

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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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. )

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Civil Action No.  
1:25-cv-10886-IT

BEFORE THE HONORABLE INDIRA TALWANI, DISTRICT JUDGE

MOTION HEARING

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

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

Robert W. Paschal, RMR, CRR  
Official Court Reporter  
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**P R O C E E D I N G S**

(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.

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

THE COURT: Good afternoon.

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

THE COURT: Good afternoon.

MR. RODGERS: Matthew Rodgers for Stoughton Media 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.

13          THE COURT: Well, so I don't think, legally, your  
14 request is any -- I mean, your request at that point is a  
15 heavy lift, but it is right now too. It is likelihood of  
16 success on the merits and irreparable harm. But you're a lot  
17 closer to irreparable harm if they have voted.

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.

9 MR. ZOPPO: Your Honor, yes. And we think that  
10 there's a basis to do that. And we think that any decision  
11 that's done with their participation, as a matter of contract  
12 law, as a matter of ethics, as a matter of whether or not  
13 SMAC is free to broadcast what it wants to and what the  
14 producers are asking them to, that it would be essential.

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**

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

Dated this 17th day of October, 2025.

/s/ Robert W. Paschal

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ROBERT W. PASCHAL, RMR, CRR  
Official Court Reporter