

December 8, 2023

FOR PUBLIC DISTRIBUTION

VIA EMAIL ONLY

Martin LaLonde
Chair, Special Committee on Impeachment Inquiry
Vermont House of Representatives
115 State Street
Montpelier, Vermont 05603

Re: ***Subpoena to Sheriff John Grismore***

Dear Representative LaLonde:

I am in receipt of the Subpoena from the Vermont House of Representatives Special Committee on Impeachment Inquiry issued to Sheriff John Grismore (attached as Exhibit "A") to appear before the Special Committee on Impeachment Inquiry (herein "Impeachment Committee") on Monday, December 11, 2023 at 1:00 p.m. Sheriff Grismore has authorized me to provide the following response to the Impeachment Committee's Subpoena:

Sheriff Grismore regards the Impeachment Committee as an anti-democratic attack on representative government in the State of Vermont and a repudiation by extremist Democratic Party partisans of the will of the voters of Franklin County to select their elected leaders. The Vermont State Constitution created three distinct branches of government that were designed to implement checks and balances on each other to prevent the rise of autocratic tyranny. While impeachment of elected officials of the Executive Branch of government in Vermont is authorized by statute, this measure has virtually never been pursued in Vermont before now. The restraint in the pursuit of the extreme measure of impeachment would appear to reflect the sober judgment of Vermont legislators of prior generations that supplanting the will of the electorate in subordination to the passions of a few Representatives in Montpelier is certain to cause great harm to our government and society by undermining public trust in the electoral process and representative government. The history of Vermont politics is littered with questionable characters who have held all manner of office, yet the sort of partisan hit-job the Impeachment Committee brings to our politics is unprecedented, and for good reason.

There is powerful evidence to support Sheriff Grismore's view of the Impeachment Committee. Sheriff Grismore was elected Sheriff of Franklin County in the November 2022

general election by the free choice of 8,900 voters. Sheriff Grismore beat his nearest competitor for Sheriff by 3,619 votes. Representative Michael McCarthy, the instigator of the Impeachment Committee, was elected to the Vermont House of Representatives in that same November 2022 election by only 926 Franklin County voters. Significantly, Representative McCarthy beat his nearest competitor by only 242 votes. You were elected in the November 2022 general election by 1,997 Chittenden County voters, while your nearest competitor, Blank Votes, secured a significant 406 votes. Essentially, you ran uncontested for your seat and still only managed to secure 82% of the vote. Not to put too fine a point on this comparison, Sheriff Grismore beat his competitor for the office of Franklin County Sheriff through the votes of more Vermonters than all of the combined voters who voted you and Representative McCarthy into office. Yet, despite the small support for you and the lackluster support for Representative McCarthy among the electorate, you and Representative McCarthy seemingly felt entitled and emboldened to attempt to supplant the reasoned choice of 8,900 Franklin County voters for their Sheriff.

Moreover, the formation of the Impeachment Committee appears to be nothing more than the furtherance of a bullying campaign by Representative McCarthy to then Candidate, John Grismore, to allow the installation of a Democrat as Sheriff of Franklin County. In an email on August 24, 2022 (attached as Exhibit “B”), Representative McCarthy wrote to Candidate Grismore demanding that Mr. Grismore withdraw from the election for Sheriff and remove his name from the ballot. Specifically, Representative McCarthy demanded of Sheriff Grismore, a Republican, that he remove himself from the election in favor of a Democratic Party member to be selected by a caucus of Democrats. This brazen attempt to bully Sheriff Grismore into withdrawing from the election in order to allow a Democrat to be elected Sheriff of Franklin County was, obviously, unsuccessful as Sheriff Grismore did not withdraw from the election and, instead, went on to win a resounding victory over the anointed Democrat, Mark Lauer. This political history, combined with the lack of precedent for impeachment in Vermont, strikes at the heart of the legitimacy of the Impeachment Committee.

The work of the Impeachment Committee has been no better than its formation. The spirit of the Impeachment Committee seems adherent to the infamous quote by Lavrentiy Beria, Josef Stalin’s head of the secret police, to “show me the man and I will show you the crime.” The Impeachment Committee’s inquiry into Sheriff Grismore has been diffuse and meandering, spending tens of thousand of taxpayer dollars on a crusade with no more defined purpose than to find some way to oust Sheriff Grismore. The Impeachment Committee has conducted all of its most important work in secret, preventing the press and the public from monitoring what it is doing. Just as with impeachment, there is very little precedent in Vermont for the legislative body to work in secret. This secrecy prevents the public from knowing not only what information has been collected by the Impeachment Committee, but also how the members of the Impeachment Committee have conducted themselves in gathering this information. The

Martin LaLonde
Chair, Special Committee on Impeachment Inquiry
Page 3 of 4
December 8, 2023

Impeachment Committee has ignored the entreaties of the Vermont Press Association which objected to the Impeachment Committee's secrecy by correspondence from the Vermont Press Association's legal counsel on May 30, 2023 (attached as Exhibit "C"). The Impeachment Committee has none the less plowed forward with Star Chamber like secrecy in defiance of the clear will and choice of the Vermont electorate to know what its elected representatives are doing with their tax dollars.

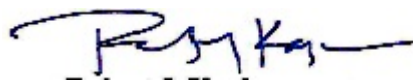
Despite the shaky foundation, questionable legitimacy and autocratic conduct of the Impeachment Committee, Sheriff Grismore is willing to appear before the Impeachment Committee and answer questions. However, Sheriff Grismore will not appear before the Impeachment Committee in secret, closed proceedings from which the press and public are excluded. Presuming that the Impeachment Committee is intending to conduct an open hearing for Sheriff Grismore's appearance at which there will be nothing kept from the press and public, Sheriff Grismore is still likely to be limited in what useful information he will be able to provide to the Impeachment Committee in light of the breadth and vagueness of the topics to be covered as listed in the Impeachment Committee's Subpoena to Sheriff Grismore. Since the Impeachment Committee has elected to proceed in secret, Sheriff Grismore has little understanding of what information the Impeachment Committee has gathered to this point and cannot reliably predict what questions he might be asked. In order that all of his answers are precise and maximally accurate, the Impeachment Committee should consider itself warned that many of Sheriff Grismore's answers may be that he is unable to answer without review and study of the matter under examination.

Sheriff Grismore and I will be in attendance at the Legislature on Monday at 1:00 p.m. and prepared to participate in an open hearing. We hope and expect that this hearing will be well attended by the press and public.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

KAPLAN AND KAPLAN

A handwritten signature in blue ink, appearing to read "R. Kaplan", written over a horizontal line.

Robert J. Kaplan

Martin LaLonde
Chair, Special Committee on Impeachment Inquiry
Page 4 of 4
December 8, 2023

RJK/nm
Enclosures
cc: Sheriff John Grismore

**VERMONT HOUSE OF REPRESENTATIVES SPECIAL COMMITTEE ON
IMPEACHMENT INQUIRY**

IN RE: Impeachment Investigation of Franklin County Sheriff

SUBPOENA

This SUBPOENA is issued to:

Sheriff John Grismore
Franklin County Sheriff's Office
387 Lake Street
Saint Albans, VT 05478

Care of:
Robert Kaplan
Kaplan and Kaplan
95 St. Paul Street, Suite 405
Burlington, VT 05401

By the following date and time:

December 11, 2023, at 1:00 p.m.

To appear before the Vermont House Special Committee on Impeachment Inquiry and testify pertaining to:

1. Your administration of the Franklin County Sheriff's Office.
2. Use of force.
3. Policies adopted by your office during your administration.
4. Certification as a law enforcement officer.
5. Performance of your duties.
6. Your management and accounting of the budget and finances of the Office.
7. Use of the Office for an improper purpose or personal gain;
8. Actions you have taken during your tenure as the Franklin County Sheriff.

This testimony may take place in executive session.

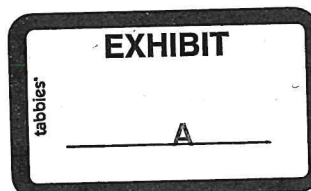
This subpoena attaches the text of Vermont Rule of Civil Procedure 45(c) and (d).

Failure to comply with this subpoena shall be cause for this matter to be brought to the Washington County Superior Court for enforcement purposes pursuant to 2 V.S.A. § 22.

DATED AT Montpelier, County of Washington County and State of Vermont, this 1st day of December, 2023.

Rep. Martin LaLonde
Chair of the House Special Committee on
Impeachment Inquiry

If you have any questions, contact Jennifer Carbee at 802.828.6506 or jcarbee@leg.state.vt.us.



RETURN OF SERVICE

On December 1, 2023, I served this subpoena upon Robert Kaplan, Esq., counsel for the Franklin County Sheriff John Grismore, by either personally delivering a copy to him or delivery via e-mail.

Signature: /s/Rep. *Martin LaLonde*.

Title: Chair, House Special Committee on
Impeachment Inquiry

V.R.C.P. 45. SUBPOENA

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court for which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to the requested production or to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court for which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3)(A) On timely motion, the court for which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a resident of this state to travel to attend a deposition more than 50 miles one way unless the court otherwise orders; requires a nonresident of this state to travel to attend a deposition at a place more than 50 miles from the place of service unless another convenient place is fixed by order of court, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 50 miles one way to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(1). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.



John Grismore <jgrismore28@gmail.com>

What Franklin County Needs

1 message

Mike McCarthy <mike@ilikemikevt.com>

Wed, Aug 24, 2022 at 7:55 AM

To: JGRISMORE28@gmail.com

Good morning Capt. Grismore,

My name is Rep. Mike McCarthy. I represent the City of St. Albans in the Vermont House, serve on the City Council for Ward IV, and am the Assistant Majority Leader for the House Democratic Caucus. I'm writing to ask that you send a message to JP Isabelle, Elections Administrator at the Secretary of State's office requesting that your name be taken off of the ballots no later than this coming Friday, August 26. His email is JP.Isabelle@vermont.gov

While you are of course entitled to all due process, the video released after you were the winner of both the Democratic and Republican primary nomination on August 9th makes it impossible for you to continue to run. Please avail yourself of the option granted to you by 17 V.S.A. § 2412(b), contact the Sec. of State's office and ask that your name not be printed before the deadline this Friday. Franklin County needs to have a Sheriff who does not have an incident like this hanging over the office.

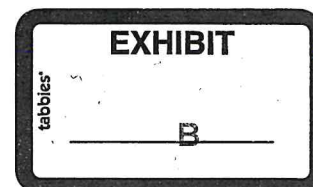
I attended a meeting of the Franklin County Democratic Committee Monday where two write-in candidates announced their interest in the office. I believe next week that one of those candidates will be supported by a caucus of the local Democrats, and possibly the same candidate will be supported by the Republicans. If you choose to continue your campaign, and your name is printed on the ballot for the general, leaders of both parties plan to help make sure that you are not elected.

The choice you have now is this: End your campaign, and ask that your name be removed from the ballots. Then the write-in candidates can campaign on their own merits and the focus will be off of the video. Alternatively, if you persist, the next two months will be all about why you shouldn't be the Sheriff, with the public asked again and again to focus on what I hope was the biggest mistake of your career. That will be terrible for you, for the Franklin County Sheriff's office which you hoped to lead, and for everyone in this county.

Please contact the Secretary of State's office and request to withdraw your name as soon as possible.

Sincerely,
Rep. Mike McCarthy

--
Mike McCarthy
mike@ilikemikevt.com
(802)-233-7587



A PROFESSIONAL CORPORATION

76 St. Paul Street
P.O. Box 369
Burlington, Vermont 05402-0369

Telephone 802.658.0220
Facsimile 802.658-1456
www.gravelshea.com

Matthew B. Byrne
Shareholder
mbyrne@gravelshea.com

May 30, 2023

E-MAIL

Rep. Martin Lalonde, Chair
Rep. Michael McCarthy, Vice Chair
Special Committee on Impeachment Inquiry
115 State Street
Montpelier, VT 05633

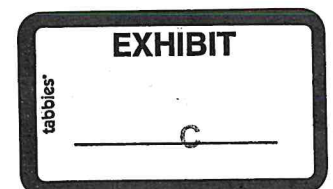
Re: Vermont Press Association

Dear Rep. Lalonde and Rep. McCarthy:

One of the most important Constitutional issues that the General Assembly can decide is whether to impeach an independently elected official. Because of the nature of this responsibility, every step of the process should be open and transparent.

On behalf of the Vermont Press Association and its statewide membership, I am writing you today to please reconsider your decision to provide possible sweeping secrecy as your committee investigates if an impeachment proceeding should be undertaken. The Committee adopted its proposed secrecy rules without a chance for public comment at a hearing as requested by the VPA before your first meeting. Most of your adopted rules would never pass muster in Vermont courts. Witnesses, even child victims in sex crimes, testify in open court.

In a democracy, the public are the ultimate authority. The Vermont Constitution recognizes both the people's central role and the need of the General Assembly to conduct its business in the open. Our Constitution recognizes that the people are the ultimate holders of governmental power. Chapter I, Article 6 says: "That all power being originally inherent in and co[n]sequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them." The General Assembly can only be accountable to the people if the General Assembly's actions are public. There is not only a long tradition of requiring the General Assembly to conduct its business in the open, but the Constitution explicitly requires it. Chapter II, Section 8 says, "The doors of the House in which the General Assembly of this Commonwealth shall sit, shall be open for the admission of all persons who behave decently, except only when the welfare of the State may require them to be shut."



Rep. Martin Lalonde, Chair
Rep. Mike McCarthy, Vice Chair

May 30, 2023
Page 2

The First Amendment of the United States Constitution also provides strong protection for open proceedings in criminal and civil court. In *Richmond Newspapers, Inc. v. Virginia*, the United States Supreme Court held that: “Plainly it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted; as we have shown, recognition of this pervades the centuries-old history of open trials and the opinions of this Court.” 448 U.S. 555, 575 (1980). The Court recognized that “[i]n guaranteeing freedoms such as those of speech and press, the First Amendment can be read as protecting the right of everyone to attend trials so as to give meaning to those explicit guarantees.” *Id.* Criminal trials are not private: “A trial is a public event. What transpires in the court room is public property. . . . Those who see and hear what transpired can report it with impunity.” *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 492-93 (1975) quoting *Craig v. Harney*, 331 U.S. 367, 374 (1947).

The United States Supreme Court extended the holding of *Richmond Newspapers* to criminal pretrial proceedings in *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 13 (1986). The Court held that these proceedings could only be closed in narrow circumstances. *Id.* “Since a qualified First Amendment right of access attaches to preliminary hearings in California, the proceedings cannot be closed unless specific, on the record findings are made demonstrating that ‘closure is essential to preserve higher values and is narrowly tailored to serve that interest.’” *Id.* at 13-14 (citations omitted). The interests of witnesses was one of the arguments in favor of closing the hearings that the Court rejected.

The First Amendment also extends that openness to civil judicial proceedings. “[I]t is well established that the public and the press have a ‘qualified First Amendment right to attend judicial proceedings and to access certain judicial documents.’” *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006) (citation omitted); see also *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 91 (2d Cir. 2004) (qualified First Amendment right to docket sheets). “Judicial documents” include not just the opinion of the court, but documents that the court considers in reaching its decision. In *Lugosch*, the issue involved summary judgment briefing. 435 F.3d at 120-21. The Second Circuit held that the First Amendment right of access attached to those documents. “Our precedents indicate that documents submitted to a court for its consideration in a summary judgment motion are—as a matter of law—judicial documents to which a strong presumption of access attaches, under both the common law and the First Amendment.” *Id.* at 121.

That reasons that the Committee has given to close its proceedings do not hold up to scrutiny. In our judicial system, witnesses are asked to testify routinely in criminal trials, civil trials, and various pre-trial proceedings. Rather than conceal testimony, the courts have long supported the use of cross examination to promote truthful testimony. Indeed, the Sixth

Rep. Martin Lalonde, Chair
Rep. Mike McCarthy, Vice Chair

May 30, 2023
Page 3

Amendment of the United States Constitution guarantees the rights of a criminal defendant to confront his or her accuser(s).

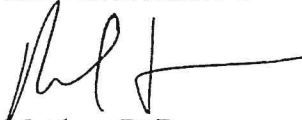
Likewise, the concern for retaliation against witnesses is unfounded. Significant protections already exist under the law to protect witnesses from intimidation or retaliation. *See, e.g.,* 13 V.S.A. § 3015. If the General Assembly felt that these protections were insufficient, it could have and should have enacted stronger protections like a whistleblower protection law.

What is equally concerning is that the “Special Committee on Impeachment” is attempting to give itself limitless power to exclude the public and press based on vague and unreviewable bases. For example, the Committee is apparently giving itself the authority to make things secret when it is “otherwise necessary to enable the Special Committee to conduct its inquiries.” With respect, this savings clause grants the Committee an excessive amount of discretion to close its proceedings for little or no reason. Moreover, the Committee has no requirement to record the reasons for concealing witness testimony or its deliberations, effectively insulating itself from any sort of accountability for its investigatory conduct. Prosecutors in the judicial system are accountable to the Judiciary for their conduct even in the investigatory stage of a case.

We appreciate the Committee’s commitment that it “will conduct our work in open session whenever possible.” In addition, the press appreciate your commitment that “The Final Report of the Special Committee on Impeachment Inquiry will be available to the public. Any evidence presented to the House, in the event that Articles of Impeachment are recommended by the Special Committee, would also be public, as well as the testimony and evidence in any trial in the Senate.” However, that disclosure comes too late to ensure that the General Assembly is doing its job. The deliberations of the Committee and all evidence given to the Committee should be available for public review immediately.

Very truly yours,

GRAVEL & SHEA PC



Matthew B. Byrne

MBB:lbb

cc: Lisa Loomis (e-mail)
Michael Donoghue (e-mail)