

Merrimack, ss.

6<sup>th</sup> Circuit-District Division-Concord  
No. 429-2021-03644

State of New Hampshire

V.

Terese Grinnell

NOW COMES the Defendant Terese Grinnell and moves that this Court Deny the Motion to Quash the Subpoena of Governor Christopher T. Sununu. As grounds therefore, Defendant says: 1) Governor Sununu is a material witness in this matter and on certain issues he is the primary witness and 2) video evidence of the proceedings and the Governor's actions strongly suggests that the decision to arrest the defendant (and others) was made and implemented by Governor Sununu prior to any alleged disruption giving rise to the charges in this matter.

In support of this Motion, Defendant attaches the Complaint and time stamped still photographs from a video of the incident and says:

I. The Governor is the Prime Material Witness in the Case

1) The Complaint in this matter (attached as Exhibit 1) recites that the defendant caused a breach of the peace “by disrupting the orderly conduct of business of a Governor and Council Meeting.” The Governor was the chair for this meeting (as abundantly demonstrated by the video of the proceedings) and therefore uniquely had the role to determine if, when and how a “disruption” occurred and to halt the meeting in the

event of a disruption. The Complaint further recites that “after receiving a warning from Governor Sununu ... that continued verbal disruptions would result in arrest, [Defendant] yell[ed] “Amen.”

2) The video in this matter does not disclose anything that could be remotely characterized as a “disruption” by the defendant prior to her arrest and not only is there no audio of her yelling “Amen,” but none of the persons seated around her react to any sound or so much as turn their heads. The meeting is not interrupted and proceeds without interruption as she is escorted away. Moreover, the video does not disclose any warning given by the Governor as recited in the Complaint.

3) Governor Sununu is uniquely situated to testify whether, when and how the meeting was disrupted, what (if anything) the defendant said, and why the meeting proceeded under his watch without interruption as the defendant was detained and led away.

4) None of the cases cited by the Attorney General are comparable to the above set of facts. In Bogon v. City of Boston, 489 F.3d 417 (1<sup>st</sup> Cir. 2007) plaintiffs in a civil suit brought a claim over a city inspection of a residential property and attempted to depose the Mayor of Boston who was not present for the inspection. The First Circuit accordingly ruled that the denial of the mayor’s deposition testimony did not violate due process, but the Court did state:

“Depositions of high ranking officials may be permitted where the official has **first-hand knowledge related to the claim being litigated**. citing *Baine v. Gen. Motors Corp.*, 141 F.R.D. 332, 335 (M.D.Ala.1991); *Church of Scientology of Boston v. IRS*, 138 F.R.D. 9, 12 (D.Mass.1990); *Cnty. Fed. Sav. & Loan Ass'n v. Fed. Home Loan Bank Bd.*, 96 F.R.D. 619, 621 (D.D.C.1983) (emphasis supplied)

- 5) Likewise, in Fitzpatrick v. Secretary of State, 440 N.W.2d 45 (Mich. App. 1989), a litigant brought suit over a ballot initiative and attempted to depose the Michigan Secretary of State. The Michigan Appeals Court sided with the Secretary of State and declared the general rule that if every litigant were to use process against department heads and high governmental officials it would be against the public interest because “ordinarily an agency head has **little or no knowledge of facts in a case.**” (emphasis supplied) Id. at 617. In this criminal matter by contrast, the Governor is a direct material witness.
- 6) The criminal matters cited by the Attorney General do not involve high ranking government officials. United States v. Valenzeula-Bernal, 458 U.S. 858 (1982), concerned the government’s deportation of two illegal alien witnesses and their unavailability at trial. Washington v. Texas, 388 U.S. 14 (1967), concerned a state law preventing a defendant from calling a convicted co-defendant in a murder case. The Washington court in fact reversed the defendant’s conviction on due process grounds because he was not permitted to compel the testimony of the witness. Id. at 17. The Court stated in relevant part:

“The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.”

Id. at 19.

II. The Governor's Actions on Video Strongly Suggest that the Decision to Arrest the Defendant was Made and Initiated by Governor Sununu Prior to any act of the Defendant

7) As the attached still shots from video of the event demonstrate, the roughly 1 minute time period prior to the detention of the defendant showed Governor Sununu engaged in text messaging, which is followed by a look and a nod to his right, a look and a nod to his left, and the police then converging on the defendant and she is escorted out of the room.

8) Exhibit 2, pages 1-5 depict screenshots of a video already provided to the State showing Governor Sununu removing his attention away from the meeting and towards his phone, in which he is subsequently shown typing and responding to what appear to be text communications. Take note of timestamps in the lower left hand corner of Exhibit 2.

9) Exhibit 2, pages 6-11 show Governor Sununu within seconds of text messaging giving a nod to his right, and a nod to his left to the police stationed on both sides of the room.

10) Exhibit 2, pages 12-15 show that within seconds of the nods, numerous police officers converge upon, confront, and escort Terese Grinnell. It should be noted that less than 30 seconds elapse between the beginning of Governor Sununu's nods and the detention of the Defendant.

11) The non-verbal communications of the Governor, followed immediately by the police converging upon the defendant – even before she is alleged to said anything – are highly material to the issues in this case and raise numerous issues including the credibility of the police witnesses. This is especially so where the high quality audio visual record of the proceedings does not reveal the defendant saying anything or anyone

reacting at all. Governor Sununu's testimony is potentially exculpatory for the defendant and as a matter of due process she should be allowed to compel his attendance.

Wherefore, for the forgoing reasons, the Motion to Quash should be denied.

Respectfully Submitted,

Terese Grinnell  
By her attorneys,

/s/ Bradford R. Stanton

Bradford R. Stanton,  
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/s/ William E. Gens

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DATED: June 26, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon the Office of the Attorney for the New Hampshire Department of Safety, Prosecutions Unit-Troop D by E-mail on:

DATE: June 26, 2023 SPR

# **EXHIBIT**

**1**

## THE STATE OF NEW HAMPSHIRE

## COMPLAINT

Case Number:

4292021CR3644

Charge ID:

1922090101

SIN# NSP0400210071352B005

Case Number:

Charge ID:

<input type="checkbox"/> VIOLATION	MISDEMEANOR	<input type="checkbox"/> CLASS A	<input checked="" type="checkbox"/> CLASS B	<input type="checkbox"/> UNCLASSIFIED(non-person)
	FELONY	<input type="checkbox"/> CLASS A	<input type="checkbox"/> CLASS B	<input type="checkbox"/> UNCLASSIFIED(non-person)

You are to appear at the: 6TH CIRCUIT - DISTRICT DIVISION - CONCORD

Court,

Address: 32 CLINTON STREET, CONCORD, NH 03301-2359

County: MERRIMACK

Time: 08:00 AM

Date: 11/19/2021

Under penalty of law to answer to a complaint charging you with the following offense:

THE UNDERSIGNED COMPLAINS THAT: PLEASE PRINT

GRINNELL

TERESE

Last Name

First Name

Middle

7337 OAK HILL RD

LOUDON

NH

03307

Address

City

State

Zip

FEMALE

WHITE

507

175

GREEN

RED OR AUBURN

Sex

Race

Height

Weight

Eye Color

Hair Color

07/06/1973

NHL17447952

NH

DOB

License #:

OP License State

☐ COMM.VEH.☐ COMM.DR.LIC.☐ HAZ.MAT.☐ 16+PASSENGER

AT: 17 INSTITUTE DR, CONCORD, NH 03301

On 10/13/2021 at 11:00AM in MERRIMACK County NH, did commit the offense of:

RSA Name: DISORDERLY CONDUCT

Contrary to RSA: 644:2

Inchoate:

(Sentence Enhancer):

And the laws of New Hampshire for which the defendant should be held to answer, in that the defendant did:

Purposely caused a breach of the peace and public inconvenience by disrupting the orderly conduct of business of a Governor and Executive Council Meeting at the New Hampshire Police Standards and Training Council facility in Concord, New Hampshire, after receiving a warning from Governor Sununu and New Hampshire State Troopers that continued verbal disruptions would result in arrest, to wit yell "Amen"

against the peace and dignity of the State.

☐ SERVED IN HAND


CHARLES O'LEARY

NEW HAMPSHIRE STATE POLICE - TROOP D

Complainant Signature

Complainant Printed Name

Complainant Dept.

Making a false statement on this complaint may result in criminal prosecution.

Oath below not required for police officers unless complaint class A misdemeanor or felony (RSA 592-A:7.1).

Personally appeared the above named complainant and made oath that the above complaint by him/her subscribed is, in his/her belief, true.

11/5/2021  
 Date

NH-JB-2962-D(6/27/2016)

Charles E. Hand  
 Justice of the Peace

My Commission expires June 30, 2026

Not passed by the State  
 Charles O'Leary #1910  
 N.H. Deputy Safety 4/29/2022

# **EXHIBIT**

**2**





02:02



06:33







































