

FIRE

Foundation for Individual
Rights and Expression

August 23, 2023

Sent Via Certified U.S. Mail and Email

Katherine I. Rand, Esq.
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, Maine 04101
krand@pierceatwood.com

***Re: Demand to Disavow Threatened Defamation Suit Over Samson
Cournane's Patient-Safety Advocacy***

Dear Attorney Rand:

The Foundation for Individual Rights and Expression (FIRE)¹ writes on behalf of our client, Samson Cournane, to demand that Northern Light Health and Eastern Maine Medical Center immediately retract and disavow their threat of a lawsuit based on his public advocacy for patient safety. Samson's speech is fully protected by the First Amendment and the threatened lawsuit is entirely without merit.

In Maine, private institutions violate the spirit of state law when they threaten baseless legal action to silence protected advocacy.² Your clients have done exactly that. To vindicate Samson's expressive rights—and to spare your clients the embarrassment of publicly defending their ham-handed attempt to censor a 15-year-old—Northern Light Health and Eastern Maine Medical Center must provide FIRE a written statement disavowing any intent to sue over Samson's protected advocacy.

Samson is a computer science major at the University of Maine and a patient-safety advocate. He first became concerned about patient safety at his local hospital, Eastern Maine Medical Center, in July 2021, when the hospital fired his

¹ FIRE is a nonpartisan, nonprofit organization dedicated to defending the individual rights of all Americans to free speech and free thought—the most essential qualities of liberty.

² See ME. REV. STAT. tit. 14 § 556 (Maine's statute protecting speakers from "strategic lawsuits against public participation" or "SLAPPs").

mother—Dr. Anne Yered, a respected pediatric intensive care physician—after she raised concerns about inadequate patient-safety protocols. Upon further research, Samson learned of other troubling safety-related issues at the hospital. In September 2022, he corresponded with hospital officials to discuss his concerns, but they refused to meet with him or answer his substantive questions.

After being rebuffed by these administrators, Samson directed a Change.org petition to an elected official—U.S. Representative Jared Golden, who serves Samson and his family in Maine’s Second Congressional District.³ The petition calls for an investigation, asking Rep. Golden to “make sure that patient safety is at the forefront” because “[w]e, the public, need to know what is happening at the hospital.” Samson also created a Twitter account, @USPatientSafety, to raise awareness of his petition and pediatric-patient safety concerns. In October 2022, the University of Maine student newspaper, *The Maine Campus*, published a letter to the editor from Samson, voicing his concerns about patient safety at the campus’s local hospital and directing readers to his petition.⁴

In January 2023, Dr. Yered, attempting to settle her potential wrongful termination claims without litigation, sent the hospital a letter and draft complaint. In April, the hospital fired back, threatening to countersue for defamation based on Samson’s written advocacy and baselessly claiming that Dr. Yered “ghostwrote” the petition, tweets, and letter to the editor.

Nothing could be further from the truth.⁵ Samson wrote every word of his petition, tweets, and letter to the editor. Nevertheless, he immediately ceased his public advocacy. Your clients’ threatened suit could bring financial ruin to his family as a result of costly litigation against a billion-dollar hospital conglomerate and would increase the significant financial and emotional distress the family has been under since his mother’s firing. Samson fears that engaging in patient-safety advocacy would cause these harms, and so the threat of defending against a meritless suit continues to silence his free speech.

When Mainers, whether 15 or 50 years old, ask for their government’s assistance to address perceived wrongs, their statements are protected from

³ Samson Cournane, *Patient Safety in Maine Matters*, CHANGE.ORG (Sept. 18, 2022), <https://www.change.org/p/good-healthcare-workers-need-your-help> [<https://web.archive.org/web/20230329122852/https://www.change.org/p/good-healthcare-workers-need-your-help>].

⁴ Samson Cournane, *Letter to the Editor*, MAINE CAMPUS MEDIA (Oct. 28, 2022), <https://mainecampus.com/2022/10/letter-to-the-editor-by-samson-cournane/> [<https://perma.cc/8F7G-VHBY>].

⁵ Enclosed are affidavits from Samson Cournane and John Cournane, affirming under penalty of perjury that Samson wrote the emails, petition, letter to the editor, and tweets referenced in the hospital’s draft counterclaim.

baseless lawsuits designed to silence them. Samson’s advocacy statements are wholly protected by Maine law. Any attempt to sue him into silence will fail.

I. Samson Will Defeat Any Defamation Suit Related to His Advocacy.

Samson’s petition, tweets, and letter to the editor are unquestionably protected by the free speech guarantees in the U.S. and Maine Constitutions. To further protect these guarantees, many states, including Maine, have enacted statutes protecting against private actors’ meritless lawsuits meant to silence speakers with protracted and expensive litigation. These lawsuits are known as SLAPPs (Strategic Lawsuits Against Public Participation).

As Maine’s robust anti-SLAPP statute makes clear, statements “falling within constitutional protection of the right to petition government under the Constitution of the United States or the Constitution of Maine” that are not “devoid of any reasonable factual support” are immune from suit.⁶ The right to petition is interpreted broadly and encompasses a large swath of expressive activity. According to ME. REV. STAT. tit. 14 § 556, the right to petition includes:

Any written or oral statement made before or submitted to a legislative, executive or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.

The Maine Supreme Judicial Court has clarified that the right to petition also includes “statements that may have the effect of bringing an issue not currently under consideration into consideration or review by any governmental body.”⁷ Put

⁶ ME. REV. STAT. tit. 14 § 556.

⁷ *Schelling v. Lindell*, 942 A.2d 1226, 1230–31 (Me. 2008).

plainly, Samson’s statements are petitioning activity, supported by facts⁸ and protected under the First Amendment and Maine law.

A. Maine’s anti-SLAPP statute applies to Samson’s statements.

The petition, tweets, and letter to the editor are petitioning activity protected by Maine’s law.

Samson’s Change.org petition explicitly asks his Congressman, Rep. Jared Golden, for “justice for our fundamental concern—health[,]” to “make sure that patient safety is at the forefront,” and for “an investigation into the concerns brought forward by Dr. Anne Yered.” The petition also describes the need for safe staffing levels to ensure the protection of patients and staff—a topic that has been repeatedly discussed at the Maine Legislature.⁹ Samson’s petition is textbook petitioning activity—exactly what Maine’s anti-SLAPP statute is designed to protect from meritless lawsuits.

Samson’s tweets and letter to the editor further the petition’s goals and receive the same statutory protection.¹⁰ They explicitly seek to raise awareness of his petition and the patient-safety issues it describes. For example, Samson’s advocacy twitter account, @USPatientSafety, repeatedly posted links to his petition and decried lacking patient safety, hospital accountability, and appropriate staffing. His letter addresses the same issues and includes four weblinks to the petition. Both the tweets and letter to the editor discuss issues debated in recent Maine legislative sessions. There can be no doubt that, *at the least*, they “may have the effect of bringing an issue . . . into consideration or review by [a] governmental body.”

B. Samson’s statements are factually supported.

Samson’s advocacy consists of statements of fact supported by Samson’s personal knowledge, communications with trusted individuals, news articles, and

⁸ Even if one of Samson’s statements was “devoid of any reasonable factual support,” your clients almost certainly cannot get over the third hurdle of Maine’s anti-SLAPP statute: demonstrating that Samson’s statements have caused actual monetary damage “in a definite amount.” *Camden National Bank v. Weintraub*, 143 A.3d 788, 792 (Me. 2016).

⁹ See, e.g., Joe Lawlor, *Lawmakers Mull Bill to Limit Nurse-to-patient Ratios in Maine Hospitals*, PORTLAND PRESS HERALD, (May 4, 2023), <https://www.pressherald.com/2023/05/04/lawmakers-mull-bill-to-limit-nurse-to-patient-ratios-in-maine-hospitals>. [<https://perma.cc/6PHV-E26Y>]

¹⁰ See *Maietta Const., Inc. v. Wainwright*, 847 A.2d 1169, 1173 (Me. 2004) (letters to city council and mayor, as well as statements to newspaper reporters, “clearly amount to petitioning activity”); *Schelling* 942 A.2d at 1230–31 (letters to newspaper editors were “petitioning activity” designed to “expand the public consideration of a controversial issue”).

healthcare watchdog reports. Because of their underlying factual basis, Samson’s statements cannot in any way be characterized as “devoid of any reasonable factual support.”

The remaining statements, such as Samson’s expressions of fear for his community’s health or his subjective assessments of the hospital and its staff, are equally protected as fact-based opinions. Samson’s opinions are based on the same information and documentation as his statements of fact, and are his interpretations of those facts. While opinions can always be debated, Samson’s opinions have factual support and are therefore protected petitioning activity.

II. A Defamation Suit Would Be Doomed.

Even without Maine’s statutory protection, Samson’s public advocacy cannot constitute defamation. The First Amendment protects statements about others, even some false statements, because society has an interest in promoting free and frank communication.¹¹ Defamation exists only where false and reputationally damaging statements, that are not legally privileged, are published with, at least, “a high degree of awareness of probable falsity,” and cause monetary damages.¹²

A court would find no need to traverse the full defamation analysis here. As described above, Samson’s statements of fact are supported by personal knowledge and documentary evidence. His opinions are expressions of personal judgment, based on his interpretation of facts—a well-established category of protected speech. And his obvious intent was and is to raise awareness of a serious problem for his community that he believes public officials could resolve. Samson’s petition and other advocacy on the vital issue of patient safety are what the freedom of speech is all about: “For speech concerning public affairs is more than self-expression; it is the essence of self-government.”¹³

III. Conclusion

Please understand that FIRE is fully committed to seeing this matter to a just conclusion. We will not tolerate any further threat to silence Samson’s protected

¹¹ See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 271–72 (1964); *Lester v. Powers*, 596 A.2d 65, 70 (Me. 1991).

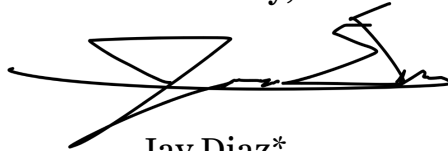
¹² *Cole v. Chandler*, 752 A.2d 1189, 1193–94 (Me. 2000).

¹³ *Garrison v. State of La.*, 379 U.S. 64, 74–75 (1964); see also *N.Y. Times*, 376 U.S. at 269 (“The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.”).

advocacy. You are hereby on notice that Northern Light Health and Eastern Maine Medical Center are to preserve all records, including, without limitation, all communications, recordings, or other documentation related to their claim of defamation for Samson's public advocacy. This material is obviously relevant to Samson's defense and discoverable, should Northern Light Health and Eastern Maine Medical Center proceed to litigation.

But litigation here is as unnecessary as it is unwise. Your clients must abandon their attempts to censor and end the unjust chilling of Samson's protected speech. To do so, Northern Light Health and Eastern Maine Medical Center must provide a written statement disavowing any intent to sue based on Samson's advocacy for pediatric-patient safety. Please provide the written statement no later than the close of business on September 1, 2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Diaz", with a horizontal line drawn through it.

Jay Diaz*

Senior Attorney

FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION

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** This attorney is a member of the Vermont Bar.*

*** This attorney is a member of the Maine bar.*

Enclosures

July 2021 § 5.C

7. In ~~June 2022~~, Northern Light Health and Eastern Maine Medical Center ended my mother's employment after she raised pediatric-patient safety concerns, among other concerns, with hospital and Northern Light Health administrators.
8. As a result, I developed a personal interest in pediatric-patient safety at Eastern Maine Medical Center, which is my local hospital.
9. In summer 2022, I found news articles and healthcare watchdog reports describing others' concerns for patient-safety at Eastern Maine Medical Center and low patient-safety ratings for Eastern Maine Medical Center.
10. This information troubled me because my family and I, as well as many of my friends and classmates, would be transported to Eastern Maine Medical Center if we needed hospital-level medical care.
11. As a result, in September 2022, I attempted to rent a table at my university to seek signatures on a petition advocating for improvements to patient safety at Eastern Maine Medical Center.
12. University of Maine's Assistant Director for Campus Activities, Benjamin Evans, informed me that tabling would cost \$250 per day.
13. I could not afford the tabling fee.
14. Benjamin Evans instead offered to connect me via email to administrators at Northern Light Health, Eastern Maine Medical Center's parent corporation.
15. With the assistance of Benjamin Evans, I corresponded with Northern Light Health officials.
16. The Northern Light Health officials refused to respond to my substantive questions via email.

17. When they learned that Dr. Yered was my mother, the Northern Light Health officials refused to meet with me to discuss my questions and concerns.

18. As a result, I wrote and posted a Change.org petition under the name *Patient Safety in Maine Matters*, to spark an investigation and change patient-safety practices at Eastern Maine Medical Center.

19. The petition is addressed to my district's congressman, Representative Jared Golden.

20. I am the sole author of the petition and all updates to the petition.

21. I learned the facts in the petition and all updates from personal knowledge, as well as reputable and knowledgeable individuals, news sources, and healthcare watchdog organizations.

22. My parents did not author, draft, or otherwise participate in the writing of my Change.org petition *Patient Safety in Maine Matters*.

23. I created a Twitter account, University Students for Patient Safety, with the Twitter handle @USPatientSafety, to promote the *Patient Safety in Maine Matters* petition.

24. I am the sole operator of the @USPatientSafety Twitter account and the sole author of its tweets.

25. I learned the facts in the @USPatientSafety tweets from personal knowledge, as well as reputable and knowledgeable individuals, news sources, and healthcare watchdog organizations.

26. My parents did not author, draft, or otherwise participate in the writing of tweets on the @USPatientSafety Twitter account.

27. In October 2022, I drafted and submitted a letter to the editor to *The Maine Campus*, the University of Maine's student newspaper.

28. I am the sole author of the letter to the editor submitted to *The Maine Campus*.

29. Grace Blanchard, the editor of *The Maine Campus*, edited and published an edited version of my letter to the editor on October 28, 2022.

30. I learned the facts in my letter to the editor from personal knowledge, as well as reputable and knowledgeable individuals, news sources, and healthcare watchdog organizations.

31. My parents did not author, draft, or otherwise participate in the writing of my letter to the editor, published in *The Maine Campus* October 28, 2022.

Dated at Town Clerk ^{in Hallowell}, Maine, this 22 day of August, 2023.

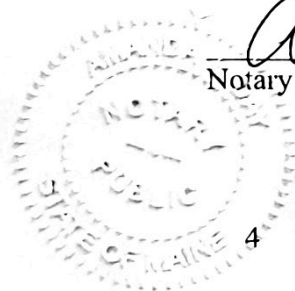
Samson Courmane
Samson Courmane

STATE OF MAINE
COUNTY OF Penobscot, ss.

August 22, 2023

PERSONALLY appeared the above-named SAMSON COURMANE who acknowledged the foregoing instrument to be his free act and deed and made oath that the foregoing was based upon his own personal knowledge.

Before me,



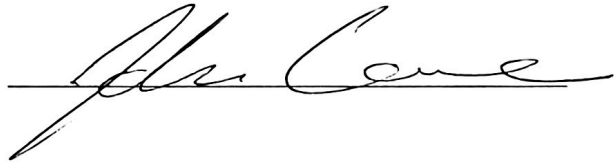
Notary Public

Amanda L. Day
Amanda L. Day
Notary Public, State of Maine
My Commission Expires December 15, 2027

person participated in the writing of the Samson Cournane's tweets under the @USPatientSafety Twitter handle.

7. To the best of my knowledge, Samson Cournane is the sole author of the letter to the editor sent to *The Maine Campus* in October 2022.
8. To the best of my knowledge, the editor of *The Maine Campus*, Grace Blanchard, made edits to Samson's letter to the editor, and published the edited version on October 28, 2022.
9. To the best of my knowledge, no other person, except Grace Blanchard, participated in the writing of Samson Cournane's letter to the editor sent to *The Maine Campus* and published on October 28, 2022.

Dated at Town Clerk.
22, Maine, this 22 day of August, 2023.
Hampden

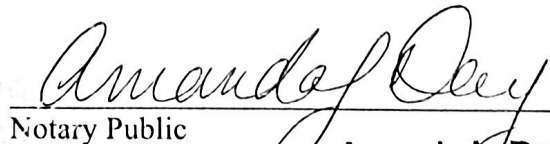


STATE OF MAINE
COUNTY OF Penobscot, ss.

August 22, 2023

PERSONALLY appeared the above-named JOHN CURNANE who acknowledged the foregoing instrument to be his free act and deed and made oath that the foregoing was based upon his own personal knowledge.

Before me,



Notary Public

Amanda L. Day
Notary Public, State of Maine
My Commission Expires December 15, 2027

