

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
DOCKET NO. SJ-2023-0343

Karen Read,  
Petitioner

v.

Commonwealth,  
Respondent

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MEMORANDUM OF LAW IN SUPPORT OF APPLICANT'S MOTION TO  
INTERVENE

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Now comes Brian Albert, the applicant, and respectfully moves to intervene in the captioned matter pursuant to Mass. R. Civ. Pro. 24(a).

**ARGUMENT**

**THE APPLICANT'S MOTION FOR INTERVENTION SHOULD BE ALLOWED BECAUSE HE IS UNIQUELY SITUATED TO PROTECT HIS SUBSTANTIVE INTEREST IN THE ACTION**

The right to be secure in our persons, houses, papers, and effects is well established in both the Constitution of the United States and in the Massachusetts Declaration of Rights. Their provisions create a "right to privacy, no less important than any other right carefully and particularly reserved to the people." *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965) (citations omitted). The applicant, not the

government, is best situated to advocate for and protect his privacy interests. Accordingly, as it is the order on the applicant's motion to quash which the petitioner seeks to disturb, the applicant should be permitted the opportunity to be heard.

Our rules of civil procedure set out the standard for intervention:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the Commonwealth confers an unconditional right to intervene or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Mass R. Civ. P. 24(a) (emphasis added).

"A judge should allow intervention as of right when (1) the applicant claims an interest in the subject of the action, and (2) he is situated so that his ability to protect this interest may be impaired as a practical matter by the disposition of the action, and (3) his interest is not adequately represented by the existing parties." *Massachusetts Federation of Teachers, AFT, AFL-CIO v. School Committee of Chelsea*, 409 Mass. 203, 205-06 (1991), citing Mass. R. Civ. P. 24(a)(2).

When an "applicant for intervention and an existing

party have the same interests or ultimate objectives in the litigation, the application should be denied unless a showing of inadequate representation is made." *Id.*, (quotation omitted) (emphasis added). "The burden of showing the inadequacy of the representation is on the applicant." *Id.*, quoting *Attorney Gen. v. Brockton Agricultural Soc'y*, 390 Mass. 431, 434 (1983). Here the interests and ultimate objectives of the applicant and respondent clearly differ.

Only the applicant has a privacy interest in the records sought. While the respondent can certainly articulate the myriad ways the petitioner's requests fail to follow our rules of criminal procedure, only the applicant can adequately advance the substantive rights to privacy that underpin his objection. Our system relies upon the personal advancement of personal rights; to suggest the government could somehow stand *in loco parentis* with respect to a citizen's privacy interests fails to appreciate the historical fact that it is the government which most often infringes upon those rights.

Furthermore, the applicant does not share the ultimate objective of the respondent, i.e., he has no interest in the substantive disposition of the case-in-chief against the petitioner. The applicant has no interest or stake in the ultimate conviction or acquittal of the petitioner. Whatever transpires at trial, the applicant's right to privacy will be

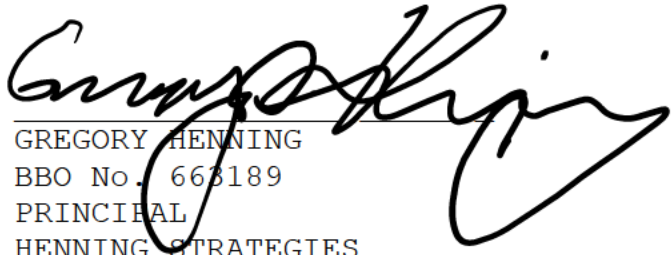
no less infringed upon if the petition is allowed. Likewise, the respondent's interests are purely procedural and stop at the potential substantive violation of the applicant's right to privacy.

Lastly, intervention is proper because it helps "maintain the integrity of the issues raised by the original pleadings" *Rothberg v. Schmiedeskamp*, 334 Mass. 172, 178 (1956). It was, in essence, the applicant's motion to quash which served as the basis for the Court's ruling below which triggered the instant petition (R.A. 6, 435-439). Rather than having interests which are "only vicarious and attenuated," *Coggins v. New England Patriots Football Club, Inc.*, 397 Mass. 525, 539 (1986), his interests stand at the very heart of the matter.

#### **CONCLUSION**

The petitioner's fantastical choice of defense has dragged the applicant against his will into a controversy he neither sought, nor desires. The petitioner seeks to use the power of the Court to lay bare the most intimate and private details of the applicant's life. This Court should not pass judgment on the petition without granting the applicant the opportunity to be heard.

Respectfully Submitted  
On behalf of the Applicant,



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Dated: September 18, 2023

**CERTIFICATE OF SERVICE**

I, Gregory Henning, hereby certify that I served the foregoing document on counsel for the petitioner and the respondent via electronic mail on September 14, 2023.

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Gregory Henning

Dated: September 18, 2023