

# The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

ERIC SPOFFORD

v.

NEW HAMPSHIRE PUBLIC RADIO, INC. ET AL.

Docket No. 218-2022-CV-00803

## **ORDER ON MOTION TO FILE AND MOTION TO STRIKE *AMICUS* BRIEF**

Plaintiff Eric Spofford brought this defamation action against Defendants New Hampshire Public Radio, Inc. (“NHPR”), Lauren Chooljian, Jason Moon, Dan Barrick (collectively, the “NHPR Defendants”), Nancy Bourque, Justin Downey, and Brian Stoesz stemming from an NHPR article detailing accusations of sexual misconduct. Doc. 26 (Am. Compl.). Defendants, save Stoesz, now move to dismiss. Docs. 17 (NHPR Defs.’ Mot. Dismiss); see also Docs. 55, 62 (Downey and Borque’s Mots. Dismiss). Additionally, American Civil Liberties Union of New Hampshire and other advocacy groups (collectively, “Proposed *Amici*”) now move to submit a brief as *amicus curiae*. Doc. 45. Spofford objects. Doc. 48; see also Doc. 53 (Proposed *Amici*’s Reply); Doc. 63 (Spofford’s Surreply). Spofford moves to strike the proposed *amicus* brief. Doc. 49. Proposed *Amici* object. Doc. 54; see also Doc. 64 (Spofford’s Reply). The Court held a hearing on the motions on January 13, 2022. After review, the Court finds and rules as follows.

In their motion, Proposed *Amici* argue that this case raises concerns regarding freedom of speech and freedom of the press, and that their experience as advocacy

organizations on those subjects “will make their brief of service to the Court.” Doc. 45 ¶ 6. Spofford objects, contending that the absence of any court rules governing *amicus* briefs suggests that the brief should not be accepted, particularly over the objection of a party. Doc. 48 ¶¶ 16–17. Further, Spofford argues that the brief adds no legal or factual perspective that the NHPR Defendants have not already provided, and that allowing Proposed *Amici* to merely echo existing arguments could lead to excessive briefing at every stage of trial. *Id.* ¶¶ 18–22. Spofford’s motion to strike the brief makes similar arguments as those in his objection. See Doc. 49.

Acceptance of *amicus* briefs by a Superior Court in New Hampshire is rare, but not unprecedented. See, e.g., State v. Brown, No. 216-2020-CR-00483, Hillsborough Cty. Super. Ct. North (July 25, 2022 Order, Delker, J.); Estate of Hagen Esty-Lennon v. State, No. 217-2015-CV-00376, Merrimack Cty. Super. Ct. (Sept. 4, 2015 Order, Fauver, J.). Here, the parties agree that the relevant question is not whether the Court may accept the *amicus* brief, but whether the Court should. The Superior Court Rules are silent regarding filing of *amicus* briefs, and New Hampshire case law on the subject is sparse. Thus, the Court looks to other jurisdictions for guidance.

Acceptance or rejection of *amicus* briefs falls squarely “within the sound discretion of the court.” Strasser v. Doorley, 432 F.2d 567, 569 (1st Cir. 1970); see also Parsons v. State, Dept. of Soc. And Health Servs., 129 Wash.App. 293, 299 (2005) (“We can see no reason a trial judge should not have discretion to permit [*amicus*] participation if it may be helpful to the court.”). “In cases involving questions of important public interest leave is generally granted to file a brief as *amicus curiae*.” Kruger v. Bloomberg, 768 N.Y.S.2d 76, 81 (Sup. Ct., New York Cty., 2003). “Although

an *amicus curiae* is permitted to make useful suggestions to the court on matters of law which may escape the court's attention, an *amicus curiae* is bound by the issues presented by the parties." Thomas Tool Servs., Inc. v. Town of Croydon, 145 N.H. 218, 221 (2000) (quotation omitted). However, "an *amicus* may present different arguments than the parties relating to those issues." Lewis v. Harris, 378 N.J.Super. 168, 185 n.2 (App. Div. 2003).

Upon review, the Court finds that the proposed brief is appropriately limited in scope to the issues raised by the parties and may be helpful to the Court in ruling on the pending motions to dismiss. See Parsons, 129 Wash.App. at 299. The brief highlights Proposed *Amici*'s history of advocacy in preserving freedom of expression and the right to a free press, and limits its legal analysis to arguing why Spofford's action should be dismissed. See Doc. 45 Ex. 1 (Proposed Brief). In the Court's view, the brief does not attempt to argue issues of fact or otherwise exceed the limited issue of dismissal, instead describing the appropriate legal standard for this type of defamation action and arguing why that standard necessitates dismissal of Spofford's claims under the state and federal constitutions. See id.

In other words, the brief simply raises additional, relevant arguments related to existing issues before the Court. See Thomas Tool Servs., Inc., 145 N.H. at 221. To the extent that the brief raises new arguments regarding constitutional issues, such arguments are clearly linked to the issue of dismissal, and are thus proper. See Lewis, 378 N.J.Super. at 185 n.2. The Court also notes that issues related to freedom of speech or freedom of the press are undoubtedly of "important public interest," further suggesting leave should be granted to file the brief. See Kruger, 768 N.Y.S.2d at 81.

While Spofford understandably disagrees regarding the validity of Proposed *Amici's* arguments, he cannot argue in good faith that his claims do not raise such constitutional questions. The Court sees no prejudice to Spofford created by acceptance of the brief, as he will have a full opportunity to be heard regarding his responses to Proposed *Amici's* arguments at the upcoming hearing on the motions to dismiss, currently scheduled for January 31, 2023. Accordingly, for the reasons stated above, Proposed *Amici's* motion to file an *amicus* brief is **GRANTED**. See Doc. 45. For the same reasons, Spofford's motion to strike the propose *amicus* brief is **DENIED**. See Doc. 49.

Before concluding, the Court notes that at the January 13, 2023 hearing the Court expressed concern about the prospect of well-resourced third-party interest groups filing briefs in lawsuits involving purely private actors, such as run-of-the-mill tort or contract disputes. Such a practice could overburden the Court or prejudice certain parties without serving to benefit the public interest. Therefore, while the Court finds that an *amicus* brief is appropriate under these circumstances given the free speech issues raised in this case, this Order should not be read to suggest that *amicus* briefs should be accepted as a matter of course. The Court also emphasizes that, should this case survive dismissal, the parties should not expect additional *amicus* briefs to be accepted at later stages of litigation without further review.

SO ORDERED.

Date: January 26, 2023



---

Hon. Daniel I. St. Hilaire

Clerk's Notice of Decision  
4 Document Sent to Parties  
on 01/26/2023