking me
20 to disqualify them, when they're the elected representatives,
21 based on their interest, and their interest in it that you're
22 stating is that they're defendants in a lawsuit that you've
23 brought.

24 MR. ZOPPO: Well, there's also just the conduct
25 section, which is just using your office to your personal

1 advantage. So, yes, it's all conflict of interest, expressed
2 in different ways.

3 But, Your Honor, what we're really asking is that
4 the Town not terminate the contract because we believe that
5 we've put through the affidavits and the complaint
6 uncontroverted evidence to the effect that the reason that
7 it's happening is the inability to control what's broadcast
8 at the station.

9 THE COURT: Okay. Do you want to respond to any or
10 all of this?

11 MR. KESTEN: Well, Your Honor, you're familiar with
12 my style, although I best sit down and shut up. I'm just
13 going to point out a couple of things.

14 On this business of recording that meeting, in
15 Article V, Section 3, the contract that they signed, it
16 clearly says that the only meeting they can cover is if the
17 municipality requests them to. It delineates what they're
18 supposed to cover and nothing else, an agreement they agreed
19 to. And there's a 30-day notice provision even to record
20 something else.

21 So there's no question, Your Honor, I suggest to
22 you, that there's no First Amendment violation in telling
23 them they can't record it. Open to the public. The -- they
24 weren't thrown out. They could have showed up. But they
25 wanted to record, and the town manager says, "I have a

1 contractual right, and I don't want it."

2 The business of suing public officials, as you
3 know, I represent a lot of public officials and this is a
4 novel theory that you -- if you sue the entire board of
5 selectmen, then nobody gets to decide anything because you've
6 sued them.

7 THE COURT: Well, he's agreeing that as long as --
8 if there was a quorum problem, it would be different. So
9 he's saying only if he sues people and he leaves enough
10 people who could make up a quorum.

11 MR. KESTEN: Oh, I don't think that helps at all.
12 I mean, they're cherry-picking their votes. I assume --
13 everybody is connected here. All these people talk to each
14 other. One of the plaintiffs involved is the town moderator.
15 It's a small town. They all talk. So the content -- why do
16 we think -- let's disqualify all the Democrats from Congress
17 and see how the vote comes out, so obviously --

18 THE COURT: The same as currently.

19 MR. KESTEN: What? Oh, absolutely, Your Honor.
20 No, no. I'm with you. I've got my naturalization papers
21 right here, just in case. I keep an eye out, Your Honor.

22 Absolutely. But this is -- I mean, it's a
23 preposterous notion that, by suing public officials, you
24 have -- this courthouse has hundreds of lawsuits against
25 public officials who are being sued, who are also running the

1 government. It's that pesky democracy. So here, yes, the
2 plaintiffs cherry-picked -- cherry-picked three -- two
3 people, and they figured that now they'll have the votes.
4 And --

5 THE COURT: Okay. So putting aside the question of
6 who should and shouldn't be allowed to vote and putting aside
7 the initial meeting that is called to my attention about them
8 not being allowed to record, the plaintiffs allege that on a
9 number of occasions, essentially one or another of the
10 individual defendants strong-arm them to give them more
11 favorable coverage.

12 And when that -- they were reluctant to do so or
13 they pushed back to do so, they're having their contract
14 canceled. What's your answer to that?

15 MR. KESTEN: First, it's premature. We're having a
16 hearing tomorrow night, which they're trying to stop, at
17 which votes will happen and at which there will be a record
18 as to if -- if -- if there's a vote -- I'm kind of hoping
19 it's a five-to-nothing vote -- if there's a vote to
20 terminate, for example, then we'll have a record. And the
21 Court, at some point, or a jury can decide what was their
22 motivation.

23 THE COURT: So if there's a vote -- in terms of
24 they're asking for an injunction, if there's a vote, is the
25 vote on terminating effective at midnight of the -- tomorrow

1 night or do we know what the vote would be on? Is there a
2 proposed -- a proposed motion or anything that we know about?

3 In other words, if there's a vote and it goes
4 against them, do they get to run back in here on Friday or
5 is --

6 MR. KESTEN: Of course.

7 THE COURT: -- the contract already terminated or
8 already gone and they're out of their office?

9 MR. KESTEN: Regardless, they can come back here.
10 I mean, if they -- if they have a lawsuit, if there's a
11 lawsuit -- there is -- and they prove that there was illegal
12 motivation, then the -- then the -- either there's damages or
13 the contract's reversed.

14 THE COURT: The one exception to the damages are
15 sufficient to solve the problem is that there is some limited
16 case law where the -- in the absence of an injunction, the
17 company closes down.

18 MR. KESTEN: Yes.

19 THE COURT: So there -- I think they're
20 representing -- and I don't know if this is correct -- this
21 is their only source of revenue?

22 MR. KESTEN: Oh, yeah. No, I agree with them. If
23 the contract is terminated, unless they have a GoFundMe,
24 they're out of business.

25 There is -- there's -- I don't think this has

1 happened before. There's a provision in the contract for a
2 winding-down period.

3 THE COURT: Okay. What does that say?

4 MS. HUFF: I think they're talking about --

5 MR. KESTEN: I don't know. Ms. Huff did all the
6 work.

7 THE COURT: That's why I thought she was going to
8 stand up.

9 MR. KESTEN: Oh, come on. I'm near the end.

10 THE COURT: You said it, not me.

11 MS. HUFF: I think, as practical matter, there
12 would have to be a winding down.

13 MR. KESTEN: Your Honor, we --

14 MS. HUFF: But if -- if I may just interject,
15 Your Honor, the talk about -- and this is set forth in the
16 brief in the section about no irreparable harm would result
17 to SMAC. And it's, in part, because the hearing is set forth
18 to ascertain if there has, in fact, been a breach, if that
19 breach has been cured, if the breach has been waived, and
20 then subsequently, you know, what should be done about that.

21 The contract gives a period of ten days for the
22 board to inform SMAC of their decision. So there's a period
23 of --

24 THE COURT: Okay.

25 MS. HUFF: -- time here. I think that --

1 THE COURT: So if the board tomorrow --

2 MS. HUFF: Uh-huh.

3 THE COURT: -- were to find a breach, no cure, the
4 contract would be terminated, the contract should be
5 terminated, there still is some notice that goes to them?

6 MS. HUFF: I think --

7 MR. KESTEN: I think, Your Honor -- I tell you
8 what. I have an idea.

9 THE COURT: Uh-huh.

10 MR. KESTEN: It's not clear to us that it's a
11 mandatory ten days. We will agree -- hearing, vote, ten days
12 before we execute. It gives them the time to come running in
13 here. We have now evidence that this vote was illegal, that
14 it was for an illegal motive, which is what they have to
15 prove.

16 By the way, the selectmen have a First Amendment
17 right to go to them and say, "I think your coverage is
18 unfair." For them to complain that this document says --

19 THE COURT: They have a First Amendment right to do
20 that. The question is: Are they using that, are they using
21 their authority to lean on the -- SMAC to cover -- change the
22 coverage to keep the contract?

23 MR. KESTEN: Well, SMAC is contractually obligated
24 to make the coverage equal. It's in the contract, that they
25 have -- they have to be equal to any side. They can't

1 advocate. And what you have is selectmen coming in and
2 saying, "We think you're advocating."

3 THE COURT: Well, and they say they also have a
4 selectman coming in and saying that you didn't -- you cut out
5 of a tape something that was flattering.

6 MR. KESTEN: Which has nothing to do with anything.
7 I mean, I don't know if that would be a case. If he votes
8 against them because he thought they took out something
9 flattering, I don't know what's the First Amendment right --
10 I'm not sure on that one.

11 Their real beef is that they're being accused of
12 advocating for a position the selectmen are not, and the
13 selectmen are trying to change that, and they're not
14 advocating. That's the big picture. They claim we're not
15 advocating, everything is equal, and they're unfairly
16 pressuring us to tilt.

17 Because if everything is equal and the selectmen
18 vote to take them out because they wanted them to tilt,
19 that's illegal. But if they were tilting and the selectmen
20 are pushing them not to tilt and they advocated them -- and
21 they terminate them because they tilted, that's against their
22 contract. They're not allowed to do that. The contract --
23 the contract says you are not allowed to advocate.

24 THE COURT: Okay. So I am interested in not having
25 to make decisions before I have to make decisions. And so

1 what I hear you saying is -- takes care of a portion of this
2 problem. It doesn't take of all of what plaintiff wants me
3 to do, but it takes care of a portion of the problem, which
4 is that you're saying that, in the event that there is a vote
5 to find them in breach that there was no cure and that the
6 contract shall be terminated, that that would not be in
7 effect for a period of ten days.

8 MR. KESTEN: Ten days. Yep.

9 THE COURT: Okay. So now let's turn to the
10 question -- and I'd like you to address this as well -- which
11 is the idea -- and I think you started addressing it by
12 saying it was preposterous, but to be more specific, the
13 notion that these people have an interest, and I want to talk
14 about what their interest may or may not be.

15 I think that the plaintiffs are asserting that the
16 individual defendants are on the hook for damages and,
17 therefore, have an interest. And what's your response to
18 that?

19 MR. KESTEN: Because they sued. I mean, it's
20 always true. Why -- the reason I say it's preposterous is,
21 having done this for a very long time and representing all
22 the time, all the time, elected officials who are being sued,
23 sometimes for actually pecuniary interest, there's no
24 allegation of pecuniary interest.

25 THE COURT: Oh, I thought they were making that

1 argument.

2 Right? You're making an argument about damages?

3 MR. WALLACK: If I may, Your Honor?

4 THE COURT: Yes.

5 MR. WALLACK: We are. The --

6 THE COURT: That's what I thought.

7 MR. WALLACK: -- individual defendants have
8 exposure here.

9 THE COURT: And I thought you might have a response
10 to that.

11 MR. KESTEN: No, I'm not talking about that
12 pecuniary -- I'm talking about the pecuniary interest which
13 is driving their motives. Somebody wants to build a house
14 next door to me. I'll make a lot more money on my house if
15 they don't, and now I participate in the ZBA.

16 THE COURT: Right. That's not here.

17 MR. KESTEN: I have a pecuniary interest. They
18 don't have one, the plaintiffs.

19 THE COURT: No, they're saying --

20 MR. KESTEN: They're -- I'm sorry.

21 THE COURT: They're saying that your clients may be
22 subject to a damages award; and because they might be subject
23 to a damages award, they're retaliating against them. And I
24 sort of assumed, having read your answer to the amended -- to
25 the original complaint, that you would be saying they

1 couldn't be subject to a damages award based on qualified
2 immunity, but maybe I'm wrong.

3 MR. KESTEN: No, no. That's their -- that's there,
4 too, Your Honor. There's qualified immunity. But the
5 fact -- I want to get this -- stop this train. The fact is,
6 in the majority of cases that you and other judges in this
7 courthouse handle involving towns, municipal officials are
8 sued, are subject to damages, and vote and run the
9 government, because they're elected to do so.

10 As I've told a lot of people, the ethics question
11 is between the individual public officials -- Ms. Huff is
12 one, she's an elected official, not in Stoughton -- is
13 between the official and the ethics board. For example, the
14 select board can't vote. We're not going to let you vote
15 because you're prohibited. That's the enforcement mechanism.
16 The Court doesn't have it.

17 And if that were the law, is if the plaintiff sues
18 you, you then can't participate in what they're doing, in
19 what -- in the decision that you're supposed to because you
20 might lose damages, it would be hell for the towns, because
21 they get to pick it. The plaintiff gets to pick who. It's
22 no accident who they picked. There's been debates about
23 this, about the -- the school, by the way, the good guys won.
24 The school is getting built.

25 But I do not see that ever being something that a

1 federal court can determine that you're somehow so tied up in
2 ethics that you can't vote.

3 THE COURT: And I'll turn it back to you, because I
4 think, as to the question of is it okay to have a vote there
5 or not, it seems to me the answer is there's no irreparable
6 harm as you sit here today. If they vote against you
7 tomorrow you're presenting a somewhat different case. I'm
8 not sure that you win even then, but at least it's a little
9 more of an immediate issue, whereas today it's hypothetical.

10 The second question as to who can vote, I -- I
11 don't see any authority that you've given me for the idea
12 that I could take someone -- I could order someone, an
13 elected official, not to participate in the vote based on
14 their ethical obligation, which might be separately enforced.

15 But I don't see where I have the authority. I
16 don't see where you've given me any authority for that
17 proposition.

18 MR. WALLACK: So, Your Honor, I think that it's an
19 open question. I don't think there's anything directly on
20 point that specifically says it. I think that the *Nantasket*
21 case that we cited in our papers leaves open the opportunity
22 for a court to grant relief in the event of a situation where
23 there is these ethics concerns that we have raised.

24 We don't have the time to go before the ethics
25 commission and obtain the relief that we want before

1 tomorrow. The notice that we received -- and I appreciate
2 Attorney Kesten confirming that there will be ten days
3 following the vote before action is taken. But that -- that
4 is not clear from the notice. And that's why we're here
5 before the Court, because --

6 THE COURT: No, it was ambiguous. I agree.

7 MR. WALLACK: It was our belief that tomorrow was
8 the end of it. And it's also our belief, based on the
9 affidavit and the conversations that are cited in the
10 affidavits, that this is a foregone conclusion. They're
11 going to vote to terminate SMAC. And we will be back here
12 whether it's -- at some point next week making, I think, the
13 same argument to the Court.

14 But your question, Your Honor, was what authority
15 the Court has to do this. I think the *Nantasket* case, which
16 is cited in our papers, does give the Court the authority,
17 the authority to enjoin defendants that have a conflict of
18 interest, given the financial -- I'll call it a windfall --
19 that they would -- that would inure to them in the event this
20 case is dismissed, that SMAC is dissolved. I think the
21 Court --

22 THE COURT: What's the financial windfall?

23 MR. WALLACK: Perhaps that was unartful. What I
24 meant to say was that, if this case no longer exists, the
25 individual defendants face no risk of owing damages. If the

1 case is gone, they have no exposure.

2 THE COURT: So you've given me a case where you're
3 suggesting that if I think there's a conflict, I could order
4 them not to participate. Do you have any authority for this
5 notion that there is a conflict because you have sued them?

6 MR. WALLACK: I think it's the -- if I'm
7 pronouncing it correctly, the *Comtois* or *Comtois* case that is
8 cited in our papers, Your Honor, that speaks to -- that
9 speaks to the conflict. And I can give the Court the cite,
10 if I can find my -- my motion here.

11 Judge, it's 102 Mass.App.Ct 424. It's a 2023 case.

12 THE COURT: And where's the page on your brief?

13 MR. WALLACK: I apologize, Your Honor?

14 THE COURT: Where did you cite it in your brief?

15 MR. WALLACK: I think it's right around page 18,
16 Your Honor. I'll tell you in one moment. I have it in front
17 of me.

18 Yeah, it's the first paragraph on page 18, Judge.

19 THE COURT: Okay. So the quoted language there
20 represents the position that a person's private interest --
21 my question for you is: Do you have authority that that
22 private interest is there by virtue of being a defendant in a
23 suit that the plaintiff has brought?

24 MR. WALLACK: I don't believe that we have cited
25 any authority on that specific point.

1 THE COURT: But do you realize why that point is
2 different? Do you realize that what you are saying is that,
3 in any case, the plaintiff can choose the people to be
4 disqualified simply by suing them?

5 MR. WALLACK: I understand -- I understand the
6 Court's -- yes, I do understand what you're saying.

7 THE COURT: And you're giving me -- you have a
8 burden here, a substantial likelihood of success. And you're
9 asking me here, with no authority whatsoever, to take on what
10 seems to me an extraordinary proposition, that I should order
11 an elected official not to participate because you've sued
12 them.

13 MR. WALLACK: I don't -- I think I see it a little
14 bit differently, Your Honor. I think that what we're
15 suggesting is -- the lead claim here is our First Amendment
16 claim. And we're suggesting that we have a strong likelihood
17 of success on the merits for -- on our First Amendment claim.

18 The recording issue notwithstanding, it's the
19 course of conduct that occurred after that from the
20 defendants' constant pressuring, coercion, and threats to
21 SMAC and SMAC's employees, in our view, and as we set forth
22 in the affidavits and papers, in order to steer coverage of
23 events a certain way. We believe that we have a strong
24 likelihood of success on the merits of that claim.

25 We believe that the Court can and should prevent

1 the defendants who are accused of engaging in those actions,
2 which we believe we have a strong likelihood of success on,
3 the individual defendants, we believe that this Court can and
4 should prohibit them from taking what we view is a
5 retaliatory action to terminate SMAC as a result of the
6 allegations that we have made.

7 I think the ethics piece of it, I agree; the case
8 law is not -- is not clear on -- there's not much of it. But
9 I think what I just laid out to the Court is really what this
10 case is about.

11 Yes, there is a conflict. We believe there's a
12 conflict of interest given the financial interest that the
13 individual defendants have here. But, really, what this is,
14 Your Honor, is it's the defendants in this case threatening,
15 pressuring, and coercing SMAC to cover subjects in a way that
16 is preferable to the defendants. And this action, after not
17 having acted for a year, to now notice the meeting to
18 terminate SMAC is retaliatory.

19 And I do not see a better -- frankly, a better case
20 for irreparable harm than this. We will be taken off the
21 airwaves. The residents of Stoughton will not get the news
22 from the public access corporation, and we'll be out of
23 business. No amount of damages can cure that.

24 THE COURT: The case law requires -- sort of the
25 front and center is I do have to find a substantial

1 likelihood of success. So regardless of how terrible
2 something feels, I have to deal with that.

3 But as to the how terrible something feels, I
4 don't -- the irreparable harm -- I don't think you have it
5 until the vote happens tomorrow. And I disagree that you
6 have any -- any likelihood of success on the notion that an
7 injunction that I issue, telling a public official that they
8 may not vote at this meeting, I don't think you have the
9 record to support it.

10 I think -- I don't know as I stand here whether the
11 things that those officials did were to push it to their
12 side, as you say, or whether it is to try and put it into the
13 middle, as defense counsel says.

14 I don't have enough here to say that is what
15 happened. But even if I had that, to go that extra step and
16 say they may not vote tomorrow, I -- I don't -- I have -- I
17 have not found that enjoining speech or -- an elected
18 official -- works all that well.

19 Yes?

20 MR. ZOPPO: Two points, Your Honor. There's a
21 programming log attached to --

22 THE COURT: I did see that, and it listed programs.
23 It didn't list what time the programs were, for how much time
24 they were, which month they were. There's a total. There's
25 a log. And you've categorized them in one group and another.

1 I can't take that as truth that, in fact, it ended
2 up being equal. And more than that, even if it ended up
3 being equal, if the defendants thought it was unequal, I'm
4 not sure they're not protected by their good faith belief
5 that all they were doing was trying to center you to the
6 middle.

7 And I think the problem, when there's a contentious
8 debate, to be honest, is that everybody hears what they hear,
9 right? I mean, so somebody is complaining that this is being
10 covered completely one-sided, if it's an irrational
11 assessment of what happened, okay; but if it's merely wrong,
12 I don't know that you're going to have the right intent here
13 as to what they were trying to do.

14 MR. ZOPPO: I think the standard has to be
15 objective at some point. It can't just be totally
16 subjective. There has to be some standard that it's based on
17 something other than emotion.

18 THE COURT: Well, I think -- I think there needs to
19 be a good faith reasonable view, probably, of what you're
20 going to do. But if the individuals, for example, are, you
21 know -- they are being told by others, "Oh, SMAC had bad
22 coverage of this issue or has biased coverage of this issue,"
23 and they relay that, is that actionable? I don't know. I
24 mean, I think you need to have more than that.

25 MR. ZOPPO: If you multiply it over the period of a

1 year over the number of incidents that are in here, I think
2 you start to question whether there's an objective,
3 reasonable --

4 THE COURT: And you might get there. You might
5 start to question it. My problem is I need to -- and I hear
6 what you're saying about this closing down. But I need to
7 find substantial likelihood of success right now. It seems a
8 tougher call than that.

9 At any rate, I am -- I am -- I think the only part
10 of this that is necessary as to -- that I have to actually
11 ultimately come down on is the question of who is voting and
12 who is going to be attending it. And I am denying the motion
13 as to the request that I bar people from voting on this
14 matter.

15 As to what happens if they vote and they terminate
16 it, you can come back in. That's denied without prejudice.
17 But you can come back in after the vote happens, and we can
18 have this conversation with a little bit more focus on -- on
19 that issue of whether the -- not on who's voting, but on
20 whether the actions in terminating the contract are
21 retaliation for First Amendment -- whether you have a
22 likelihood of success of showing that.

23 MR. ZOPPO: Your Honor, I'd like to add just one
24 other thing.

25 THE COURT: Sure.

1 MR. ZOPPO: And I'm not arguing the point of case
2 law and the point of voting or not voting. But the appeals
3 court decision -- and, again, I might be butchering the
4 name -- this *Comtois* or *Comtois* -- it defines a conflict of
5 interest very expansively. And the case is specifically
6 about an elected official saying, look, this is only a future
7 contingent problem and sues the ethics commission for having
8 found otherwise.

9 So just because it hasn't happened and there's no
10 liability yet doesn't mean that there is the conflict.

11 THE COURT: But it is distinguishable, and I think
12 you have to understand that. It's one thing to say, you
13 know, "I'm hoping my son-in-law's company is going to get
14 some more stock and that I'm going to do this and this and
15 this down the road." That's a financial interest. It might
16 be a contingent interest, but it's impacting you.

17 It's a different thing to say the plaintiff selects
18 the people who they are suing and then says that lawsuit
19 that, frankly, is being defended, in any case, by town
20 council and who they've hired, that that lawsuit is a
21 financial basis for terminating it.

22 It doesn't mean that you don't have a -- you know,
23 it doesn't mean that you can't have a claim if they're taking
24 action against you for exercising your First Amendment
25 rights. But it does mean that you can't say they're

1 disqualified based on a financial interest that you created.

2 MR. ZOPPO: Your Honor, I would just say that's
3 what the rule of necessity is all about. And recusal exists
4 for that very purpose.

5 THE COURT: Right. And as I said, I just -- I
6 don't know of the case.

7 And, you know, frankly, we get it here all the
8 time. We have litigants who come in, usually not represented
9 by counsel, occasionally, yes, by counsel. But they come in.
10 They don't like what I'm doing. And then they -- the next
11 day, they want to re- -- me to recuse myself on the next
12 motion because of how I -- you know, because of the thing.

13 You don't get to choose your -- you don't get to
14 choose your decision-maker by objecting to them because of
15 how they have addressed the matter.

16 MR. ZOPPO: Fair enough, Your Honor.

17 THE COURT: Okay. So it is denied as to the --
18 who's participating in the meeting tomorrow, it is denied;
19 and as to what happens as to the termination, it's denied
20 without prejudice.

21 MS. HUFF: Thank you, Your Honor.

22 MR. KESTEN: Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. WALLACK: Thank you, Your Honor.

25 THE DEPUTY CLERK: We are in recess.

(Court in recess at 4:32 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

4 I, Robert W. Paschal, Registered Merit Reporter and
5 Certified Realtime Reporter, in and for the United States
6 District Court for the District of Massachusetts, do hereby
7 certify that pursuant to Section 753, Title 28, United States
8 Code, the foregoing pages are a true and correct transcript
9 of the stenographically reported proceedings held in the
10 above-entitled matter and that the transcript page format is
11 in conformance with the regulations of the Judicial
12 Conference of the United States.

Dated this 17th day of October, 2025.

/s/ Robert W. Paschal

ROBERT W. PASCHAL, RMR, CRR
Official Court Reporter