

No. 25-1356

In the United States Court of Appeals for the First Circuit

STEPHEN SCAER; BETHANY R. SCAER,

Plaintiffs - Appellants,

v.

CITY OF NASHUA, NEW HAMPSHIRE; JAMES W. DONCHESS, Mayor, City of
Nashua, New Hampshire, in their official and individual capacities;
JENNIFER L. DESHAIES, Risk Manager, City of Nashua, New Hampshire,
in their official and individual capacities,

Defendants - Appellees.

Appeal from a Preliminary Injunction Denial of the United States
District Court for the District of New Hampshire, The Hon. Landya B.
McCafferty (Dist. Ct. No. 1:24-cv-00277-LM-TSM)

APPENDIX

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June 17, 2025

Counsel for Plaintiffs-Appellants

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APPEAL,JLrecused,SErecused,STAYED,TRLSET

**U.S. District Court
District of New Hampshire (Concord)
CIVIL DOCKET FOR CASE #: 1:24-cv-00277-LM-TSM**

Scaer et al v. Nashua, NH, City of et al
Assigned to: Chief Judge Landya B. McCafferty
Referred to: US Magistrate Judge Talesha L. Saint-Marc
Case in other court: First Circuit COA, 23-01356
Cause: 28:1983 Civil Rights

Date Filed: 09/06/2024
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

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Plaintiff

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V.

Defendant

Nashua, NH, City of

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App.001

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Defendant

Mayor, City of Nashua, NH
in his official and individual capacities
other
James W. Donchess

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Defendant

Risk Manager, City of Nashua, NH
in her official and individual capacities
other
Jennifer L. Deshaies

represented by **Kat J. Mail**
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Jennifer L Deshaies

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Date Filed	#	Docket Text
09/06/2024	<u>1</u>	NEW CASE/ COMPLAINT Filing fee \$ 405, receipt number ANHDC-2549478 filed by Stephen Scaer, Bethany R. Scaer. (Attachments: # <u>1</u> Exhibit A City Website, October 2020, # <u>2</u> Exhibit B City Website, July 2024, # <u>3</u> Exhibit C Special Events Procedures, October 2020, # <u>4</u> Exhibit D Nashua Flag Pole Policy, May 11, 2022, # <u>5</u> Exhibit E Special Event Procedures, July 2024, # <u>6</u> Exhibit F Schmidt Facebook Post, # <u>7</u> Exhibit G Corporation Counsel Response, # <u>8</u> Exhibit H Nashua's Denial of Pine Tree Flag, # <u>9</u> Exhibit I Alderman Sennott's email, # <u>10</u> Exhibit J Nashua's Denial of Detransitioner Flag, # <u>11</u> Exhibit K Flag Photographs, # <u>12</u> Civil Cover Sheet)(McCandless, Roy) Modified on 9/6/2024 to add: Exhibit Descriptions (ed). (Additional attachment(s) added on 9/6/2024: # <u>13</u> Summonses) (mc). (Entered: 09/06/2024)
09/06/2024	<u>2</u>	MOTION for Preliminary Injunction filed by Bethany R. Scaer, Stephen Scaer.Follow up on Objection on 9/20/2024. The court only follow up date DOES NOT include 3 additional days that may apply per FRCP 6(d) and FRCrP 45(c). (Attachments: # <u>1</u> Exhibit Declaration of Stephen Scaer, # <u>2</u> Exhibit Declaration of Bethany Scaer, # <u>3</u> Exhibit A City Website, October 2020, # <u>4</u> Exhibit B City Website, July 2024, # <u>5</u> Exhibit C Special Events Procedures, October 2020, # <u>6</u> Exhibit D Nashua Flag Pole Policy, May 11, 2022, # <u>7</u> Exhibit E Special Event Procedures, July 2024, # <u>8</u> Exhibit F Schmidt Facebook Post, # <u>9</u> Exhibit G Corporation Counsel Response, # <u>10</u> Exhibit H Nashua's Denial of Pine Tree Flag, # <u>11</u> Exhibit I Alderman Sennott's email, # <u>12</u> Exhibit J Nashua's Denial of Detransitioner Flag, # <u>13</u> Exhibit K Flag Photographs, # <u>14</u> Proposed Order)(McCandless, Roy) Modified on 9/6/2024 to add: Exhibit Descriptions (ed). (Entered: 09/06/2024)
09/06/2024	<u>3</u>	MOTION for Nathan J. Ristuccia to Appear Pro Hac Vice (Filing fee \$ 100, Receipt # ANHDC-2549519.) filed by Bethany R. Scaer, Stephen Scaer.Follow up on Objection on 9/20/2024. The court only follow up date DOES NOT include 3 additional days that may apply per FRCP 6(d) and FRCrP 45(c). (Attachments: # <u>1</u> Ristuccia declaration PHV)(McCandless, Roy) (Entered: 09/06/2024)
09/06/2024	<u>4</u>	MOTION for Kolde to Appear Pro Hac Vice (Filing fee \$ 100, Receipt # ANHDC-2549520.) filed by Bethany R. Scaer, Stephen Scaer.Follow up on Objection on 9/20/2024. The court only follow up date DOES NOT include 3 additional days that may apply per FRCP 6(d) and FRCrP 45(c). (Attachments: # <u>1</u> Kolde declaration PHV)(McCandless, Roy) (Entered: 09/06/2024)
09/06/2024		Case assigned to Chief Judge Landya B. McCafferty and US Magistrate Judge Talesha L. Saint-Marc. The case designation is: 1:24-cv-277-LM-TSM. Please show this number with the judge designation on all future pleadings. (ed) (Entered: 09/06/2024)
09/06/2024		NOTICE. This case has been designated for Electronic Case Filing. All further submissions shall be filed in compliance with the Administrative Procedures for Electronic Case Filing. Pro se litigants are not required to file electronically and may continue to file documents in paper format. Persons filing electronically are strongly encouraged to complete the interactive training modules available on the courts website. To access these modules, click <u>HERE</u>. (ed) (Entered: 09/06/2024)
09/06/2024		ENDORSED ORDER granting <u>3</u> Motion to Appear Pro Hac Vice. Text of Order: Granted. Local counsel shall comply with all obligations required by L.R. 83.2(b) absent order of the court. So Ordered by US Magistrate Judge Talesha L. Saint-Marc.

		<p>The clerks office will provide the admitted attorney with instructions on how to obtain access to electronic filing by separate email. The admitted attorney must have an individual upgraded PACER account, not a shared firm account, to electronically file in the District of New Hampshire. After obtaining e-filing access, the admitted attorney must file an appearance to begin receiving electronic notices.(ed)</p> <p>(Entered: 09/06/2024)</p>
09/06/2024		<p>ENDORSED ORDER granting <u>4</u> Motion to Appear Pro Hac Vice. Text of Order: Granted. Local counsel shall comply with all obligations required by L.R. 83.2(b) absent order of the court. So Ordered by US Magistrate Judge Talesha L. Saint-Marc..</p> <p>The clerks office will provide the admitted attorney with instructions on how to obtain access to electronic filing by separate email. The admitted attorney must have an individual upgraded PACER account, not a shared firm account, to electronically file in the District of New Hampshire. After obtaining e-filing access, the admitted attorney must file an appearance to begin receiving electronic notices.(ed)</p> <p>(Entered: 09/06/2024)</p>
09/06/2024	<u>5</u>	<p>Summonses issued electronically as to Mayor, City of Nashua, NH, Nashua, NH, City of, Risk Manager, City of Nashua, NH. NOTICE: Counsel shall print and serve the summonses and all attachments in accordance with Fed. R. Civ. P. 4. (Attachments: # <u>1</u> Notice ECF) (mc) (Entered: 09/06/2024)</p>
09/06/2024	<u>6</u>	<p>NOTICE of Attorney Appearance by Nathan John Ristuccia on behalf of Bethany R. Scaer, Stephen Scaer Attorney Nathan John Ristuccia added to party Bethany R. Scaer(pty:pla), Attorney Nathan John Ristuccia added to party Stephen Scaer(pty:pla).(Ristuccia, Nathan) (Entered: 09/06/2024)</p>
09/09/2024	<u>7</u>	<p>NOTICE of Attorney Appearance by Endel Kolde on behalf of Bethany R. Scaer, Stephen Scaer Attorney Endel Kolde added to party Bethany R. Scaer(pty:pla), Attorney Endel Kolde added to party Stephen Scaer(pty:pla).(Kolde, Endel) (Entered: 09/09/2024)</p>
09/10/2024		<p>ENDORSED ORDER Re: <u>2</u> MOTION for Preliminary Injunction. Text of Order: Plaintiff has requested preliminary injunctive relief (doc. no. 2). The magistrate judge is designated to consider the request and, if necessary, conduct a hearing on the matter. The magistrate judge shall file proposed findings and recommendations with the court. See 28 U.S.C. §636(b)(1)(B). So Ordered by Chief Judge Landya B. McCafferty.(de) (Entered: 09/10/2024)</p>
09/10/2024	<u>8</u>	<p>Return of Service Executed as to Nashua, NH, City of by Stephen Scaer, Bethany R. Scaer. Served/Mailed on 9/9/2024. Answer Follow Up on 9/30/2024. The court only follow up date DOES NOT include 3 additional days that may apply per FRCP 6(d) and FRCrP 45(c).(Ristuccia, Nathan) (Entered: 09/10/2024)</p>
09/11/2024	<u>9</u>	<p>Return of Service Executed as to Mayor, City of Nashua, NH by Stephen Scaer, Bethany R. Scaer. Served/Mailed on 9/10/2024. Answer Follow Up on 10/1/2024. The court only follow up date DOES NOT include 3 additional days that may apply per FRCP 6(d) and FRCrP 45(c).(Ristuccia, Nathan) (Entered: 09/11/2024)</p>
09/11/2024	<u>10</u>	<p>Return of Service Executed as to Risk Manager, City of Nashua, NH by Stephen Scaer, Bethany R. Scaer. Served/Mailed on 9/10/2024. Answer Follow Up on 10/1/2024. The court only follow up date DOES NOT include 3 additional days that may apply per FRCP 6(d) and FRCrP 45(c).(Ristuccia, Nathan) (Entered: 09/11/2024)</p>
09/11/2024	<u>11</u>	<p>CERTIFICATE OF SERVICE by Bethany R. Scaer, Stephen Scaer re: <u>2</u> MOTION for Preliminary Injunction (Ristuccia, Nathan) (Entered: 09/11/2024)</p>
09/13/2024	<u>12</u>	<p>NOTICE of Plaintiffs' Counsel Unavailability by Bethany R. Scaer, Stephen Scaer.(McCandless, Roy) (Entered: 09/13/2024)</p>
09/16/2024	<u>13</u>	<p>NOTICE of Attorney Appearance by Steven A. Bolton on behalf of Mayor, City of Nashua, NH, Nashua, NH, City of Nashua Attorney Steven A. Bolton added to party Mayor, City of Nashua, NH(pty:dft), Attorney Steven A. Bolton added to party</p>

		Nashua, NH, City of(pty:dft).(Bolton, Steven) (Entered: 09/16/2024)
09/18/2024	<u>14</u>	NOTICE of Attorney Appearance by Kat J. Mail on behalf of Jennifer L Deshaies Attorney Kat J. Mail added to party Jennifer L Deshaies(pty:dft).(Mail, Kat) (Entered: 09/18/2024)
09/18/2024	<u>15</u>	NOTICE of Attorney Appearance by Peter G. Callaghan on behalf of Jennifer L Deshaies Attorney Peter G. Callaghan added to party Jennifer L Deshaies(pty:dft).(Callaghan, Peter) (Entered: 09/18/2024)
09/18/2024		NOTICE of Hearing. Scheduling Conference via Video set for 9/26/2024 11:30 AM before US Magistrate Judge Talesha L. Saint-Marc.(kad) (Entered: 09/18/2024)
09/19/2024	<u>16</u>	Assented to MOTION to Extend Time to Respond to Pending Pleadings filed by Jennifer L Deshaies.(Callaghan, Peter) (Entered: 09/19/2024)
09/19/2024		ENDORSED ORDER granting <u>16</u> Motion to Extend Time Respond to Pending Pleadings. Text of Order:Granted. So Ordered by US Magistrate Judge Talesha L. Saint-Marc. (vln) (Entered: 09/19/2024)
09/23/2024	<u>17</u>	NOTICE of Attorney Appearance by Adam B. Pignatelli on behalf of Mayor, City of Nashua, NH Attorney Adam B. Pignatelli added to party Mayor, City of Nashua, NH(pty:dft). (Attachments: # <u>1</u> Appearance of Michael Pignatelli, Esq.)(Pignatelli, Adam) (Entered: 09/23/2024)
09/25/2024	<u>18</u>	NOTICE of Attorney Appearance by Michael A. Pignatelli on behalf of Mayor, City of Nashua, NH Attorney Michael A. Pignatelli added to party Mayor, City of Nashua, NH(pty:dft).(Pignatelli, Michael) (Entered: 09/25/2024)
09/26/2024		Minute Entry for proceedings held before US Magistrate Judge Talesha L. Saint-Marc. SCHEDULING CONFERENCE held on 9/26/2024. Hearing re: Motion for Preliminary Injunction scheduled for November 5, 2024 @ 10:30 a.m. (Pltfs Atty: Nathan Ristuccia, Endel Kolde) (Defets Atty: Michael Pignatelli, Peter Callaghan, Steven Bolton)(Total Hearing Time: 06 min.) (lw) (Entered: 09/26/2024)
09/26/2024		NOTICE of Hearing re: <u>2</u> MOTION for Preliminary Injunction. Evidentiary Hearing set for 11/5/2024 10:30 AM before US Magistrate Judge Talesha L. Saint-Marc.(lw) (Entered: 09/26/2024)
10/10/2024	<u>19</u>	NOTICE of Attorney Appearance by Jonathan A. Barnes on behalf of Nashua, NH, City of Attorney Jonathan A. Barnes added to party Nashua, NH, City of(pty:dft).(Barnes, Jonathan) (Entered: 10/10/2024)
10/10/2024	<u>20</u>	OBJECTION to <u>2</u> MOTION for Preliminary Injunction filed by Nashua, NH, City of. Follow up on Reply on 10/17/2024. The court only follow up date DOES NOT include 3 additional days that may apply per FRCP 6(d) and FRCrP 45(c). (Barnes, Jonathan) (Entered: 10/10/2024)
10/10/2024	<u>21</u>	MEMORANDUM re <u>20</u> Objection to Motion, filed by Nashua, NH, City of. (Barnes, Jonathan) (Entered: 10/10/2024)
10/11/2024	<u>22</u>	Exhibit A. <i>City Hall Flagpole Policy</i> to <u>21</u> Memorandum to Motion and/or Objection by Nashua, NH, City of.(Barnes, Jonathan) (Entered: 10/11/2024)
10/14/2024	<u>23</u>	///NOTICE of Voluntary Dismissal as to Individual Capacity Claims against Defendants Donchess and Deshaies by Bethany R. Scaer, Stephen Scaer(Ristuccia, Nathan) (Entered: 10/14/2024)
10/16/2024	<u>24</u>	ANSWER to <u>1</u> Complaint – New Case,,, filed by Jennifer L Deshaies, Nashua, NH, City of.(Barnes, Jonathan) (Entered: 10/16/2024)
10/16/2024	<u>25</u>	<i>Mayor Donchess's</i> ANSWER to <u>1</u> Complaint – New Case,,, filed by Mayor, City of Nashua, NH.(Pignatelli, Adam) (Entered: 10/16/2024)
10/17/2024	<u>26</u>	REPLY to Objection to Motion re <u>2</u> MOTION for Preliminary Injunction filed by Bethany R. Scaer, Stephen Scaer. Surreply due by 10/22/2024. (Attachments: # <u>1</u> Exhibit (Affidavit) Supplemental Declaration, # <u>2</u> Exhibit Exhibit L, # <u>3</u> Exhibit Exhibit M, # <u>4</u> Exhibit Exhibit N)(Ristuccia, Nathan) (Entered: 10/17/2024)

10/17/2024		NOTICE OF PRETRIAL CONFERENCE. Pretrial Conference set for 11/21/2024 11:00 AM before US Magistrate Judge Talesha L. Saint-Marc. Follow up on Discovery Plan 11/14/2024. Please note pursuant to Title 28 USC 636(c) and Local Rule 73.1, the parties may consent to have the case reassigned to the Magistrate Judge, but are free to withhold consent without adverse consequences.(kad) (Entered: 10/17/2024)
10/17/2024		ENDORSED ORDER re: <u>23</u> Notice of Voluntary Dismissal as to Individual Capacity Claims against Defendants Donchess and Deshaies. Text of Order: Reviewed. So Ordered by US Magistrate Judge Talesha L. Saint-Marc.(de) (Entered: 10/17/2024)
10/24/2024	<u>27</u>	Proposed Discovery Plan <i>Joint Proposed Discovery Plan</i> filed by Bethany R. Scaer, Stephen Scaer. (Ristuccia, Nathan) (Entered: 10/24/2024)
10/28/2024	<u>28</u>	NOTICE of New event impacting pending motion by Stephen Scaer, Bethany R. Scaer. (Attachments: # <u>1</u> Exhibit Thibeault Newsletter, # <u>2</u> Exhibit Thibeault Correction)(Ristuccia, Nathan) (Entered: 10/28/2024)
11/04/2024	<u>29</u>	Exhibit List / Exhibits by Nashua, NH, City of.(Barnes, Jonathan) Modified on 11/4/2024 to fix text: Exhibit List / Exhibits (de). (Entered: 11/04/2024)
11/05/2024		Minute Entry for proceedings held before US Magistrate Judge Talesha L. Saint-Marc. MOTION HEARING held on 11/5/2024 re <u>2</u> MOTION for Preliminary Injunction. Motion taken under advisement. Order to issue. (Court Reporter: Susan Bateman) (Pltfs Atty: Nathan Ristuccia, Endel Kolde, Roy McCandless) (Defts Atty: Johathan Burns, Steven Bolton, Adam Pignatelli, Peter Gallagher, Kat Mail)(Total Hearing Time: 47 min.) (kad) (Entered: 11/05/2024)
11/05/2024	<u>30</u>	Final Exhibit List by Nashua, NH, City of(kad) (Entered: 11/06/2024)
11/19/2024		ENDORSED ORDER approving with modifications <u>27</u> Discovery Plan. Length of Trial 2 days. Case Track: BENCH Trial; Standard Track. PRETRIAL CONFERENCE CANCELLED. Text of Order: Approved and adopted as a pretrial scheduling order with the following modifications: The deadline for the parties to complete mandatory disclosures in the form set forth in Fed. R. Civ. P. 26(a)(1) shall be January 10, 2025. By April 1, 2025, the parties shall file a joint statement describing the status of discovery. Trial: A bench trial is scheduled for the two-week period beginning December 9, 2025. So Ordered by US Magistrate Judge Talesha L. Saint-Marc. Summary Judgment Motions due by 7/17/2025. Dispositive Motion Filing Deadline 2/13/2025. Joint Statement regarding the status of discovery due by 4/1/2025.(de) (Entered: 11/19/2024)
12/06/2024		TRIAL NOTICE: Pretrial Statements due 11/4/2025. LR 16.2(d) Objections due 11/18/2025. Bench Trial set for the two-week period beginning 12/9/2025 at 09:00 AM before Chief Judge Landya B. McCafferty. Final Pretrial Conference set for 11/25/2025 at 11:00 AM before Chief Judge Landya B. McCafferty. (de) (Entered: 12/06/2024)
12/10/2024	<u>31</u>	TRANSCRIPT of Proceedings for Preliminary Injunction Hearing held on 11/5/2024. Court Reporter: Susan Bateman, Telephone # 603 225-1453. Transcript is available for public inspection, but may not be copied or otherwise reproduced, at the Clerk's Office for a period of 90 days. Additionally, only attorneys of record and pro se parties with an ECF login and password who purchase a transcript from the court reporter will have access to the transcript through PACER during this 90-day period. If you would like to order a copy, please contact the court reporter at the above listed phone number. NOTICE: Any party who requests an original transcript has 21 days from service of this notice to determine whether it is necessary to redact any personal identifiers and, if so, to electronically file a Redaction Request. Redaction Request Follow Up 12/31/2024. Redacted Transcript Follow Up 1/10/2025. Release of Transcript Restriction set for 3/10/2025.(de) (Entered: 12/10/2024)
12/16/2024	<u>32</u>	REPORT AND RECOMMENDATION re <u>2</u> Motion for Preliminary Injunction: For all the reasons detailed herein, this court recommends that the District Judge deny Plaintiffs' Motion for Preliminary Injunction (Doc. No. 2). Follow up on Objections to R&R on 12/30/2024. So Ordered by US Magistrate Judge Talesha

		L. Saint-Marc.(de) (Entered: 12/16/2024)
12/23/2024	<u>33</u>	OBJECTION to <u>32</u> Report and Recommendation filed by Stephen Scaer, Bethany R. Scaer. (Ristuccia, Nathan) (Entered: 12/23/2024)
01/06/2025	<u>34</u>	REPLY to Objection to Motion re <u>32</u> REPORT AND RECOMMENDATION re <u>2</u> Motion for Preliminary Injunction,,, recommending For all the reasons detailed herein, this court recommends that the District Judge deny Plaintiffs Motion for Preliminary Injunction (Doc. No. 2).. filed by Nashua, NH, City of, Mayor, City of Nashua, NH, Risk Manager, City of Nashua, NH, Jennifer L Deshaies. Attorney Kat J. Mail added to party Nashua, NH, City of(pty:dft), Attorney Kat J. Mail added to party Mayor, City of Nashua, NH(pty:dft), Attorney Kat J. Mail added to party Risk Manager, City of Nashua, NH(pty:dft). Surreply due by 1/13/2025. (Mail, Kat) (Entered: 01/06/2025)
01/10/2025	<u>35</u>	FILED IN ERROR – Disclosures by Nashua, NH, City of . (Barnes, Jonathan) Modified on 1/13/2025 to add: FILED IN ERROR (de). (Entered: 01/10/2025)
01/29/2025	<u>36</u>	Proposed Discovery Plan <i>Joint Amended</i> filed by Mayor, City of Nashua, NH. (Pignatelli, Adam) (Entered: 01/29/2025)
02/04/2025		ENDORSED ORDER granting <u>36</u> Joint Amended Discovery Plan. Text of Order: Granted. So Ordered by US Magistrate Judge Talesha L. Saint-Marc. (COUNSEL: NOTE FROM CLERK'S OFFICE -- WRONG FILING EVENT WAS USED. IN THE FUTURE COUNSEL SHOULD USE THE MOTION TO EXTEND DEADLINES / TRIAL EVENT TO REQUEST AN EXTENSION OF DEADLINES AND/OR TRIAL AND MUST ATTACH A CIVIL FORM 3. THANK YOU.) Summary Judgment Motions due by 8/11/2025. Dispositive Motion Filing Deadline 3/13/2025.(de) Modified on 2/5/2025 to add: Civil Form 3 (de). (Entered: 02/05/2025)
02/27/2025	<u>37</u>	Joint Assented to MOTION to Extend Time to Deadlines established in the Court's Order of 2-5-25 filed by Nashua, NH, City of. (Attachments: # <u>1</u> Civil Form 3 attachment)(Barnes, Jonathan) (Entered: 02/27/2025)
02/28/2025		ENDORSED ORDER granting <u>37</u> Motion to Extend Deadlines established in the Court's Order of 2-5-25. Text of Order: Granted. So Ordered by US Magistrate Judge Talesha L. Saint-Marc. (vln) (Entered: 02/28/2025)
02/28/2025		TRIAL NOTICE: Bench Trial set for the two-week period beginning 6/16/2026 09:30 AM before Chief Judge Landya B. McCafferty. Final Pretrial Conference set for 6/3/2026 11:00 AM before Chief Judge Landya B. McCafferty. Pretrial Statements due 5/13/2026. LR 16.2(d) Objections due 5/27/2026. (vln) (Entered: 02/28/2025)
03/27/2025	<u>38</u>	Assented to MOTION to Extend Time to conduct discovery filed by Jennifer L Deshaies. (Attachments: # <u>1</u> Exhibit Civil Form 3)(Callaghan, Peter) (Entered: 03/27/2025)
03/28/2025	<u>39</u>	ORDER denying <u>2</u> Motion for Preliminary Injunction; approving <u>32</u> Report and Recommendation. So Ordered by Chief Judge Landya B. McCafferty.(de) (Entered: 03/28/2025)
04/04/2025	<u>40</u>	NOTICE OF APPEAL as to <u>39</u> Order on Motion for Preliminary Injunction, Order on Report and Recommendation by Bethany R. Scaer, Stephen Scaer.(Filing fee \$ 605, receipt number ANHDC-2620409.) [NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the Forms & Notices section of the First Circuit website at www.ca1.uscourts.gov , MUST be completed and submitted to the U.S. Court of Appeals for the First Circuit.] NOTICE TO COUNSEL: Counsel should register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf/. Counsel should also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf/ (Ristuccia, Nathan) (Entered: 04/04/2025)
04/04/2025		ENDORSED ORDER granting <u>38</u> Assented to Motion to Extend Time. Text of Order: Granted. So Ordered by US Magistrate Judge Talesha L. Saint-Marc. Dispositive Motion Filing Deadline 5/29/2025. Summary Judgment Motions due

		by 10/27/2025.(de) (Entered: 04/04/2025)
04/09/2025	<u>41</u>	Joint Assented to MOTION to Stay <i>Pending Appeal</i> filed by Bethany R. Scaer, Stephen Scaer.(Ristuccia, Nathan) (Entered: 04/09/2025)
04/11/2025	<u>42</u>	Appeal Cover Sheet as to <u>40</u> Notice of Appeal filed by Stephen Scaer, Bethany R. Scaer. (de) (Entered: 04/11/2025)
04/11/2025	<u>43</u>	Clerk's Certificate transmitting Record on Appeal to US Court of Appeals documents numbered 39, 40 and 42 re <u>40</u> Notice of Appeal. (de) (Entered: 04/11/2025)
04/11/2025		Appellate Case Number: First Circuit COA case no. 25-1356 re <u>40</u> Notice of Appeal filed by Stephen Scaer, Bethany R. Scaer.(de) (Entered: 04/11/2025)
04/14/2025	<u>doc</u>	ORDER granting <u>41</u> Joint Motion for Partial Stay Pending Appeal. So Ordered by Chief Judge Landya B. McCafferty.(de) (de). (Entered: 04/14/2025)
04/15/2025	<u>44</u>	NOTICE of Transcript Report Form certifying that transcript already on file with district court by Bethany R. Scaer, Stephen Scaer.(Ristuccia, Nathan) (Entered: 04/15/2025)
04/17/2025	<u>45</u>	Joint MOTION to Dismiss <i>the Official Capacity Claims Against the Individual Defendants</i> filed by Jennifer L Deshaies, Mayor, City of Nashua, NH, Nashua, NH, City of, Risk Manager, City of Nashua, NH.Follow up on Objection on 5/1/2025. The court only follow up date DOES NOT include 3 additional days that may apply per FRCP 6(d) and FRCrP 45(c).(Mail, Kat) (Entered: 04/17/2025)
04/29/2025	<u>46</u>	RESPONSE to Motion re <u>45</u> Joint MOTION to Dismiss <i>the Official Capacity Claims Against the Individual Defendants</i> filed by Bethany R. Scaer, Stephen Scaer. (Ristuccia, Nathan) (Entered: 04/29/2025)
05/06/2025	<u>47</u>	REPLY to Objection to Motion re <u>45</u> Joint MOTION to Dismiss <i>the Official Capacity Claims Against the Individual Defendants</i> filed by Jennifer L Deshaies. Surreply due by 5/12/2025. (Mail, Kat) (Entered: 05/06/2025)
05/09/2025		/// ENDORSED ORDER granting <u>45</u> Joint Motion to Dismiss the Official Capacity Claims Against the Individual Defendants. Text of Order: Doc. no. 45 is granted without objection given defendants' agreement in their reply (doc. no. 47) that dismissal of the official-capacity claims will not affect the scope of discovery or available relief. So Ordered by Chief Judge Landya B. McCafferty.(de) (Entered: 05/09/2025)

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

BETHANY R. SCAER and STEPHEN :
SCAER, :

Plaintiffs, :

v. :

CITY OF NASHUA, a municipal :
corporation; JAMES W. DONCHESS, :
Mayor, City of Nashua, in his official and :
individual capacities; JENNIFER L. :
DESHAIES, Risk Manager, City of :
Nashua, in her official and individual :
capacities, :

Defendants. :

Case No.

COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF

INTRODUCTION

The City of Nashua reserves a “Citizen Flag Pole” in front of city hall for people “to fly a flag in support of cultural heritage, [to] observe an anniversary, honor a special accomplishment, or support a worthy cause.”

Unless city leaders dislike the message. According to the city’s written flag policy, only speech which Nashua “wishes to express and endorse”—speech that is “in harmony with city policies and message” and in “the City’s best interest”—is allowed. Thus, while officials have allowed Nashua residents to fly flags celebrating causes such as Indian Independence Day, Lutheranism, Pride Month, organ

donation, and women's suffrage on the "Citizen Flag Pole," they have forbidden Bethany Scaer from commemorating the 249th anniversary of the Battle of Bunker Hill by raising the Pine Tree Flag, a traditional patriotic flag flown by New England troops during the American Revolution. Likewise, officials have denied Beth's husband, Stephen Scaer, permission to raise a Detransitioner Awareness Flag to observe Detrans Awareness Day (March 12). Stephen¹ wishes to support gender detransitioners and call attention to the threats, ridicule, discrimination, and medical expenses that they often suffer, but city officials apparently do not want him to be allowed to express support for detransitioners.

Nashua's flag policy is unconstitutionally vague and overbroad, and it imposes an arbitrary prior restraint on use of the Citizen Flag Pole. The First Amendment does not allow municipalities to turn the government speech doctrine into a cover for favoring some private speakers and censoring others. Such viewpoint discrimination is anathema to the constitution. Plaintiffs Beth and Stephen Scaer are entitled to relief securing their fundamental right of free speech.

THE PARTIES

1. Plaintiff Bethany R. Scaer is a natural person and a citizen of New Hampshire and the United States. She resides in Nashua and has resided in Nashua during all times relevant to her past actions mentioned in this complaint.

¹ Because Plaintiffs have the same surname, this complaint will refer to them as "Beth" and "Stephen" for the sake of clarity.

2. Plaintiff Stephen Scaer is a natural person and a citizen of New Hampshire and the United States. He resides in Nashua and has resided in Nashua during all times relevant to his past actions mentioned in this complaint

3. Defendant City of Nashua is a New Hampshire municipal corporation.

4. Defendant James W. Donchess is the mayor of Nashua and has held that position during all times relevant to the events in this complaint. He is sued in his official and individual capacities.

5. Defendant Jennifer L. Deshaies is Nashua's Risk Manager and has held that position during all times relevant to the events in this complaint. She is sued in her official and individual capacities.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343, because this action presents questions of federal law and challenges Defendants' violation of Plaintiffs' civil rights pursuant to 42 U.S.C. § 1983.

7. Venue lies in this Court pursuant to 28 U.S.C. § 1391, because a substantial part of the events and omissions giving rise to the claims occurred and are occurring in this judicial district and because Defendants City of Nashua, Donchess, and Deshaies all reside in this district.

STATEMENT OF FACTS

The Citizen Flag Pole

8. The City of Nashua, New Hampshire has four flag poles, of varying heights, in front of its city hall. Three are used by the city to display governmental flags, such as the American flag and the New Hampshire state flag. But the city permits people to apply to fly a flag of their own choosing on the fourth pole.

9. Previously, Nashua's website referred to this fourth pole as the "Citizen Flag Pole." Exhibit A is a true and correct copy of Nashua's website page about the Citizen Flag Pole, as of October 11, 2020.

10. Defendant Deshaies continued to refer to this pole as the "Citizen Flag Pole" (or "Citizen's Flag Pole") in correspondence with flag applicants as late as December 2023.

11. Currently, Nashua's revised website refers to this pole as "[a] flag pole in front of City Hall." Exhibit B is a true and correct copy of Nashua's website page about the flag pole events, as of July 18, 2024. This page is also available at <https://perma.cc/QU88-6UWY>.

12. Until May 2022, Nashua had no written policy governing what could be displayed on the Citizen Flag Pole. Those wishing to use the pole had to submit a Special Events Application to the Risk Manager, provide the physical flag themselves, pledge to abide by local ordinances, and agree to indemnify the city in the event of damage. The Risk Manager would then check to ensure that no one had already reserved the Citizen Flag Pole for the time period requested.

13. Exhibit C is a true and correct copy of Special Events Procedures, as of October 12, 2020.

14. On May 2, 2022, the U.S. Supreme Court unanimously decided *Shurtleff v. City of Boston*, 596 U.S. 243 (2022), holding that Boston violated the free speech rights of a Christian group when Boston denied the group's request to fly the Christian Flag on a pole at city hall. Like Nashua, Boston had no written policy about which flags were acceptable.

15. On May 11, 2022—just a week after the *Shurtleff* decision—the City of Nashua issued a written flag policy on its website.

16. Exhibit D is a true and correct copy of Nashua's flag pole policy. This policy, in full, states:

A flag pole in front of City Hall may be provided for use by persons to fly a flag in support of cultural heritage, observe an anniversary, honor a special accomplishment, or support a worthy cause. Any group wishing to fly a flag must provide the flag. This potential use of a City flag pole is not intended to serve as a forum for free expression by the public. Any message sought to be permitted will be allowed only if it is in harmony with city policies and messages that the city wishes to express and endorse. This policy recognizes that a flag flown in front of City Hall will be deemed by many as City support for the sentiment thereby expressed, city administration reserves the right to deny permission or remove any flag it considers contrary to the City's best interest.

For More Information

For more information, please contact the Risk Management office at 603-589-3350.

17. At this time, Nashua also revised its Special Events Procedures, to include a section on "Request[s] for Use of the City Flag Pole." Exhibit E is a true

and correct copy of Nashua's Special Events Procedures, as of July 18, 2024. The revised Procedures are also available at <https://perma.cc/VV5V-YTRK>. The section on the flag pole, in full, states:

Requests to fly a flag shall be made to the Risk Manager or designee and will be evaluated in accordance with the City's flag pole policy. Applications shall include a photograph of the flag proposed and an explanation of the message intended to be conveyed. No single organization or agency shall monopolize the City flag pole.

A. The Special Event Application (SEACH2022) should be completed in its entirety and shall be subject to review and approval of the Risk Manager. The Risk Manager reserves the right to decline any non-compliant application for use of the City flag pole for a given day or time period. The Applicant is to be notified as soon as a decision has been made.

B. Any and all requests may be subject to cancellation, rescheduling or relocation by the Risk Manager on a forty-eight (48) hours' notice as necessary to accommodate the needs of the City's governing body. The Risk Manager shall make every effort to reschedule use of the City flag pole by the applicant for any time lost.

18. Records disclosed by Nashua in response to requests under the New Hampshire Right-to-Know Law show that both before and after the issuance of the May 2022 policy, residents flew approximately ten flags a year on the Citizen Flag Pole. Each flag usually flew for a week, from Saturday, Sunday, or Monday through Friday.

19. Short ceremonies at the City Hall Plaza often—but do not always—accompany flag raisings. Local politicians sometimes attend or even speak at these ceremonies. Politicians can use these ceremonies as an opportunity to interact with flag-raising constituents and other attendees and passersby. If applicants wish to hold a ceremony, they must describe the details of this ceremony (such as the

number of expected attendees and the extent to which it will obstruct the sidewalk) on their application.

20. Many of the same groups apply to Nashua every year to fly a flag in celebration of an anniversary. For instance, both before and after the issuance of the May 2022 written policy, community groups regularly flew flags in honor of Pride Month, Indian Independence Day, Brazilian Independence Day, Greek Independence Day, International Francophonie Day, and the anniversary of the foundation of Nashua's Lions Club.

21. Other flags have flown sporadically or just once. Examples include the Kurdistan Flag, the Christian Flag, the Luther Rose Flag, the Porcupine Flag, and flags in support of National Recovery Month and organ donation.

Beth Scaer's Earlier Flag Applications

22. Since Nashua's flag program began in 2017, Plaintiff Beth Scaer has repeatedly applied to use the Citizen Flag Pole. Nashua approved some of her applications. In 2021, for instance, Beth was allowed to fly the Luther Rose Flag in April and a flag celebrating the ratification of the Nineteenth Amendment (women's suffrage) in August. In 2024, Beth and Stephen Scaer were part of a group that flew the Christian Flag during Holy Week.

23. Nashua also refused to fly some of Beth's proposed flags. In 2020, for instance, Beth received permission to fly a Save Women's Sports flag for a week in October. On October 10, Beth and Stephen raised this flag together, using a tool

borrowed from the city, without a ceremony but with two other people in attendance, holding signs.

24. Below is a photograph of the Save Women's Sports Flag.



25. The city removed this Save Women's Sports Flag the following day, well before the end of its allotted week on the pole, after Alderwoman Jan Schmidt and various others complained that the flag was allegedly transphobic. The city bowed to the heckler's veto and censored Beth's political speech.

26. Exhibit F is a true and correct copy of Alderwoman Schmidt's Facebook post about the Save Women Sport's Flag.

27. Beth appealed this removal to Mayor Donchess, to no avail. According to Nashua's corporation counsel, "the previously granted permission was revoked" because Beth's flag "was outside of the parameters established for use of the citizen

flag pole.” Nashua justified its action by citing *Shurtleff v. City of Boston*, 928 F.3d 166 (1st Cir. 2019)—a decision later reversed by the Supreme Court.

28. Exhibit G is a true and correct copy of corporation counsel’s response to Beth’s appeal.

29. In May 2022, soon after the Supreme Court’s decision in *Shurtleff*, 596 U.S. 243, Beth applied a second time to fly the Save Women Sport’s Flag. Defendant Deshaies—in her role as Nashua’s Risk Manager—denied this application.

30. From her personal knowledge and records disclosed in response to Right-to-Know requests, Beth understands that Nashua only refused to fly two flags prior to the issuance of the May 2022 flag policy. Those were the Save Women’s Sports flag in October 2020, and a Porcupine Flag associated with both the Free State Project and the Libertarian Party, in February 2021. Nashua, however, allowed the Porcupine Flag to be flown on three other occasions.

31. Since issuing the May 2022 flag policy, Nashua has refused to fly several other flags proposed by Nashua residents, including the Palestinian flag, a version of the Save Women’s Sports flag that differed iconographically from Beth’s, and the Pro-Life flag.

The Detransitioner Awareness Flag Application

32. On February 7, 2024, Stephen Scaer applied to raise the Detransitioner Awareness Flag. Stephen sought to fly the flag for a week, to commemorate Detrans Awareness Day on March 12. He planned to organize a small flag-raising ceremony with only five people in attendance—none of whom would represent the city.

33. Exhibit J is a true and correct copy of Stephen's Detransitioner Awareness Flag application and his correspondence with Defendants concerning this application.

34. The Detransitioner Awareness Flag is a new flag, designed by a gender detransitioner, which depicts a blue-green lizard against a black background, with the words "De-Trans Awareness" at the bottom. This iconography was chosen because some lizards are able to lose parts of their body and survive to grow them back. The flag celebrates the bravery that gender detransitioners demonstrate, by enduring threats, ridicule, discrimination, and often painful and expensive medical care in order to live according to their biological sex.

35. Below is a photograph of the Detransitioner Awareness Flag.



36. On February 14, Defendant Deshaies denied Stephen's flag application because the Detransitioner Awareness Flag supposedly "is not in harmony with the message that the City wishes to express and endorse." Stephen appealed to the mayor's office. On March 4, Mayor Donchess upheld Deshaies' decision.

The Pine Tree Flag Application

37. On May 27, 2024, Beth Scaer applied to fly the Pine Tree Flag on Saturday, June 15, to honor the Nashua soldiers who fought and died at the Battle of Bunker Hill. Because Bunker Hill occurred on June 17, 1775, Beth wished to commemorate the battle's 249th anniversary.

38. Exhibit H is a true and correct copy of Beth's Pine Tree Flag application and her correspondence with Defendants concerning this application.

39. The Pine Tree Flag is a traditional American emblem, carried by New England troops during the early years of the American Revolution, including at Bunker Hill. *See, e.g.*, JOHN R. VILE, THE AMERICAN FLAG: AN ENCYCLOPEDIA OF THE STARS AND STRIPES IN U.S. HISTORY, CULTURE, AND LAW 255 (2018); MARC LEEPSON, FLAG: AN AMERICAN BIOGRAPHY 13-15 (2005). This flag's origins go back at least to the 1772 Pine Tree Riot, a colonial uprising against unjust British taxation that occurred in Weare, New Hampshire. MICHAEL SHEA, IN GOD WE TRUST: GEORGE WASHINGTON AND THE SPIRITUAL DESTINY OF THE UNITED STATES OF AMERICA 71-74 (2012). Although the flag's iconography can differ, commonly it is a white flag, with a green pine tree in its center and the inscription "An Appeal to Heaven" above. *Leepson, supra* at 14-15. "An Appeal to Heaven" alludes to the political philosophy

of John Locke, who used this phrase to mean the freedom of the people to revolt against a tyrant. See JOHN LOCKE, TWO TREATISES OF GOVERNMENT 379-80 (Peter Laslett ed., 2016); VILE, *supra* at 255.

40. Below is a photograph of the Pine Tree Flag.



41. On May 29, Defendant Deshaies wrote Beth to say that the city was denying her request. Deshaies justified this decision only briefly, by stating that “[t]he flag is not in harmony with the message that the City wishes to express and endorse. Therefore, we must deny your request as the flag poles are not intended to serve as a forum for free expression by the public.” This explanation is an almost direct quote of Nashua’s written flag policy.

42. A few days later, Beth appealed this decision to Mayor Donchess. Her appeal, in part, stated:

Nashua's brave soldiers fought and died at the Battle of Bunker Hill on June 17, 1775. I applied to raise the Pine Tree Flag, which our soldiers carried into battle that day, on the Nashua City Hall Plaza to commemorate this solemn anniversary. My request was rejected because the "flag is not in harmony with the message that the City wishes to express or endorse." The citizens of Nashua would be quite alarmed and ashamed to know that the City does not endorse the message of commemorating our soldiers fighting and dying at the Battle of Bunker Hill.

43. On June 4, Mayor Donchess upheld Deshaies' decision, without additional explanation. As a result of Defendants' actions, Beth was not permitted to fly the Pine Tree Flag.

44. On the days leading up to June 17, Beth emailed the mayor's office, her local alderman (Timothy Sennott), and various Nashua leaders and press outlets, to complain that the city was doing nothing to observe the anniversary of Bunker Hill and to remind them that June 17, 2025, next year, will be the battle's 250th anniversary.

45. Alderman Sennott responded to Beth, to note that he had not been consulted or involved in any decisions regarding the Citizen Flag Pole, because the flag program operated out of the mayor's office exclusively. Exhibit I is a true and correct copy of Sennott's email.

The Continuing Impact of Defendants' Actions on Plaintiffs

46. Plaintiffs Beth and Stephen Scaer intend to apply to fly additional flags on the Citizen Flag Pole, in order to express their views, whether Defendants Donchess and Deshaies or other political leaders in Nashua agree with their views or not.

47. Indeed, Beth has already emailed Nashua leaders to remind them that June 17, 2025 will be the 250th anniversary of Bunker Hill. If permitted, Beth would fly the Pine Tree Flag then. She reasonably believes, however, that applying to fly the Pine Tree Flag on that day would be futile, because Defendants would deny her application just as they did this year.

48. Beth and Stephen Scaer also reasonably expect to disagree with Defendants' views on issues such as gender-critical feminism, parental rights, women's sex-based rights, pediatric gender medicine, abortion, and the freedoms protected in the Bill of Rights. If permitted, they would express themselves through flags on these issues.

49. If permitted, Beth and Stephen would both fly the Save Women's Sports Flag for the anniversary of Title IX next year. Similarly, Beth would fly the Pro-Life Flag for the anniversary of the Supreme Court's *Dobbs* decision next year. Plaintiffs reasonably believe that applying to Nashua to fly these flags would be futile, because Defendants have denied applications to fly these two flags in the past.

50. If permitted, Stephen would fly the Detransitioner Awareness Flag next year during the week around Detrans Awareness Day. Stephen believes, however, that applying to fly the Detransitioner Awareness Flag again would be futile, because Defendants would deny the application, just as they did this year.

51. Beth and Stephen Scaer cannot communicate through the Citizen Flag Pole as they intend, because Defendants interpret Nashua's flag pole policy to prohibit many of the flags that they wish to fly. Defendants have already used this

policy to justify refusing to fly flags such as the Pine Tree Flag, the Save Women's Sports Flag, the Detransitioner Awareness Flag, and the Pro-Life Flag.

52. Although Defendants have allowed Beth and Stephen to fly some flags on the Citizen Flag Pole, they would express themselves more often and differently, if the Defendants did not refuse to permit flags expressing viewpoints that they find objectionable. Nashua's flag policy, both on its face and as applied by Defendants, limits the viewpoints that Plaintiffs can express, their choice of flags and iconographies, and the frequency of their expression.

53. Plaintiffs find it frustrating and degrading to have their flag requests denied by the city, especially as other residents are allowed to promote viewpoints through flags. Flags expressing majoritarian opinions—and especially the opinions of Nashua's political leaders—are approved to fly while flags that express dissenting viewpoints, on both the right and the left, are rejected. Plaintiffs also find it frustrating and degrading that city officials refuse to explain why the Pine Tree Flag application and Detransitioner Awareness Flag application were really denied.

54. Unless this Court grants relief, Beth and Stephan Scaer expect to make fewer or different flag applications to the city in the future, in order to avoid having their flag applications denied or revoked.

COUNT ONE
VIEWPOINT DISCRIMINATION, FACIALLY AND AS APPLIED
U.S. CONST. AMENDS. I, XIV, 42 U.S.C. § 1983

55. Plaintiffs reallege and incorporate by reference paragraphs 1 through 54.

56. Plaintiffs have a First Amendment right to speak in both a limited public forum and a non-public forum, free from viewpoint discrimination. The history of the Citizen Flag Pole, the public’s likely perception as to who speaks through the flags on the pole, and Nashua’s lack of any direct control or active shaping of the messages conveyed in the flags all demonstrate that the Citizen Flag Pole constitutes a limited public forum for private speech by the general public. *See, e.g., Shurtleff v. City of Bos.*, 596 U.S. 243, 252 (2022); *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 211-13 (2015).

57. The Citizen Flag Pole is not an outlet for government speech, as Nashua’s speech policy wrongly implies. “If private speech could be passed off as government speech by simply affixing a government seal of approval, government could silence or muffle the expression of disfavored viewpoints.” *Matal v. Tam*, 582 U.S. 218, 235 (2017). Government speech doctrine cannot be “a subterfuge for favoring certain private speakers over others based on viewpoint.” *Pleasant Grove City v. Summum*, 555 U.S. 460, 473 (2009); *see also Shurtleff v. City of Bos.*, 596 U.S. 243, 263 (2022) (Alito, J., concurring) (courts must “prevent the government-speech doctrine from being used as a cover for censorship”).

58. “Under the . . . First Amendment . . . government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.” *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). “[I]n a limited public forum, government ‘[c]ontrol over access to [the] forum can be based on subject matter and speaker identity so long as

the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint neutral.” *McBreairty v. Sch. Bd. of RSU22*, 616 F. Supp. 3d 79, 93 (D. Me. 2022) (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985)). Likewise, access to a non-public forum can only be restricted “as long as the restrictions are reasonable and are not an effort to suppress expression merely because public officials oppose the speaker’s view.” *Ridley v. Mass. Bay Transp. Auth.*, 390 F.3d 65, 97 (1st Cir. 2004) (cleaned up).

59. Nashua’s written flag policy facially discriminates against speech that is not “in harmony with city policies and messages that the city wishes to express and endorse” or that officials “considers contrary to the City’s best interest.” The policy, however, contains no objective criteria for evaluating what speech is in harmony with the city’s messages or what is in the city’s interest. Defendants Donchess and Deshaies have applied this policy subjectively to Plaintiffs’ proposed speech, by preventing them from flying the Pine Tree Flag and the Detransitioner Awareness Flag without any explanation of the rationale for these denials. Defendants’ decisions about what flags can fly on the Citizen Flag Pole are neither reasonable nor viewpoint neutral.

60. By these actions, Defendants, under color of law, deprived and continue to deprive Plaintiffs of their right to free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Plaintiffs are thus damaged in violation of 42 U.S.C. § 1983 and, therefore, are entitled to damages; declaratory and preliminary and permanent injunctive relief against continued

enforcement and maintenance of Defendants' unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

COUNT TWO
PRIOR RESTRAINT – U.S. CONST. AMENDS. I, XIV, 42 U.S.C. § 1983

61. Plaintiffs reallege and incorporate by reference paragraphs 1 through 60.

62. Defendants impose a prior restraint on speech by preventing anyone from flying a flag on the Citizen Flag Pole unless they first apply to the city and obtain endorsement of their viewpoint from city officials first. To be valid, prior restraints “have to contain narrow, objective, and definite standards to guide [officials] in their decision to approve or reject a [] propos[al].” *Asociacion de Educacion Privada de P.R., Inc. v. Garcia-Padilla*, 490 F.3d 1, 19 n.15 (1st Cir. 2007) (internal quotation marks omitted). For example, a hypothetical flag policy would be valid if it required an application simply so that the city could ensure that no one had already reserved the Citizen Flag Pole for the same time period.

63. In contrast, Nashua's policy and practices constitute an unconstitutional prior restraint because they lack any standards. Permission to use the Citizen Flag Pole is left entirely to Defendants' unbridled discretion. Nashua's flag policy and practices fail to cabin official discretion and empower local partisan politicians to silence disfavor speech without any judicial oversight. *Cf. Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969).

64. Defendants' practice of granting or denying flag applications based on subjective, unspecified criteria is an unconstitutional prior restraint. Their decisions to admit or to deny access to the Citizen Flag Pole is left entirely to their arbitrary,

unbridled discretion. Additionally, Defendants' practice is entirely bereft of procedural safeguards to ensure reviewable decisionmaking. Evidently, the mayor's office has power to grant or deny applications and to review appeals of its own decisions, without consulting or involving the Board of Aldermen or judiciary in any way.

65. By imposing a prior restraint on Plaintiffs' political speech and thereby subjecting their access to the forum at Defendants' discretion, Defendants, under color of law, deprive Plaintiffs of their right to free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Plaintiffs are thus damaged in violation of 42 U.S.C. § 1983 and, therefore, are entitled to damages; declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

COUNT THREE

VAGUENESS AND EXCESSIVE ENFORCEMENT DISCRETION – SPEECH CODE, U.S. CONST. AMENDS. I, XIV, 42 U.S.C. § 1983

66. Plaintiffs reallege and incorporate by reference paragraphs 1 through 65.

67. As notice is the first element of due process, and government officials require precise guidance so that they do not act in an arbitrary or discriminatory way, the Fourteenth Amendment guarantee of Due Process prohibits the enforcement of vague laws. The First Amendment also reflects these concerns, and likewise forbids the enforcement of laws that, however valid their application may be in some instances, are so vague as to chill protected speech. A law can be “impermissibly vague for either of two independent reasons. First, if it fails to

provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement.” *Hill v. Colorado*, 530 U.S. 703, 732 (2000) (citation omitted).

68. Defendants’ prohibitions of flags whose message is not “in harmony with city policies and messages that the city wishes to express and endorse” and whose message “city administration . . . considers contrary to the City’s best interest” is unduly vague and inherently subjective, serving only to authorize Defendants’ arbitrary censorship of speech they dislike. This policy is unconstitutionally vague and gives excessive enforcement discretion to city leaders. *Cf. Minn. Voters Alliance v. Mansky*, 138 S. Ct. 1876, 1891 (2018).

69. By enforcing this flag policy, Defendants, under color of law, deprive Plaintiffs of their right to free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Plaintiffs are thus damaged in violation of 42 U.S.C. § 1983 and, therefore, are entitled to damages; declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants’ unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

COUNT FOUR

OVERBREADTH – SPEECH CODE, U.S. CONST. AMENDS. I, XIV, 42 U.S.C. § 1983

70. Plaintiffs reallege and incorporate by reference paragraphs 1 through 69

71. Speech regulations may not “sweep unnecessarily broadly and thereby invade the area of protected freedoms.” *NAACP v. Alabama*, 377 U.S. 288, 307

(1964). “The showing that a law punishes a substantial amount of protected free speech, judged in relation to the statute’s plainly legitimate sweep, suffices to invalidate *all* enforcement of that law, until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression.” *Virginia v. Hicks*, 539 U.S. 113, 118-19 (2003) (internal quotation marks and citations omitted) (emphasis original).

72. Defendants’ policy and practices empower “city administration . . . to deny permission or remove any flag it considers contrary to the City’s best interest.” Defendants interpret this provision in a way that allows them to prevent any symbolic speech that would offend a large number of their Nashua constituents. Flags expressing popular or majoritarian opinions can be displayed while flags that express dissenting viewpoints, on both the right and the left, are forbidden. Defendants’ policy violates the First Amendment right of free speech on its face because it is substantially overbroad, sweeping in vast amounts of protected political expression.

73. By enforcing this flag policy, Defendants, under color of law, deprive Plaintiffs of their right to free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Plaintiffs are thus damaged in violation of 42 U.S.C. § 1983 and, therefore, are entitled to damages; declaratory and preliminary and permanent injunctive relief against continued enforcement and maintenance of Defendants’ unconstitutional customs, policies, and practices; and attorney fees and expenses pursuant to 42 U.S.C. § 1988.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants as follows:

1. Orders preliminarily and permanently enjoining defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from:
 - a. Denying flag applications and preventing flags from being flown on the Citizen Flag Pole on the basis of viewpoint, including specifically the Pine Tree Flag, the Detransitioner Awareness Flag, and the Save Women's Sport's Flags;
 - b. Enforcing those parts of Nashua's Flag Pole Policy that limit acceptable flags to those whose "message . . . is in harmony with city policies and messages that the city wishes to express and endorse" or that allow "city administration . . . to deny permission or remove any flag it considers contrary to the City's best interest"; and
 - c. Denying or removing any flag because of a citizen complaint or is deemed to be offensive by city officials;
2. Declaratory relief consistent with the injunction, to the effect that:
 - a. Denying flag applications and preventing flags from being flown on the Citizen Flag Pole on the basis of viewpoint violates the First Amendment right of freedom of speech; and

- b. Those parts of Nashua’s Flag Pole Policy that limit acceptable flags to those whose “message . . . is in harmony with city policies and messages that the city wishes to express and endorse” or that allow “city administration . . . to deny permission or remove any flag it considers contrary to the City’s best interest” violate the First Amendment right to free speech, on its face and as applied against Plaintiffs, by impermissibly discriminating against speech on the basis of viewpoint and by establishing an arbitrary prior restraint; and also that these provisions are unconstitutionally vague and overbroad in violation of the First and Fourteenth Amendments;
3. An award of nominal damages from each Defendant to each Plaintiff in the amount of \$17.91;
4. Cost of suit, including attorney fees and costs pursuant to 42 U.S.C. § 1988; and
5. Any other relief as the Court deems just and appropriate.

Dated: September 5, 2024

Respectfully submitted,

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* Application pro hac vice to be filed

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

BETHANY R. SCAER and STEPHEN :
SCAER, :

Plaintiffs, :

v. :

CITY OF NASHUA; JAMES W. :
DONCHESS, Mayor, City of Nashua, in :
his official and individual capacities; :
JENNIFER L. DESHAIES, Risk :
Manager, City of Nashua, in her official :
and individual capacities, :

Defendants. :

Case No.

DECLARATION OF STEPHEN SCAER

I, Stephen Scaer, declare the following based on my personal knowledge:

1. I have lived in Nashua, New Hampshire for three decades. My wife, Bethany Scaer, and I raised two daughters in Nashua.
2. I am active in both state politics and local Nashua politics. Currently, I am a Republican candidate for state senate, and I also ran for state senate in 2022. My political platform focuses on defending First Amendment rights, protecting children from experimental gender medicine, and ensuring women can have restrooms, locker rooms, sports teams, and prisons reserved exclusively for those of their biological sex.

3. I also write for *GraniteGrok*: a New England political website advocating limited government and the defense of liberty. I also participate in political rallies, speak at government meetings, put up billboards, and stand on public sidewalks with signs, in order to raise awareness about issues such as gender detransitioners and the dangers of pediatric gender medicine. My moniker is “Sidewalk Steve” for my activism.

4. In my activism, I have worked alongside various gender-critical groups, on the political right and left, such as Gays Against Groomers and the Women’s Liberation Front.

5. I am aware that the City of Nashua, New Hampshire has a Citizen Flag Pole in front of its city hall, reserved for people to use to fly a flag in support of cultural heritage, observe an anniversary, honor an accomplishment, or support a worthy cause.

6. Nashua established its flag program in 2017. Since then, I have often seen the flags in front of city hall and have attended about a half-dozen flag-raising ceremonies. Although I myself have only applied to use the Citizen Flag Pole once, my wife and various friends have applied many times. Through this, I am familiar with the flag application process.

7. I am aware that short ceremonies at the City Hall Plaza often—but do not always—accompany flag raisings. Local politicians sometimes attend or even speak at flag-raising ceremonies.

8. Politicians can use these ceremonies as an opportunity to interact with the local group of constituents raising the flag and win favor with voters. When a local ethnic community raises a flag (such as the Indian Flag, Irish Flag, or Armenian Flag), Mayor Donchess usually attends to show his support for the community and strengthen his political network. As a local politician myself, I recognize the value of such outreach to prominent community groups.

9. I am aware that some groups apply to Nashua every year to fly a flag in celebration of an anniversary. Examples include flags in honor of Pride Month, Indian Independence Day, Brazilian Independence Day, Greek Independence Day, International Francophonie Day, and the anniversary of the foundation of Nashua's Lions Club.

10. My first experience using the Citizen Flag Pole was in October 2017, when I helped my wife raise the Luther Rose Flag in honor of the 500th anniversary of the Protestant Reformation. My wife had applied to the city and supplied the flag (which we own). Approximately six people attended the flag-raising ceremony—none of whom represented the city.

11. In April 2021, my wife again received permission to fly our Lutheran flag for the 500th anniversary of the Diet of Worms: a crucial event in the history of the Protestant Reformation, at which Martin Luther refused to recant his theological views, despite the threats of Emperor Charles V. I consider the Diet of Worms to mark the beginning of religious freedom, without which the founding of American would be unimaginable. I posted on social media about the Diet's importance,

encouraging people to attend the flag-raising ceremony. Less than a dozen people attended—none of whom represented the city.

12. In 2020, my wife received permission from the city to raise a Save Women's Sports Flag on the Citizen Flag Pole. On October 10, my wife and I raised the flag together, using a tool borrowed from the city, without a ceremony but with two other people in attendance, holding signs.

13. A day later, on October 11, the city revoked its permission and took the flag down, after various people complained that the flag was supposedly "transphobic." My wife appealed this removal, unsuccessfully.

14. In August 2021, my wife was allowed to fly a flag in honor of the ratification of the Nineteenth Amendment. No representatives of the city attended the flag raising. Indeed, my wife and I were the only people present. After we raised the flag, my wife spoke about the importance of women's sex-based rights and how Mayor Donchess' gender-identity policies undermined these rights.

15. I was part of a group that flew the Christian Flag during Holy Week 2024. There was a small ceremony of less than a dozen people at which Hal Shurtleff—the plaintiff in *Shurtleff v. City of Boston*, 596 U.S. 243 (2022)—and a local pastor both spoke about the need to reclaim America for Jesus Christ and criticized Nashua for flying flags that support progressive politics such as the Pride Flag while rejecting flags with conservative messages such as the Pro-Life Flag. No representatives of the city were present.

16. On February 7, 2024, I applied to raise the Detransitioner Awareness Flag. I sought to fly the flag for a week, to commemorate Detrans Awareness Day on March 12. I planned to organize a small flag-raising ceremony with only five people in attendance—none of whom would represent the city.

17. The Detransitioner Awareness Flag was designed for this flag raising by a gender detransitioner, Laura Becker. The flag depicts a blue-green lizard against a black background, with the words “De-Trans Awareness” at the bottom. This iconography was chosen because some lizards are able to lose parts of their body and survive to grow them back.

18. Raising awareness about gender detransitioners and the difficulties they overcome is important to me both politically and personally. Detransitioners are among the bravest people that I know, and they frequently endure threats, ridicule, discrimination, and medical problems. I have helped one detransitioner obtain medical care (which can be painful and prohibitively expensive because there are no insurance codes for these treatments). Supporting detransitioners does not hurt transgender-identifying persons and is something that Nashua, as a “Welcoming City,” ought to embrace.

19. On February 14, 2024, I received an email from Defendant Deshaies, denying my flag application because the Detransitioner Awareness Flag supposedly “is not in harmony with the message that the City wishes to express and endorse.” I appealed this decision on February 22. On March 4, Mayor Donchess upheld Deshaies’ decision.

20. Exhibit J is a true and correct copy of my Detransitioner Awareness Flag application and my correspondence with Defendants concerning this application.

21. Exhibit K is a collection of photographs that fairly and accurately depicts the Pine Tree Flag, the Save Women's Sports Flag, and the Detransitioner Awareness Flag, that my wife or I applied to fly.

22. I intend to apply to fly additional flags on the Citizen Flag Pole, in order to express my views, if Nashua would permit this.

23. If permitted, I would fly the Detransitioner Awareness Flag next year during the week around March 12, 2025: Detrans Awareness Day. The Detransitioner Awareness Flag celebrates the bravery of men and women whose very existence is often denied. By flying the flag, Nashua would be pushing against the threats, ridicule, and discrimination often aimed at gender detransitioners. Moreover, increased awareness might make it easier for detransitioners to obtain the expensive medical care that they usually desire. I embrace and would like to express the political message of this flag. I believe, however, that applying to fly the Detransitioner Awareness Flag again would be futile, because Defendants would deny my application, just as they did this year.

24. I would also like to fly flags expressing my views on issues such as women's sex-based rights, pediatric gender medicine, abortion, and the freedoms protected in the Bill of Rights. Based on Nashua's previous flag denials, I reasonably believe that Defendants disagree with my views on these issues and would not allow me to fly flags of my own choosing about these issues.

25. If permitted, my wife and I would fly the Save Women's Sports Flag for the anniversary of Title IX next year. This flag expresses my viewpoint that women have inalienable rights based on their biological sex that governments have a duty to protect and that allowing biological males to compete against women in sports denies women their rights and the equality due them under both the U.S. Constitution and Title IX. As a father of two daughters who attended New Hampshire schools and competed in student athletics, ensuring that biological women can compete in safe and fair sports is important to me. I believe, however, that applying to fly the Save Women's Sports Flag again would be futile, because Defendants would deny my application, just as they did twice before.

26. Nashua has permitted me to fly some of the flags that I applied to display. However, if not for Defendants' policies, I would fly flags more often in the future and would be able to display a wider range of views through flags. Nashua's flag policy limits the viewpoints that I can express, the choice of flags and iconographies that I can display, and the frequency of my political expression.

27. I find it frustrating and degrading to have my flag request denied by the city, especially when I see other residents being allowed to promote their flags and viewpoints. In seeing the flags that Nashua permits in front of city hall, I have noticed that flags expressing majoritarian opinions—and especially the opinions of Nashua's political leaders—can fly while flags that express dissenting viewpoints, on both the right and the left, are rejected. It is also frustrating and degrading that city officials refuse to explain to me why my Detransitioner Awareness Flag

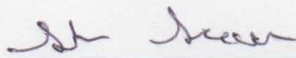
application was really denied. This amounts to disrespect towards gender detransitioners (and towards me) and suggests that Nashua—a supposedly “Welcoming City”—denies that detransitioners even exist.

28. I also think it is wrong for the city to revoke previously granted permission just because someone complains about a flag they disagree with. This amounts to city officials picking and choosing which citizens’ views matter more. It is offensive to me to be told, in effect, that my views do not matter because I advocate for gender-critical policies and the rights of detransitioners.

29. Unless I am able to obtain protection from the Court, I expect to make fewer or different flag applications to the city in the future, in order to avoid having my flag applications denied or revoked.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2024



Stephen Scaer

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

BETHANY R. SCAER and STEPHEN SCAER,

Plaintiffs,

v.

CITY OF NASHUA; JAMES W. DONCHESS, Mayor, City of Nashua, in his official and individual capacities; JENNIFER L. DESHAIES, Risk Manager, City of Nashua, in her official and individual capacities,

Defendants.

Case No.

DECLARATION OF BETHANY R. SCAER

I, Bethany R. Scaer, declare the following based on my personal knowledge:

1. I have lived in Nashua, New Hampshire for three decades. My husband, Stephen Scaer, and I raised two daughters in Nashua.
2. I am active in both state politics and local Nashua politics. As part of my activism, I write for *GraniteGrok*: a New England political website advocating limited government and the defense of liberty. I speak at meetings of Nashua's Board of Aldermen and Board of Education and have testified before New England legislatures about proposed bills. My husband is a Republican candidate for state senate this year, and he also ran back in 2022. I am involved in his campaigns.

3. I am a proponent, among other things, of gender-critical feminism, parental rights, women's sex-based rights, legislation restricting pediatric gender medicine, the Pro-Life movement, and the freedoms protected in the Bill of Rights. I have promoted these positions and criticized Nashua leaders who oppose them through my writing and activism. I have expressed criticisms of Defendant James Donchess, Nashua's mayor and a registered Democrat, repeatedly.

4. I am aware that the City of Nashua, New Hampshire has a pole in front of its city hall, which people can use to fly a flag in support of cultural heritage, observe an anniversary, honor an accomplishment, or support a worthy cause.

5. Nashua's website, Defendant Jennifer L. Deshaies, and other Nashua officials all referred to this pole as the "Citizen Flag Pole" (or "Citizen's Flag Pole") for years, including in correspondence with me about flag applications. I am aware that Defendant Deshaies used this title in correspondence with flag applicants as late as December 2023.

6. Exhibit A is a true and correct copy of Nashua's website page about the Citizen Flag Pole, as of October 12, 2020. Nashua later revised this webpage. Exhibit B is a true and correct copy of Nashua's revised webpage about the pole, as of July 18, 2024. The revised version of the webpage is also available at <https://perma.cc/QU88-6UWY>.

7. I have applied to use the Citizen Flag Pole multiple times since Nashua established its flag program in 2017. I lived in Nashua throughout this period and often saw the flags in front of city hall. I have attended at least six flag-raising

ceremonies and organized some of those ceremonies. I have also reviewed records about flag applications disclosed by Nashua in response to requests under the New Hampshire Right-to-Know Law. Through all of this, I am very familiar with the flag application process.

8. I am aware that those wishing to use the pole must submit a Special Events Application to the Risk Manager, who checks to ensure that no one already reserved the Citizen Flag Pole for the time period requested. Applicants also must supply the physical flag (although if the city already owns the flag at issue, this flag can be used), pledge to abide by local ordinances, and indemnify the city in the event of damage. Once a flag has finished flying on the pole, applicants can then pick up the flag to take home—as the flag remains their property.

9. I am aware that the Citizen Flag Pole flies approximately ten flags a year. The city's default is to have each approved flag fly for a week, from Saturday, Sunday, or Monday to Friday.

10. I am aware that short ceremonies at the City Hall Plaza often—but do not always—accompany flag raisings. Applicants often raise the flag themselves, using a tool borrowed from the city. Local politicians sometimes attend or even speak at flag-raising ceremonies. Politicians can use these ceremonies as an opportunity to interact with the local group of constituents raising the flag and win favor with voters. If applicants wish to hold a ceremony, they must describe the details of this ceremony (such as the number of expected attendees and the extent to which it will obstruct the sidewalk) on their application.

11. I am aware that some groups apply to Nashua every year to fly a flag in celebration of an anniversary. Examples include flags in honor of Pride Month, Indian Independence Day, Brazilian Independence Day, Greek Independence Day, International Francophonie Day, and the anniversary of the foundation of Nashua's Lions Club.

12. I am aware that other flags have flown sporadically or just once. Examples include the Kurdistan Flag, the Christian Flag, the Lutheran Flag, the Porcupine Party, and flags in support of National Recovery Month and organ donation.

13. I am aware that, until May 2022, Nashua had no written policy document governing what could be displayed on the Citizen Flag Pole, though Nashua's website page described the Citizen Flag Pole program briefly.

14. Exhibit C is a true and correct copy of Special Events Procedures, as of October 12, 2020.

15. I am aware that on May 11, 2022—just a week after the U.S. Supreme Court unanimously decided *Shurtleff v. City of Boston*, 596 U.S. 243 (2022)—the City of Nashua issued a written flag policy on its website.

16. Exhibit D is a true and correct copy of Nashua's flag pole policy.

17. I am aware that, at this time, Nashua also revised its Special Events Procedures, to include a section on "Request[s] for Use of the City Flag Pole."

18. Exhibit E is a true and correct copy of Nashua's revised Special Events Procedures, as of July 18, 2024. The revised Procedures are also available at <https://perma.cc/VV5V-YTRK>.

19. I first applied to use the Citizen Flag Pole in October 2017, when I was allowed to fly the Luther Rose Flag in honor of the 500th anniversary of the Protestant Reformation. I provided the flag and raised it myself, using a tool borrowed from the city. Approximately six people attended the flag-raising ceremony—none of whom represented the city.

20. Nashua allowed me to fly my Lutheran Flag again in April 2021, for the 500th anniversary of the Diet of Worms: a crucial event in the history of the Protestant Reformation, at which Martin Luther refused to recant his theological views, despite the threats of Emperor Charles V. I consider the Diet of Worms to mark the beginning of religious freedom, without which the founding of American would be unimaginable. Less than a dozen people attended the flag-raising ceremony—none of whom represented the city.

21. In 2020, I received permission from the city to raise a Save Women's Sports Flag. In my granted application, I had planned to fly this flag for a week, from October 10 to October 16, leading up to a virtual fundraiser in support of the Save Women's Sports organization at the end of that week. On October 10, my husband and I raised the flag, using a tool borrowed from the city, without a ceremony but with two other people in attendance, holding signs.

22. A day later, on October 11, the city revoked its permission and took the flag down, after various people complained that the flag was supposedly “transphobic.” I do not know how many people complained about this flag, although I have read social media postings by one complainant: Brenna Connolly, head of the Greater Nashua Young Democrats.

23. On October 13, I appealed this removal to Mayor Donchess, unsuccessfully. Indeed, Defendant James W. Donchess publicly defended Nashua’s action and was involved in the flag’s removal. In an October 14 statement, Donchess stated that my flag was taken down because it “contain[ed] a discriminatory message toward the transgender community” and “Nashua is a welcoming community, in which we embrace all people and the contributions of all are celebrated and valued.”

24. On October 10—the day that I raised the Save Women’s Sports Flag—Nashua Alderwoman Jan Schmidt posted on her Facebook account, saying that “Beth’s hate flag” does not fit Nashua’s requirements to be flown in front of city hall. I believe this post is indicative of the conversations that occurred between Nashua officials that led to my flag being removed the next day.

25. Exhibit F is a true and correct copy of Alderwoman Schmidt’s post.

26. Nashua’s corporation counsel sent my lawyer a response to my appeal, in which the city of Nashua justified removing my flag by citing *Shurtleff v. City of Boston*, 928 F.3d 166 (1st Cir. 2019)—a case later overruled by the Supreme Court.

27. Exhibit G is a true and correct copy of Nashua's response to my appeal concerning the Save Women's Sports Flag.

28. I was allowed to fly a flag in honor of the ratification of the Nineteenth Amendment in August 2021. No representatives of the city attended the flag raising. Indeed, my husband and I were the only people present. After we raised the flag, I spoke about the importance of women's sex-based rights and how Mayor Donchess' gender-identity policies undermined these rights. A day later, I placed this speech online at both *GraniteGrok* and YouTube.

29. I was part of a group that flew the Christian Flag during Holy Week 2024. There was a small ceremony of less than a dozen people at which Hal Shurtleff—the plaintiff in *Shurtleff v. City of Boston*, 596 U.S. 243 (2022)—and a local pastor both spoke about the need to reclaim America for Jesus Christ and criticized Nashua for flying flags that support progressive politics such as the Pride Flag while rejecting flags with conservative messages such as the Pro-Life Flag. No representatives of the city were present. The speeches at the ceremony later circulated online.

30. In May 2022, soon after the Supreme Court's decision in *Shurtleff*, 596 U.S. 243, I applied to again fly the Save Women's Sports Flag, to celebrate the 50th anniversary of Title IX, a federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. Defendant Deshaies and unnamed other persons denied this application. On appeal, Defendant Donchess upheld the denial.

31. Later in May 2022, a friend of mine, Laurie Ortolano, also applied to fly an iconographically different Save Women's Sports flag, which—unlike my flag—did not feature the words "Woman = Adult Human Female" on it. Defendant Deshaies denied Ortolano's application, too.

32. Based on my personal knowledge and records disclosed by Nashua in response to New Hampshire Right-to-Know requests. I am aware of only two flags that Nashua ever rejected prior to the issuance of the May 2022 flag policy: my Save Women's Sports flag in October 2020 and a Porcupine Flag (associated with both the Free State Project and the Libertarian Party) in February 2021. Nashua, however, allowed the Porcupine Flag to fly on three other occasions, in 2018, 2019, and 2020. The Save Women's Sports Flag, in comparison, was denied or removed all three times that I or Ortolano applied about it.

33. I am aware that since the issuance of the May 2022 flag policy, Nashua has rejected flag applications by several people other than myself—including one application by my husband, Stephen Scaer. I know that Nashua refused to fly a Pro-Life flag in November 2023 and again in May 2024, a Detransitioner Awareness flag in February 2024, and the Palestinian Flag in June 2024.

34. On May 27, 2024, I applied to fly the Pine Tree Flag on Saturday, June 15, to commemorate the 249th anniversary of the Battle of Bunker Hill (fought June 17, 1775). I intended to display this flag in honor of the Nashua soldiers who fought and died at the Bunker Hill.

35. Exhibit H is a true and correct copy of my Pine Tree Flag application and my correspondence with Defendants concerning this application.

36. I am aware that the Pine Tree Flag is a traditional American emblem, carried by New England troops during the early years of the American Revolution, including at Bunker Hill. The Pine Tree Flag is a key symbol of natural rights and resistance to tyranny. I have seen people fly the Pine Tree Flag all over New Hampshire, due to its importance to our state's history and the 1772 Pine Tree Riot, which occurred in Weare, New Hampshire.

37. On May 29, I received an email from Defendant Deshaies, denying my application. I appealed this decision on June 3. On June 4, Mayor Donchess upheld Deshaies' decision.

38. In the aftermath of Defendant Donchess' decision, I emailed the mayor's office, my local alderman Timothy Sennott), and various other Nashua leaders and press outlets about the city's rejection of the Pine Tree Flag. I complained that the city was doing nothing to observe the anniversary of Bunker Hill and remind Nashua leaders that June 17, 2025, next year, will be the battle's 250th anniversary. I also wrote about the flag's rejection at *GraniteGrok*.

39. Alderman Sennott responded to my email.

40. Exhibit I is a true and correct copy of my email chain with Alderman Sennott.

41. Exhibit K is a collection of photographs that fairly and accurately depicts the Pine Tree Flag, the Save Women's Sports Flag, and the Detransitioner Awareness Flag, that my husband or I applied to fly.

42. I intend to apply to fly additional flags on the Citizen Flag Pole, in order to express my views, if Nashua would permit this.

43. If permitted, I would fly the Pine Tree Flag next year on June 17, 2025: the 250th anniversary of the Battle of Bunker Hill. The Pine Tree Flag not only commemorates Nashua soldiers who risked and sacrificed their lives for freedom, but also celebrates the political philosophy of John Locke and the values of the American Revolution, such as limited government, divinely endowed rights, and the right of the people to rebel against tyrannical government. I embrace and would like to express all of these political messages. I believe, however, that applying to fly the Pine Tree Flag again would be futile, because Defendants would deny my application, just as they did this year.

44. I would also like to fly flags expressing my views on issues such as gender-critical feminism, parental rights, women's sex-based rights, pediatric gender medicine, abortion, and the freedoms protected in the Bill of Rights. Based on Nashua's previous flag denials, I reasonably believe that Defendants disagree with my views on these issues and would not allow me to fly flags of my own choosing about these issues.

45. If permitted, I would fly the Save Women's Sports Flag for the anniversary of Title IX next year. This flag expresses my viewpoint that women

have inalienable rights based on their biological sex that governments have a duty to protect and that allowing biological males to compete against women in sports denies women their rights and the equality due them under both the U.S. Constitution and Title IX. As a mother of two daughters who attended New Hampshire schools and competed in student athletics, ensuring that biological women can compete in safe and fair sports is important to me. I believe, however, that applying to fly the Save Women's Sports Flag again would be futile, because Defendants would deny my application, just as they did twice before.

46. If permitted, I would fly the Pro-Life Flag for the anniversary of the Supreme Court's *Dobbs* decision next year. This flag expressed my viewpoint that all humans, no matter their age or physical capabilities, are endowed by their Creator with natural rights, including the right to life. I believe, however, that applying to fly the Pro-Life Flag would be futile, because Defendants have twice denied applications from other Nashua residents to display the Pro-Life Flag.

47. Nashua has permitted me to fly some of the flags that I applied to display. However, if not for Defendants' policies, I would fly flags more often in the future and would be able to display a wider range of views through flags. Nashua's flag policy limits the viewpoints that I can express, the choice of flags and iconographies that I can display, and the frequency of my political expression.

48. I find it frustrating and degrading to have my flag requests denied by the city, especially when I see other residents being allowed to promote their flags and viewpoints. In seeing the flags that Nashua permits in front of city hall, I have

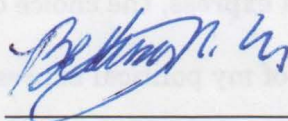
noticed that flags expressing majoritarian opinions—and especially the opinions of Nashua's political leaders—can fly while flags that express dissenting viewpoints, on both the right and the left, are rejected. It is also frustrating and degrading that city officials refuse to explain to me why my Pine Tree Flag application was really denied. This amounts to the erasure of both New Hampshire and American history.

49. I also think it is wrong for the city to revoke previously granted permission just because someone complains about a flag they disagree with. This amounts to city officials picking and choosing which citizens' views matter more. For example, I happen to disagree with the Pride Flag, but the city still flies it every year (or, for the first time in 2024, the variation called the Progress Flag). It is offensive to me to be told, in effect, that my views do not matter because I am a conservative Christian and a gender-critical feminist.

50. Unless I am able to obtain protection from the Court, I expect to make fewer or different flag applications to the city in the future, in order to avoid having my flag applications denied or revoked.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2024



Bethany R. Scaer



Citizen Flag Pole

Fly a Flag

A pole in front of City Hall is reserved for the citizens of Nashua to fly a flag in support of their cultural heritage, observe an anniversary or honor a special accomplishment. Any group wishing to fly a flag must provide the flag.

For More Information

For more information, please contact the Risk Management office at 603-589-3350.



Mayor Donchess and Lion Kamal raising the Lion Flag for the centennial of the Lions June 7, 1917 - June 7, 2017. Nashua Lions have been a club in Nashua since 1923!!

Contact Us

Mayor's Office

NashuaMayor@NashuaNH.gov

Physical Address

229 Main Street
Nashua, NH 03060

Mailing Address

P.O. Box 2019
Nashua, NH 03061

Phone: 603-589-3260

Fax: 603-594-3450

City Hall offices are closed to the public but all transactions are being processed.

* * * *

[View a List of City Services Available Online, by Phone, Drop Box, Mail, or In-Person](#)

* * * *

[Directory](#)

 **Government Websites by CivicPlus®**

Exhibit B



City Hall Plaza & Flag Pole Events

City Hall Plaza Events

The plaza in front of City Hall may be provided for use by persons or group to have an event. This potential use of the City Hall Plaza is not intended to serve as a forum for free expression by the public. Any message sought to be permitted will be allowed only if it is in harmony with city policies and messages that the city wishes to express and endorse. This policy recognizes that an event in front of City Hall will be deemed by many as City support for the sentiment thereby expressed, city administration reserves the right to deny permission it considers contrary to the City's best interest. All City Hall Plaza Events must be submitted for approval and follow all guidelines and procedures provided below.



Mayor Donchess and Lion Kamal raising the Lion Flag for the centennial of the Lions June 7, 1917 - June 7, 2017. Nashua Lions have been a club in Nashua since 1923!!

Fly a Flag

A flag pole in front of City Hall may be provided for use by persons to fly a flag in support of cultural heritage, observe an anniversary, honor a special accomplishment, or support a worthy cause. Any group wishing to fly a flag must provide the flag. This potential use of a City flag pole is not intended to serve as a forum for free expression by the public. Any message sought to be

permitted will be allowed only if it is in harmony with city policies and messages that the city wishes to express and endorse. This policy recognizes that a flag flown in front of City Hall will be deemed by many as City support for the sentiment thereby expressed, city administration reserves the right to deny permission or remove any flag it considers contrary to the City's best interest.

For More Information

For more information, please contact the Risk Management office at 603-589-3350.

- [2022_SPECIAL EVENT APPLICATION](#)
- [2022_SPECIAL EVENT PROCEDURES](#)
- [20220511 Flag Pole Policy](#)

Contact Us

Risk Management

Physical Address

229 Main Street
Nashua, NH 03060

Mailing Address

P.O. Box 2019
Nashua, NH 03061

Phone: [603-589-3350](tel:603-589-3350)

Fax: 603-589-3359

App. 059



SPECIAL EVENT PROCEDURES City Hall Plaza

DEFINITIONS.

The following words and terms, when used in the Section, shall have the following meanings, unless the context clearly indicates otherwise:

- A. CITY HALL PLAZA constitutes the area extending west-to-east from the front steps of City Hall to the western edge of Main Street sidewalk and south-to-north between the outer edges of the City property bordering the sides of City Hall.
- B. EXHIBIT. Any display of artwork, including but not limited to, paintings, sculptures, arts and crafts, photographs, public service and educational presentations, and historical displays.
- C. EVENT. Any performance, ceremony, presentation, meeting, rally or reception held in the City Hall Plaza. A rally is defined as a gathering of people for the purpose of actively promoting a cause.

GENERAL.

- A. Events, exhibits or gatherings in City Hall Plaza, which may extend onto the Main Street sidewalk in front of City Hall, shall obtain a license to obstruct or encumber that sidewalk from the Division of Public Works in accordance with NRO Sec. 285-9.
- B. See also NRO Sec. 1-12 and 231, General *Penalty, Dissemination of noncommercial materials on public property; related solicitation and Distribution and posting of handbills, fliers, etc.*

ADMINISTRATION.

The Risk Manager, or designee, shall supervise the administration of procedures for the scheduling and use of City Hall Plaza and shall perform such other duties as may be imposed by ordinance, Mayor or Board of Aldermen.

LOITERING AS TO OBSTRUCT PASSAGE.

- A. No person shall stand or loiter in or on City Hall Plaza in such a manner as to obstruct the free passage of the public nor shall any such person, after being directed by a police officer to move on and disperse, on a same or subsequent day, reappear to loiter or remain so as to obstruct the free passage of the public; provided, that nothing contained in this section shall be construed to deny the right of peaceful picketing.
- B. It shall be the duty of any police officer of the City to order any person offending against the provisions of this section to move on and disperse and if the person(s) so ordered or requested do not forthwith obey, to remove them, or to cause a complaint to be made against such person(s).

REQUEST FOR USE OF FACILITIES.

Requests to schedule events or exhibits in City Hall Plaza shall be made to the Risk Manager or designee and will be scheduled, when practicable, on a first-come, first-served basis determined by the Risk Manager.

- A. No single organization or agency shall monopolize the use of City Hall Plaza.
- B. All requests must be submitted at least ten (10) calendar days prior to an event.
- C. The Special Event Application (SEACH2010) should be completed in its entirety and shall be subject to review and approval of the Risk Manager. The Risk Manager reserves the right to decline any non-compliant application for use of a public area for a given day or time period. The Applicant is to be notified as soon as a decision has been made.
- D. Any and all events may be subject to cancellation, rescheduling or relocation by the Risk Manager on a forty-eight (48) hours' notice as necessary to accommodate the needs of the City's governing body to hold public gatherings. The Risk Manager shall make every effort to reschedule use of City Hall Plaza by the applicant for any time lost.
- E. In order to schedule an event, a sponsor will be required to sign the Special Event Application acknowledging that the sponsor has read, understood and will abide by the procedures governing

the use of the public areas of City Hall Plaza; that the sponsor is responsible for damages incurred as a result of its event; that the sponsor will either restore or pay to have restored the area used for its event to the condition that existed prior to its use; and that it will indemnify and hold harmless the City of Nashua for any damage or loss arising out of its use of City Hall Plaza.

- F. A sponsor may be required to provide a certificate of insurance issued by an insurance company licensed to do business in the State of New Hampshire, protecting the sponsor and the City from all claims for damages to property and bodily injury, which may arise from operations under or in connection with the event or exhibit. Such certificate of insurance shall be reviewed and approved by the Risk Manager.
- G. A person or organization that refuses to adhere to the conditions outlined herein is subject to immediate removal from City Hall Plaza by the Risk Manager or Nashua Police Department. Nothing contained herein shall be construed as limiting prosecution under any statute or ordinance.

CONDITIONS.

- A. In order to maintain security, safety and aesthetic appearance of City Hall and its grounds, and to provide for regular maintenance, scheduled events at City Hall Plaza shall occur between the hours of 7:00 a.m. and 9:30 p.m. on a daily basis, and shall at no time block any entrance or exit of the building, or impede free access to the building by its occupants or the public.
- B. No banners may be suspended from or attached to City Hall.
- C. Stepping or climbing upon granite benches, monuments, fences, lighting fixtures, light wells, trees or parts of City Hall not intended for such purposes is prohibited.
- D. In accordance with NRO Sec. 19-1 (g) (1), picketing and the distribution of literature shall not impeded or interfere with municipal business or public access to the use of City Hall. "An unobstructed pathway at least ten (10) feet in width shall be maintained from the foot of the stairway...to the east of the Kennedy Memorial..." during hours that City Hall is open for business.
- E. Due to the presence of underground utility, electrical and drainage lines, no sign or banner shall be driven into the ground nor shall they be supported in or by any tree, monument, or other structure affixed to City Hall. Signs or banners supported by freestanding devices may not be left unattended, i.e.; an individual must be stationed within two feet of a freestanding sign or banner at all times to prevent damage to the grounds, injury to individuals and for security reasons.
- F. Use of City Hall Plaza by an individual or organization for an event or exhibit is authorized only if the event or exhibit has been scheduled with the Risk Manager in accordance with the procedures described herein.
- G. Equipment or structures of any kind that are placed on City Hall grounds in connection with an event or exhibit shall be entirely removed at the conclusion of the event or exhibit.
- H. No sound amplifying equipment may be used if sound level interferes with the conduct of public business by the departments which occupy or use City Hall or which otherwise interferes with or disrupts the comfort of nearby residents or businesses.

APPEAL


If a person or organization is aggrieved by a decision of the Risk Manager, an appeal may be made to the Mayor or designee(s) within three (3) business days of that decision. The appeal shall be in writing, stating the basis therefore and the relief sought. The Mayor or designee(s) will review the decision of the Risk Manager and announce its decision as promptly as possible, but no later than ten (10) business days after receipt of the appeal.

FLAG POLE POLICY


A flag pole in front of City Hall may be provided for use by persons to fly a flag in support of cultural heritage, observe an anniversary, honor a special accomplishment, or support a worthy cause. Any group wishing to fly a flag must provide the flag. This potential use of a City flag pole is not intended to serve as a forum for free expression by the public. Any message sought to be permitted will be allowed only if it is in harmony with city policies and messages that the city wishes to express and endorse. This policy recognizes that a flag flown in front of City Hall will be deemed by many as City support for the sentiment thereby expressed, city administration reserves the right to deny permission or remove any flag it considers contrary to the City's best interest.

For More Information

For more information, please contact the Risk Management office at 603-589-3350.



Jim Donchess, Mayor
City of Nashua



Jennifer Deshaies, Risk Manager
City of Nashua



SPECIAL EVENT PROCEDURES City Hall Plaza

DEFINITIONS.

The following words and terms, when used in the Section, shall have the following meanings, unless the context clearly indicates otherwise:

- A. CITY HALL PLAZA constitutes the area extending west-to-east from the front steps of City Hall to the western edge of Main Street sidewalk and south-to-north between the outer edges of the City property bordering the sides of City Hall.
- B. EXHIBIT. Any display of artwork, including but not limited to, paintings, sculptures, arts and crafts, photographs, public service and educational presentations, and historical displays.
- C. EVENT. Any performance, ceremony, presentation, meeting, rally or reception held in the City Hall Plaza. A rally is defined as a gathering of people for the purpose of actively promoting a cause.

GENERAL.

- A. Events, exhibits or gatherings in City Hall Plaza, which may extend onto the Main Street sidewalk in front of City Hall, shall obtain a license to obstruct or encumber that sidewalk from the Division of Public Works in accordance with NRO Sec. 285-9.
- B. See also NRO Sec. 1-12 and 231, *General Penalty, Dissemination of noncommercial materials on public property; related solicitation and Distribution and posting of handbills, fliers, etc.*

ADMINISTRATION.

The Risk Manager, or designee, shall supervise the administration of procedures for the scheduling and use of City Hall Plaza and shall perform such other duties as may be imposed by ordinance, Mayor or Board of Aldermen.

LOITERING AS TO OBSTRUCT PASSAGE.

- A. No person shall stand or loiter in or on City Hall Plaza in such a manner as to obstruct the free passage of the public nor shall any such person, after being directed by a police officer to move on and disperse, on a same or subsequent day, reappear to loiter or remain so as to obstruct the free passage of the public; provided, that nothing contained in this section shall be construed to deny the right of peaceful picketing.
- B. It shall be the duty of any police officer of the City to order any person offending against the provisions of this section to move on and disperse and if the person(s) so ordered or requested do not forthwith obey, to remove them, or to cause a complaint to be made against such person(s).

REQUEST FOR USE OF FACILITIES.

Requests to schedule events or exhibits in City Hall Plaza shall be made to the Risk Manager or designee and will be scheduled, when practicable, on a first-come, first-served basis determined by the Risk Manager.

- A. No single organization or agency shall monopolize the use of City Hall Plaza.
- B. All requests must be submitted at least ten (10) calendar days prior to an event.
- C. The Special Event Application (SEACH2022) should be completed in its entirety and shall be subject to review and approval of the Risk Manager. The Risk Manager reserves the right to decline any non-compliant application for use of a public area for a given day or time period. The Applicant is to be notified as soon as a decision has been made.
- D. Any and all events may be subject to cancellation, rescheduling or relocation by the Risk Manager on a forty-eight (48) hours' notice as necessary to accommodate the needs of the City's governing body to hold public gatherings. The Risk Manager shall make every effort to reschedule use of City Hall Plaza by the applicant for any time lost.
- E. In order to schedule an event, a sponsor will be required to sign the Special Event Application acknowledging that the sponsor has read, understood and will abide by the procedures governing

the use of the public areas of City Hall Plaza; that the sponsor is responsible for damages incurred as a result of its event; that the sponsor will either restore or pay to have restored the area used for its event to the condition that existed prior to its use; and that it will indemnify and hold harmless the City of Nashua for any damage or loss arising out of its use of City Hall Plaza.

- F. A sponsor may be required to provide a certificate of insurance issued by an insurance company licensed to do business in the State of New Hampshire, protecting the sponsor and the City from all claims for damages to property and bodily injury, which may arise from operations under or in connection with the event or exhibit. Such certificate of insurance shall be reviewed and approved by the Risk Manager.
- G. A person or organization that refuses to adhere to the conditions outlined herein is subject to immediate removal from City Hall Plaza by the Risk Manager or Nashua Police Department. Nothing contained herein shall be construed as limiting prosecution under any statute or ordinance.

REQUEST FOR USE OF THE CITY FLAG POLE.

Requests to fly a flag shall be made to the Risk Manager or designee and will be evaluated in accordance with the City's flag pole policy. Applications shall include a photograph of the flag proposed and an explanation of the message intended to be conveyed. No single organization or agency shall monopolize the City flag pole.

- A. The Special Event Application (SEACH2022) should be completed in its entirety and shall be subject to review and approval of the Risk Manager. The Risk Manager reserves the right to decline any non-compliant application for use of the City flag pole for a given day or time period. The Applicant is to be notified as soon as a decision has been made.
- B. Any and all requests may be subject to cancellation, rescheduling or relocation by the Risk Manager on a forty-eight (48) hours' notice as necessary to accommodate the needs of the City's governing body. The Risk Manager shall make every effort to reschedule use of the City flag pole by the applicant for any time lost.

CONDITIONS.

- A. In order to maintain security, safety and aesthetic appearance of City Hall and its grounds, and to provide for regular maintenance, scheduled events at City Hall Plaza shall occur between the hours of 7:00 a.m. and 9:30 p.m. on a daily basis, and shall at no time block any entrance or exit of the building, or impede free access to the building by its occupants or the public.
- B. No banners may be suspended from or attached to City Hall.
- C. Stepping or climbing upon granite benches, monuments, fences, lighting fixtures, light wells, trees or parts of City Hall not intended for such purposes is prohibited.
- D. In accordance with NRO Sec. 19-1 (g) (1), picketing and the distribution of literature shall not impeded or interfere with municipal business or public access to the use of City Hall. "An unobstructed pathway at least ten (10) feet in width shall be maintained from the foot of the stairway...to the east of the Kennedy Memorial..." during hours that City Hall is open for business.
- E. Due to the presence of underground utility, electrical and drainage lines, no sign or banner shall be driven into the ground nor shall they be supported in or by any tree, monument, or other structure affixed to City Hall. Signs or banners supported by freestanding devices may not be left unattended, i.e.; an individual must be stationed within two feet of a freestanding sign or banner at all times to prevent damage to the grounds, injury to individuals and for security reasons.
- F. Use of City Hall Plaza by an individual or organization for an event or exhibit is authorized only if the event or exhibit has been scheduled with the Risk Manager in accordance with the procedures described herein.
- G. Equipment or structures of any kind that are placed on City Hall grounds in connection with an event or exhibit shall be entirely removed at the conclusion of the event or exhibit.
- H. No sound amplifying equipment may be used if sound level interferes with the conduct of public business by the departments which occupy or use City Hall or which otherwise interferes with or disrupts the comfort of nearby residents or businesses.

APPEAL

If a person or organization is aggrieved by a decision of the Risk Manager, an appeal may be made to the Mayor or designee(s) within three (3) business days of that decision. The appeal shall be in writing, stating the basis therefore and the relief sought. The Mayor or designee(s) will review the decision of the Risk Manager and announce its decision as promptly as possible, but no later than ten (10) business days after receipt of the appeal.

Exhibit F



 **App.**
Comment

App.066

Steven A. Bolton
Corporation Counsel
BoltonS@nashuanh.gov

Dorothy Clarke
Deputy Corporation Counsel
ClarkeD@nashuanh.gov

Celia K. Leonard
Deputy Corporation Counsel
LeonardC@nashuanh.gov



CITY OF NASHUA
OFFICE OF
CORPORATION COUNSEL

229 Main Street
P.O. Box 2019
Nashua, NH 03061-2019

T: (603) 589-3250
F: (603) 589-3259

Legal@nashuanh.gov

November 11, 2020

Richard J. Lehmann
Lehmann Law Offices, PLLC
Three North Spring Street, Suite 200
Concord, New Hampshire 03301

Re: Beth Scaer – Citizen Flag Pole

Dear Attorney Lehmann:

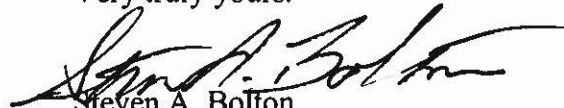
Please forgive the delay in responding to your October 13, 2020 letter to Mayor Donchess concerning the captioned matter. Our investigation reveals that you are in error regarding the facts and that we disagree with the legal analysis.

Contrary to your assertion that Ms. Scaer and her husband raised the “Save Women’s Sports flag “as agreed,” that flag was not raised on the “citizen flag pole” but instead the Scaers removed the American flag from the center and highest pole and replaced it with theirs. No permission or agreement had ever been allowed to the Scaers or anyone else for this or action.

When the wrongful flying of this flag on the pole reserved for the American flag came to the City’s attention a further inspection of the Scaer application was triggered and it was determined that this flag was outside of the parameters established for use of the citizen flag pole. Accordingly, the previously granted permission was revoked.

You have attempted to apply a public forum analysis to the City’s actions. It is the City’s position that the proper approach is to view the use of the flag pole as “government speech” where the City has reserved the right to determine the message that will be attributed to it. See, *Shurtleff v. Boston*, 928 F.3d 166 (1st Cir. 2019). Accordingly, your request for reconsideration on behalf of Ms. Scaer is denied.

Very truly yours.


Steven A. Bolton
City Corporation Counsel

cc: James Donchess, Mayor

Jim Donchess

Mayor • City of Nashua

Exhibit H

June 4, 2024

Ms. Beth Scaer
11 East Hobart Street
Nashua, NH 03060

Dear Ms. Scaer:

My office has received your letter appealing the decision to deny your request to fly the Pine Tree flag on the City Hall flag pole.

Upon further review of your letter and the City's flag pole policy, this decision is upheld.

Attached is a copy of the City's flag policy for your convenience.

Sincerely,



Jim Donchess, Mayor
City of Nashua



Beth Scaer <bscaer@gmail.com>

Appeal of rejection of my request to fly a flag in commomeration of the Battle of Bunker Hill

Beth Scaer <bscaer@gmail.com>

Mon, Jun 3, 2024 at 8:10 AM

To: Mayor's Office Email <NashuaMayor@nashuanh.gov>

Cc: Risk Management Dept <risk@nashuanh.gov>, "Cummings, Tim" <CummingsT@nashuanh.gov>, "Bolton, Steve" <BoltonS@nashuanh.gov>, nashuahistorical@comcast.net, newhampshire@societyofthecincinnati.org, MTCDARregent@gmail.com

Mayor Donchess,

Nashua's brave soldiers fought and died at the Battle of Bunker Hill on June 17, 1775. I applied to raise the Pine Tree Flag, which our soldiers carried into battle that day, on the Nashua City Hall Plaza to commemorate this solemn anniversary. My request was rejected because the "flag is not in harmony with the message that the City wishes to express or endorse." The citizens of Nashua would be quite alarmed and ashamed to know that the City does not endorse the message of commemorating our soldiers fighting and dying at the Battle of Bunker Hill.

I am writing to appeal this decision by Jennifer Deshaies of Risk Management and requesting that my application to raise the Pine Tree Flag on June 15 be approved.

See my application and the rejection letter below.



SPECIAL EVENT APPLICATION
City Hall Plaza

☐ Complete the application in its entirety. Submit the application along with any additional requirements at least ten (10) calendar days prior to the event - City of Nashua, Risk Management Department, 229 Main Street, Nashua NH 03061, fax to 603-589-3359 or Risk@NashuaNH.gov.

☐ If applicable, applicant must submit a certificate of insurance naming the City of Nashua as the certificate holder and as an additional insured: reflecting \$1,000,000/\$2,000,000 general liability insurance.

☐ If applicable, contact the Permits Coordinator, 603-589-3276, to obtain a Permit to Encumber. Any applicant that would like to place an obstruction in the City right-of-way (sidewalk abutting the plaza) will need to obtain a Permit to Encumber. This includes signage, materials or participants.

1. Organization: n/a
2. Address: 111 East Hobart Street Nashua NH 03060
3. Contact Name: Beth Scaer Contact Number: 603-888-5487
4. Name of Event: Commemoration of the Battle of Bunker Hill
5. Requested Date(s) of Event: 06/15/2024 Requested Time(s) of Event: 10:00 am

Event Details (Please include approximate number of attendees, whether or not sidewalk will be utilized and additional details that may be pertinent to the event) If your request is to have a flag down, but with no ceremony, please indicate as such below.

We will raise the Pine Tree Flag to commemorate the Battle of Bunker Hill on June 17, 1775.
We will remember the Nashua soldiers that died in the Battle including William Harris, the
young drummer boy and Colonel Ebenezer Bancroft, who had led the march on Lexington and
Concord.

We are expecting five people to attend and we will not obstruct the sidewalk.

OBSERVANCE OF LAWS AND ORDINANCES

The undersigned shall faithfully observe, keep and obey all terms and conditions of the permit, laws, rules and ordinances of the City of Nashua. The undersigned shall also faithfully observe, keep and obey all laws, rules and regulations of any other governmental entity including, State and federal regulations which may apply.

INDEMNIFICATION

The undersigned shall have the power to act on behalf of the organization. The undersigned shall have and protect, hold harmless, indemnify and defend the City, its commissions, officers, agents, and employees against any and all liability, causes of action, claims, loss damages or cost and expenses arising from, allegedly arising from, or resulting directly or indirectly from any acts of the applicant or any of its officers, employees, or agents done in the performance or operations of the event, or any act done under pretended authority of this application. This agreement to indemnify and hold the City harmless shall include any costs incurred by the City in defending any action involving an act by the applicant or any of its officers, employees, or agents, and shall include attorney's fees incurred by the City.

I certify that the answers given herein are true and complete to the best of my knowledge, and I have not omitted any information. I further understand the conditions herein. False, misleading, or omitted information in my application form may disqualify the organization from holding this event.

Signature: Bethany R. Scaer Date: 05/27/2024

(For insurance purposes: signed application serves as a contractual obligation in regards to naming the City of Nashua as an additional insured)

5/29/2024 Denied
SEACH2022



City of Nashua
Risk Management Department
229 Main Street - Nashua, NH 03060

Jennifer L. Deshaies
Risk Manager
603-589-3350
Fax 603-589-3359

May 29, 2024

Ms. Beth Scaer
11 East Hobart Street
Nashua NH 03060

RE: FLAG POLE REQUEST

Ms. Scaer:

We have reviewed your application dated May 27, 2024, requesting to fly the Pine Tree Flag on a City Plaza flag pole. The flag is not in harmony with the message that the City wishes to express and endorse. Therefore, we must deny your request as the flag poles are not intended to serve as a forum for free expression by the public.

Attached please find our Flag Pole Policy and Special Event Procedures for the City Hall Plaza that can also be found on the Risk Management page of the City website.

If you wish to appeal this decision it may be made to the Mayor's office within three business days of after receiving our decision. The appeal shall be in writing, stating the basis therefore and relief sought. The Mayor's office will review our decision and announce its decision as promptly as possible, but no later than ten business days after receipt of the appeal.

Sincerely,

Jennifer L. Deshaies
Jennifer L. Deshaies
Risk Manager

Encl.
SPECIAL EVENT APPLICATION City Hall Plaza
FLAG POLE POLICY
SPECIAL EVENT PROCEDURES City Hall Plaza

Cc: Megan Caron, Chief of Staff
Attorney Steve Bolton, Corporation Counsel
Tim Cummings, Administrative Services Director

Exhibit I

From: **Sennott, Timothy** <sennottt@nashuanh.gov>
Date: Sun, Jun 16, 2024 at 11:01 AM
Subject: Re: Pine Tree Flag
To: Beth Scaer <bscaer@gmail.com>

Good morning Beth,

I apologize if my comments let you down. I hope that you'll recognize that, at the very least, I was not attempting to lump you in with the individuals that made those threats. I've known you casually for some time now, and please know that I do not perceive you to be a violent person. To the best of my understanding, this is a program operated out of the Mayor's office. To date, I have not been consulted and/or included in any decision making regarding the city flag pole. I've been taking some time recently to review the oft-referenced case out of Boston and that city's moves in light of that decision to try and better grasp what Nashua may be able to do more effectively in that regard.

Thank you for the wealth of links. I have been actively following the matter, but I will review these to see if there is anything I've missed. As I noted on Tuesday, I do understand the importance of historic symbols to folks today (my late grandfather was an active and well-known member of an American Revolution reenactment group out of Arlington, MA and so I'm quite familiar with both the Battle of Bunker Hill and the history of this flag), and I think it's unfortunate that the current temperature throughout the world allows these historical symbols to become so polarized in any fashion.

Thanks for reaching out, and have a great rest of the weekend.

Best,

Tim Sennott | Alderman, Ward 7

62 Underhill St.

Nashua, NH 03060

(603) 347-8971 | sennottt@nashuanh.gov <<mailto:sennottt@nashuanh.gov>>

From: Beth Scaer <bscaer@gmail.com>
Sent: Friday, June 14, 2024 10:24:46 PM
To: Sennott, Timothy
Cc: Board of Aldermen; Mayors Office Email
Subject: Pine Tree Flag

CAUTION: This email came from outside of the organization. Do not click links/open attachments if the source is unknown.

Alderman Sennott,

I watched the last BOA meeting<https://www.youtube.com/watch?v=vy_5-rSU7cM&t=2925s> and I was disappointed that you exclusively focused on the violent threats against the city staff member, which are despicable, but passed over the very critical First Amendment issues concerning my flag request. I hope the city can be better and that the city grants permission for me to fly the Pine Tree Flag on the city flag pole. Why is the relatively modern Pride flag allowed and not the historic Pine Tree Flag that dates back to the founding of our nation?

Here are some links if you would like to catch up on the news coverage of the city's denial of my flag request:

<https://nhjournal.com/nashua-says-no-to-displaying-historic-n-h-pine-tree-flag/><<https://nhjournal.com/nashua-says-no-to-displaying-historic-n-h-pine-tree-flag/>>
<https://nhjournal.com/mayor-donchess-rejects-appeal-wont-let-pine-tree-flag-fly-in-nashua/><<https://nhjournal.com/mayor-donchess-rejects-appeal-wont-let-pine-tree-flag-fly-in-nashua/>>
<https://nhjournal.com/libertarians-gather-to-protest-nashuas-pine-tree-flag-ban/><<https://nhjournal.com/libertarians-gather-to-protest-nashuas-pine-tree-flag-ban/>>
https://www.unionleader.com/nashua/libertarians-stage-city-hall-protest-of-mayors-decision-against-flying-pine-tree-flag/article_887f2dff-0e60-5fb8-87ea-dcfbd1eeb1de.html<https://www.unionleader.com/nashua/libertarians-stage-city-hall-protest-of-mayors-decision-against-flying-pine-tree-flag/article_887f2dff-0e60-5fb8-87ea-dcfbd1eeb1de.html>
<https://nhjournal.com/activist-who-won-2-1m-in-boston-flag-flap-warns-nashua-get-ready-to-pay-up/><<https://nhjournal.com/activist-who-won-2-1m-in-boston-flag-flap-warns-nashua-get-ready-to-pay-up/>>



SPECIAL EVENT APPLICATION City Hall Plaza

Exhibit J

Complete the application in its entirety. Submit the application along with any additional requirements at least ten (10) calendar days prior to the event - City of Nashua, Risk Management Department, 229 Main Street, Nashua NH 03061, fax to 603-589-3359 or Risk@NashuaNH.gov.

If applicable, applicant must submit a certificate of insurance naming the City of Nashua as the certificate holder and as an additional insured; reflecting \$1,000,000/\$2,000,000 general liability insurance.

If applicable, contact the Permits Coordinator, 603-589-3276, to obtain a Permit to Encumber. Any applicant that would like to place an obstruction in the City right-of-way (sidewalk abutting the plaza) will need to obtain a Permit to Encumber. This includes signage, materials or participants.

1. Organization: Stephen Scaer
2. Address: 111 East Hobart Street
3. Contact Name: Stephen Scaer Contact Number: 603 888 5487
4. Name of Event: Detransitional Awareness Day
5. Requested Date(s) of Event: 3-9-24 Requested Time(s) of Event: 11 a m

Event Details (Please include approximate number of attendees, whether or not sidewalk will be utilized and additional details that may be pertinent to the event) If your request is to have a flag flown, but with no ceremony, please indicate as such below.

I expect to have about five attendees as
we raise the detransitional awareness flag.
We don't need the sidewalk. The flag has
a lizard symbol since lizards can lose part
of their bodies and survive.

OBSERVANCE OF LAWS AND ORDINANCES

The undersigned shall faithfully observe, keep and obey all terms and conditions of the permit, laws, rules and ordinances of the City of Nashua. The undersigned shall also faithfully observe, keep and obey all laws, rules and regulations of any other governmental entity including State and federal regulations which may apply.

INDEMNIFICATION

The undersigned shall have the power to act on behalf of the organization. The undersigned shall save and protect, hold harmless, indemnify and defend the City, its commissions, officers, agents, and employees against any and all liability, causes of action, claims, loss damages or cost and expenses arising from, allegedly arising from, or resulting directly or indirectly from any acts of the applicant or any of its officers, employees, or agents done in the performance or operations of the event, or any act done under pretended authority of this application. This agreement to indemnify and hold the City harmless shall include any costs incurred by the City in defending any action involving an act by the applicant or any of its officers, employees, or agents, and shall include attorney's fees incurred by the City.

I certify that the answers given herein are true and complete to the best of my knowledge, and I have not omitted any information. I further understand the conditions herein. False, misleading, or omitted information in my application form may disqualify the organization from holding this event.

Signature: [Signature] Date: 2-7-24

(For insurance purposes: signed application serves as a contractual obligation in regards to naming the City of Nashua as an additional insured)



City of Nashua

Risk Management Department
229 Main Street - Nashua, NH 03060

Jennifer L. Deshaies
Risk Manager

603-589-3350
Fax 603 589-3359

February 14, 2024

Mr. Stephen Scaer
11 East Hobart Street
Nashua NH 03060

RE: FLAG POLE REQUEST

Mr. Scaer:

We have reviewed your application dated February 7, 2024, requesting to fly the Detransitioner Awareness Flag on a City Plaza flag pole. The flag is not in harmony with the message that the City wishes to express and endorse. Therefore, we must deny your request as the flag poles are not intended to serve as a forum for free expression by the public.

Attached please find our Flag Pole Policy and Special Event Procedures for the City Hall Plaza that can also be found on the Risk Management page of the City website.

If you wish to appeal this decision it may be made to the Mayor's office within three business days of after receiving our decision. The appeal shall be in writing, stating the basis therefore and relief sought. The Mayor's office will review our decision and announce its decision as promptly as possible, but no later than ten business days after receipt of the appeal.

Sincerely,

Jennifer L. Deshaies
Risk Management

Encl.
SPECIAL EVENT APPLICATION City Hall Plaza
FLAG POLE POLICY
SPECIAL EVENT PROCEDURES City Hall Plaza

Cc: Megan Caron, Chief of Staff
Attorney Steve Bolton, Corporation Counsel
Tim Cummings, Administrative Services Director

Stephen Scaer
111 East Hobart Street
Nashua, NH 03060

Jim Donchess, Mayor
City of Nashua 299 Main Street
Nashua, NH 03060

February 22, 2022

Dear Mayor Donchess:

In accordance with the letter from Jennifer Deschaies, I am appealing the city administration's decision to deny my request to raise the Detransition Awareness Flag on the City Plaza flag pole in honor of Detransition Awareness Day March 12. Detransitioners like my friend Katie Anderson, who works and worships in Nashua, are among the bravest young women and men I know, and deserve to be respected. They endure ridicule death and rape threats to keep others from permanent harm. How is their message of love and caring not in harmony with the message that the City wishes to express?

Please reconsider your decision and acknowledge the existence of these brave women and men who face hatred and discrimination.

Sincerely,

Stephen Scaer

Jim Donchess

MAYOR • CITY OF NASHUA

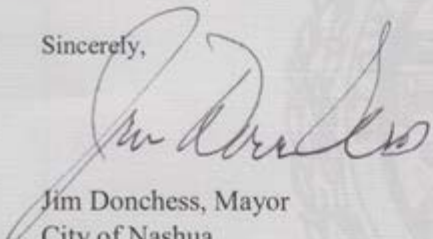
March 4, 2024
Mr. Stephen Scaer
11 East Hobart Street
Nashua, NH 03060

Dear Mr. Scaer:

My office has received your letter appealing the decision to deny your request to fly the Detransitioner Awareness flag on the City Hall flag pole.

Upon further review of your letter and the City's flag pole policy, this decision is upheld.

Sincerely,



Jim Donchess, Mayor
City of Nashua

Exhibit K





**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

BETHANY R. SCAER and STEPHEN SCAER,	:	
	:	
Plaintiffs,	:	
	:	Case No.
v.	:	
	:	
CITY OF NASHUA, a municipal corporation; JAMES W. DONCHESS, Mayor, City of Nashua, in his official and individual capacities; JENNIFER L. DESHAIES, Risk Manager, City of Nashua, in her official and individual capacities,	:	
	:	
Defendants.	:	
	:	

ORDER

BEFORE THE COURT is Plaintiffs’ Motion for a Preliminary Injunction. The Court, having considered the motion on file and all arguments of counsel, hereby finds that Plaintiffs’ Motion is well-taken and should be GRANTED.

IT IS THEREFORE ORDERED that pending final judgment, Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, are preliminarily enjoined from:

1. Denying flag applications and preventing flags from being flown on the Citizen Flag Pole on the basis of viewpoint, including specifically

the Pine Tree Flag, the Detransitioner Awareness Flag, and the Save Women's Sports Flags;

2. Enforcing those parts of Nashua's Flag Pole Policy that limit acceptable flags to those whose "message . . . is in harmony with city policies and messages that the city wishes to express and endorse" or that allow "city administration . . . to deny permission or remove any flag it considers contrary to the City's best interest"; and
3. Denying or removing any flag because of a citizen complaint or is deemed to be offensive by city officials.

SO ORDERED.

This _____ day of _____, 2024.

United States District Judge

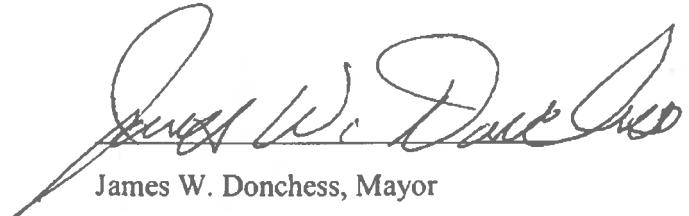
CITY HALL FLAGPOLE POLICY

The flagpoles on city hall grounds shall henceforth be exclusively controlled by city government.

The city shall determine what flags will be flown and during what time periods and does not seek input from other sources. The flagpoles are not public fora open to others for expression but are solely for city government to convey messages it chooses.

All previous policies related to flagpoles on city hall grounds are hereby repealed.

10/7/24
Date


James W. Donchess, Mayor

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

BETHANY R. SCAER and STEPHEN :
SCAER, :

Plaintiffs, :

v. :

CITY OF NASHUA, *et al.*, :

Defendants. :

Case No. 1:24-cv-00277-LM-TSM

PLAINTIFFS' NOTICE OF VOLUNTARY DISMISSAL OF INDIVIDUAL CAPACITY CLAIMS

Notice is hereby given that Plaintiffs Beth and Stephen Scaer voluntarily dismiss without prejudice the individual capacity claims against Defendants James W. Donchess and Jennifer L. Deshaies, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). The official capacity claims against Defendants Donchess and Deshaies, as well as the claims against the City of Nashua, remain unchanged.

Dated: October 14, 2024

/s/ Roy S. McCandless

Roy S. McCandless
New Hampshire Bar No. 11850
ROY S. McCANDLESS, ESQ., PLLC
125 North State Street
Concord, New Hampshire 03301
Tel: (603) 841-3671, Ext. 101
Fax: (603) 513-2799
roysmccandless@gmail.com

Respectfully submitted,

/s/ Nathan J. Ristuccia

Nathan J. Ristuccia*[†]
Virginia Bar No. 98372
Endel Kolde*
Washington Bar No. 25155
INSTITUTE FOR FREE SPEECH
1150 Connecticut Ave., NW
Suite 801
Washington, D.C. 20036
Tel: (202) 301-3300
Fax: (202) 301-3399
nrstuccia@ifs.org
dkolde@ifs.org

**Pro hac vice to be filed*

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2024, a copy of the foregoing document was served on all counsel of record, using the Court's CM/ECF system.

Dated: October 14, 2024

s/ Nathan J. Ristuccia

[†] Not a D.C. Bar Member but providing legal services in the District of Columbia exclusively before federal courts, as authorized by D.C. Ct. App. R. 49(c)(3).

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

BETHANY R. SCAER and STEPHEN
SCAER,

Plaintiffs,

v.

CITY OF NASHUA, *et al.*,

Defendants.

Case No. 1:24-cv-00277-LM-TSM

SUPPLEMENTAL DECLARATION OF BETHANY R. SCAER

I, Bethany R. Scaer, declare the following:

1. I am an adult and competent to make this declaration. Its content is based on my personal knowledge, my conversations with Julie Smith, or records that are in my possession or control.

2. On June 7, 2024, my friend, Julie Smith, made a Right-to-Know request to Nashua's Mayor's Office and to Risk Management, seeking documents concerning applications to display flags on "the community flag pole, also known as the citizens flag pole, from January 2017 through the present."

3. On July 22, 2024, Gary Perrin, Nashua's Records Administrator, completed Nashua's response to this request. Perrin turned over hundreds of pages of responsive documents to Smith.

4. Smith forward these documents to me, because she was aware of my ongoing dispute with the City of Nashua

5. Exhibit L is a true and correct copy of a selection of documents turned over to Smith in response to this Right-to-Know request.

6. I am aware that, on October 7, 2024, Nashua reportedly repealed its 2022 flagpole policy. The city announced this repeal through its website. Nashua continues to enforce its City Hall Plaza Events policy. People who wish to hold an event on City Hall Plaza apply using the same 2022 Special Event Application and 2022 Special Event Procedures document that flag applicants formerly used.

7. Exhibit M is a true and correct copy of Nashua's webpage on City Hall Plaza Events, as of October 14, 2024.

8. I am aware that Nashua's corporation counsel, Steven A. Bolton, spoke to a reporter about Nashua's present flagpole policy and claimed that it did not make any change to the city's older 2022 flagpole policy.

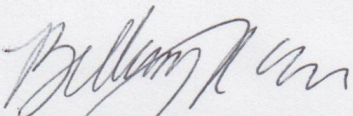
9. Exhibit N is a true and correct copy of an NH Journal article, featuring Bolton's comments.

10. Even if Nashua no longer allows citizens to fly flags, I still intend to apply to hold ceremonies on City Hall Plaza in support of causes that are important to me, such as women's sex-based rights, detransitioner awareness, abortion, and the freedom protected in the Bill of Rights. If permitted, I would hold these ceremonies on upcoming dates, such as the 250th anniversary of the Battle of Bunker Hill, the anniversary of Title IX, and the anniversary of the Supreme Court's *Dobbs* decision.

11. Based on Nashua's previous flag application denials, I believe that the Defendants disagree with my views and would not allow me to hold ceremonies on City Hall Plaza about these issues. I expect to be denied under the City Hall Plaza Events policy for the same reasons that I have been denied under the 2022 Flagpole policy. Unless I am able to obtain protection from the Court, I expect to make fewer or different applications to the city in the future, in order to avoid having my applications to hold ceremonies on City Hall Plaza denied or revoked.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 14, 2024


Bethany R. Scaer



THE CITY OF NASHUA

Office of The Records Administrator

"The Gate City"

July 22, 2024

Ms. Julie Smith
891-0267

Via email only to cantdog@comcast.net

RE: RTK Request received Friday June 7, 2024 at 9:22am.

Dear Ms. Smith,

The City is in receipt of your request dated Friday June 7, 2024 at 9:22am, under NH RSA 91-A, the "Right-to-Know" law directed to the Mayor's Office email address and Risk Management. This response is on behalf of both departments to whom it was directed.

The request is for:

Request 1:

"All requests for use of the community flag pole, also known as the citizens flag pole, from January 2017 through the present.

Risk Management's responses to all the aforementioned requests.

All appeals to denied denied (sic) aforementioned requests.

The mayor's response to all aforementioned appeals."

The City's Risk Management Department conducted a reasonable search for available records matching your request as cited above. Please find the responsive records attached Batch #2.

As discussed on July 19, 2024, notice was provided to you that the City's email server was unavailable due to a Global Microsoft technical issue, during our phone call conversation you were informed that the responsive records for RTK2024-111AS was available for pick up, as a USB drive at the City Clerk's Office until closing at 5pm on July 19, 2024.

As discussed, agreed upon, and due to your schedule and inability to retrieve the USB drive at City Hall on July 19, 2024, you were satisfied with my notice and due diligence to provide records as an USB drive on July 19, 2024, but agreed to wait until Monday July 22, 2024 for issuance via the city's email server or schedule a time on July 22, 2024 to retrieve the USB drive at City Hall if the City's email server was not restored.

On July 22, 2024 at 9:22am, you left a voicemail on the Records Administrator's extension 3022 as notice to schedule a time on July 22, 2024 to retrieve the USB as responsive records to RTK2024-111AS, or receive updated information on the City's email server.

On July 22, 2024 at approximate 9:15am on July 22, 2024 the City's email server was restored to service. Therefore, attached is Batch 2 of responsive records for RTK2024-111AS as the final issuance of responsive records to RTK2024-111AS.

As a courtesy, attached is a copy of the City's Emergency Alert of July 19, 2024 regarding the disruption with the City's email server which was posted on the City's website.

App.087

With this letter and the enclosed documents this request is considered satisfied.

Sincerely,

/s/ Gary Perrin

Records Administrator

cc: Enclosures
Mayor's Office
Legal
Director Cummings
Jennifer Deshaies
Kimberly Grasset
RTK2024-111AS

Grassett, Kimberly

From: Mayors Office Email
Sent: Thursday, May 11, 2023 11:24 AM
To: Risk Management Dept
Subject: flag request

Hi there:

The Mayor requests that the LGBTQ flag be flown on the citizen's flagpole for the week running up to the Nashua Pride Festival and Parade, so from Monday, June 19 to the following Monday, please. Thank you!

Kathleen Palmer (*she, her*)
Communications & Special Projects Coordinator
Office of the Mayor



City of Nashua – Office of the Mayor

229 Main St., in the heart of Downtown Nashua, NH

Grassett, Kimberly

From: Grassett, Kimberly
Sent: Thursday, May 11, 2023 12:19 PM
To: Mayors Office Email
Subject: RE: flag request

We've received the request and blocked off the flag pole from June 19th to June 26th. If anything changes please let me know.

Thank You,

Kimberly Grassett | Risk Coordinator



**City of Nashua – Risk Management Department
Administrative Services Division**

229 Main Street, Nashua, NH 03060
Tel. (603) 589-3345

From: Mayors Office Email <NashuaMayor@nashuanh.gov>
Sent: Thursday, May 11, 2023 11:24 AM
To: Risk Management Dept <Risk@nashuanh.gov>
Subject: flag request

Hi there:

The Mayor requests that the LGBTQ flag be flown on the citizen's flagpole for the week running up to the Nashua Pride Festival and Parade, so from Monday, June 19 to the following Monday, please. Thank you!

Kathleen Palmer *(she, her)*
Communications & Special Projects Coordinator
Office of the Mayor



City of Nashua – Office of the Mayor
229 Main St., in the heart of Downtown Nashua, NH



SPECIAL EVENT APPLICATION City Hall Plaza

Redactions of personal information pursuant to RSA 91-A:5 IV; disclosure would constitute invasion of privacy.

Complete the application in its entirety. Submit the application along with any additional requirements at least ten (10) calendar days prior to the event - City of Nashua, Risk Management Department, 229 Main Street, Nashua NH 03061, fax to 603-589-3359 or Risk@NashuaNH.gov.

If applicable, applicant must submit a certificate of insurance naming the City of Nashua as the certificate holder and as an additional insured; reflecting \$1,000,000/\$2,000,000 general liability insurance.

If applicable, contact the Permits Coordinator, 603-589-3276, to obtain a Permit to Encumber. Any applicant that would like to place an obstruction in the City right-of-way (sidewalk abutting the plaza) will need to obtain a Permit to Encumber. This includes signage, materials or participants.

1. Organization: N/A
2. Address: 13 Shingle Mill Dr. Nashua, NH, 03062
3. Contact Name: Karen Thoman Contact Number: [REDACTED]
4. Name of Event: Celebrating Life
5. Requested Date(s) of Event: Jan 20, 2024 Requested Time(s) of Event: 10am ~~11am~~

Event Details (Please include approximate number of attendees, whether or not sidewalk will be utilized and additional details that may be pertinent to the event) If your request is to have a flag flown, but with no ceremony, please indicate as such below.

I am requesting to fly the Pro-Life flag on the citizen's flag pole. I am expecting a small group of about 10 people. We will make a few remarks and raise the flag. There will be no ceremony and we will have nothing set up on the plaza. We are celebrating the overturn of Roe vs. Wade, and the right to life as a human right.

OBSERVANCE OF LAWS AND ORDINANCES

The undersigned shall faithfully observe, keep and obey all terms and conditions of the permit, laws, rules and ordinances of the City of Nashua. The undersigned shall also faithfully observe, keep and obey all laws, rules and regulations of any other governmental entity including, State and federal regulations which may apply.

INDEMNIFICATION

The undersigned shall have the power to act on behalf of the organization. The undersigned shall save and protect, hold harmless, indemnify and defend the City, its commissions, officers, agents, and employees against any and all liability, causes of action, claims, loss damages or cost and expenses arising from, allegedly arising from, or resulting directly or indirectly from any acts of the applicant or any of its officers, employees, or agents done in the performance or operations of the event, or any act done under pretended authority of this application. This agreement to indemnify and hold the City harmless shall include any costs incurred by the City in defending any action involving an act by the applicant or any of its officers, employees, or agents, and shall include attorney's fees incurred by the City.

I certify that the answers given herein are true and complete to the best of my knowledge, and I have not omitted any information. I further understand the conditions herein. False, misleading, or omitted information in my application form may disqualify the organization from holding this event.

Signature: Karen Thoman Date: 11/16/2023

(For insurance purposes; signed application serves as a contractual obligation in regards to naming the City of Nashua as an additional insured)

NOV 29 2023
Risk Management



City of Nashua
Risk Management Department
229 Main Street - Nashua, NH 03060

Jennifer L. Deshaies
Risk Manager

603-589-3350
Fax 603 589-3359

December 5, 2023

Ms. Karen Thoman
13 Shingle Mill Drive
Nashua NH 03062

RE: FLAG POLE REQUEST

Ms. Thoman:

We have reviewed your application dated November 16, 2023, requesting to fly the Pro-Life flag on the Citizen's flag pole. The flag is not in harmony with the message that the City wishes to express and endorse. Therefore, we must deny your request as the flag pole is not intended to serve as a forum for free expression by the public.

Attached please find our Flag Pole Policy and Special Event Procedures for the City Hall Plaza that can also be found on the Risk Management page of the City website

If you wish to appeal this decision it may be made to the Mayor's office within three business days of after receiving our decision. The appeal shall be in writing, stating the basis therefore and relief sought. They Mayor's office will review our decision and announce its decision as promptly as possible, but no later than ten business days after receipt of the appeal.

Sincerely,

Jennifer L. Deshaies
Risk Management

Encl.
SPECIAL EVENT APPLICATION City Hall Plaza
FLAG POLE POLICY
SPECIALEVENT PROCEDURES City Hall Plaza

The white background symbolizes non-violence in the womb as well as the innocence of the unborn child.

The two baby feet represent the humanity of the unborn child. Baby feet have been a symbol associated with the pro-life movement since the iconic Precious Feet lapel pins were named the international pro-life symbol in 1979.

The two pink hands represent the pregnant mother, holding and protecting her child.

The circle shape formed by the hands evoke imagery of a pregnant mother's growing belly: a safe, secure, protected place for a developing child.

The two stripes again emphasize the TWO distinct human lives present in a pregnancy. The stripes also form an "equals sign," stressing that the unborn child is equally and fully human, and therefore deserving of equal human rights. The stripes can also represent the role of both the father and mother in creating and raising a child.

The colors blue and pink mean different things to different people. Traditionally, they have been the colors associated with baby boys and girls, but the two distinct colors also reemphasize the two lives present in a pregnancy: mother and child.

NOV 29 2023
Risk Management



Pink and Blue

NOV 29 2023

Risk Management

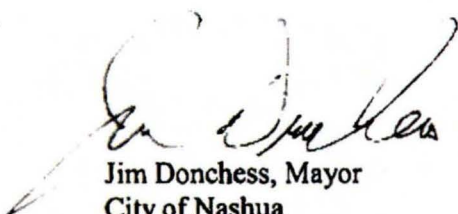
App 094

FLAG POLE POLICY

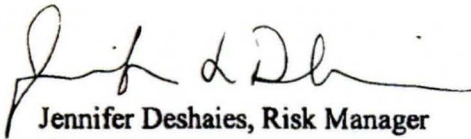
A flag pole in front of City Hall may be provided for use by persons to fly a flag in support of cultural heritage, observe an anniversary, honor a special accomplishment, or support a worthy cause. Any group wishing to fly a flag must provide the flag. This potential use of a City flag pole is not intended to serve as a forum for free expression by the public. Any message sought to be permitted will be allowed only if it is in harmony with city policies and messages that the city wishes to express and endorse. This policy recognizes that a flag flown in front of City Hall will be deemed by many as City support for the sentiment thereby expressed, city administration reserves the right to deny permission or remove any flag it considers contrary to the City's best interest.

For More Information

For more information, please contact the Risk Management office at 603-589-3350.



Jim Donchess, Mayor
City of Nashua



Jennifer Deshaies, Risk Manager
City of Nashua



SPECIAL EVENT PROCEDURES

City Hall Plaza

DEFINITIONS.

The following words and terms, when used in the Section, shall have the following meanings, unless the context clearly indicates otherwise:

- A. CITY HALL PLAZA constitutes the area extending west-to-east from the front steps of City Hall to the western edge of Main Street sidewalk and south-to-north between the outer edges of the City property bordering the sides of City Hall.
- B. EXHIBIT. Any display of artwork, including but not limited to, paintings, sculptures, arts and crafts, photographs, public service and educational presentations, and historical displays.
- C. EVENT. Any performance, ceremony, presentation, meeting, rally or reception held in the City Hall Plaza. A rally is defined as a gathering of people for the purpose of actively promoting a cause.

GENERAL.

- A. Events, exhibits or gatherings in City Hall Plaza, which may extend onto the Main Street sidewalk in front of City Hall, shall obtain a license to obstruct or encumber that sidewalk from the Division of Public Works in accordance with NRO Sec. 285-9.
- B. See also NRO Sec. 1-12 and 231, *General Penalty, Dissemination of noncommercial materials on public property; related solicitation and Distribution and posting of handbills, fliers, etc.*

ADMINISTRATION.

The Risk Manager, or designee, shall supervise the administration of procedures for the scheduling and use of City Hall Plaza and shall perform such other duties as may be imposed by ordinance, Mayor or Board of Aldermen.

LOITERING AS TO OBSTRUCT PASSAGE.

- A. No person shall stand or loiter in or on City Hall Plaza in such a manner as to obstruct the free passage of the public nor shall any such person, after being directed by a police officer to move on and disperse, on a same or subsequent day, reappear to loiter or remain so as to obstruct the free passage of the public; provided, that nothing contained in this section shall be construed to deny the right of peaceful picketing.
- B. It shall be the duty of any police officer of the City to order any person offending against the provisions of this section to move on and disperse and if the person(s) so ordered or requested do not forthwith obey, to remove them, or to cause a complaint to be made against such person(s).

REQUEST FOR USE OF FACILITIES.

Requests to schedule events or exhibits in City Hall Plaza shall be made to the Risk Manager or designee and will be scheduled, when practicable, on a first-come, first-served basis determined by the Risk Manager.

- A. No single organization or agency shall monopolize the use of City Hall Plaza.
- B. All requests must be submitted at least ten (10) calendar days prior to an event.
- C. The Special Event Application (SEACH2022) should be completed in its entirety and shall be subject to review and approval of the Risk Manager. The Risk Manager reserves the right to decline any non-compliant application for use of a public area for a given day or time period. The Applicant is to be notified as soon as a decision has been made.
- D. Any and all events may be subject to cancellation, rescheduling or relocation by the Risk Manager on a forty-eight (48) hours' notice as necessary to accommodate the needs of the City's governing body to hold public gatherings. The Risk Manager shall make every effort to reschedule use of City Hall Plaza by the applicant for any time lost.
- E. In order to schedule an event, a sponsor will be required to sign the Special Event Application acknowledging that the sponsor has read, understood and will abide by the procedures governing

the use of the public areas of City Hall Plaza; that the sponsor is responsible for damages incurred as a result of its event; that the sponsor will either restore or pay to have restored the area used for its event to the condition that existed prior to its use; and that it will indemnify and hold harmless the City of Nashua for any damage or loss arising out of its use of City Hall Plaza.

- F. A sponsor may be required to provide a certificate of insurance issued by an insurance company licensed to do business in the State of New Hampshire, protecting the sponsor and the City from all claims for damages to property and bodily injury, which may arise from operations under or in connection with the event or exhibit. Such certificate of insurance shall be reviewed and approved by the Risk Manager.
- G. A person or organization that refuses to adhere to the conditions outlined herein is subject to immediate removal from City Hall Plaza by the Risk Manager or Nashua Police Department. Nothing contained herein shall be construed as limiting prosecution under any statute or ordinance.

REQUEST FOR USE OF THE CITY FLAG POLE.

Requests to fly a flag shall be made to the Risk Manager or designee and will be evaluated in accordance with the City's flag pole policy. Applications shall include a photograph of the flag proposed and an explanation of the message intended to be conveyed. No single organization or agency shall monopolize the City flag pole.

- A. The Special Event Application (SEACH2022) should be completed in its entirety and shall be subject to review and approval of the Risk Manager. The Risk Manager reserves the right to decline any non-compliant application for use of the City flag pole for a given day or time period. The Applicant is to be notified as soon as a decision has been made.
- B. Any and all requests may be subject to cancellation, rescheduling or relocation by the Risk Manager on a forty-eight (48) hours' notice as necessary to accommodate the needs of the City's governing body. The Risk Manager shall make every effort to reschedule use of the City flag pole by the applicant for any time lost.

CONDITIONS.

- A. In order to maintain security, safety and aesthetic appearance of City Hall and its grounds, and to provide for regular maintenance, scheduled events at City Hall Plaza shall occur between the hours of 7:00 a.m. and 9:30 p.m. on a daily basis, and shall at no time block any entrance or exit of the building, or impede free access to the building by its occupants or the public.
- B. No banners may be suspended from or attached to City Hall.
- C. Stepping or climbing upon granite benches, monuments, fences, lighting fixtures, light wells, trees or parts of City Hall not intended for such purposes is prohibited.
- D. In accordance with NRO Sec. 19-1 (g) (1), picketing and the distribution of literature shall not impeded or interfere with municipal business or public access to the use of City Hall. "An unobstructed pathway at least ten (10) feet in width shall be maintained from the foot of the stairway...to the east of the Kennedy Memorial..." during hours that City Hall is open for business.
- E. Due to the presence of underground utility, electrical and drainage lines, no sign or banner shall be driven into the ground nor shall they be supported in or by any tree, monument, or other structure affixed to City Hall. Signs or banners supported by freestanding devices may not be left unattended, i.e.; an individual must be stationed within two feet of a freestanding sign or banner at all times to prevent damage to the grounds, injury to individuals and for security reasons.
- F. Use of City Hall Plaza by an individual or organization for an event or exhibit is authorized only if the event or exhibit has been scheduled with the Risk Manager in accordance with the procedures described herein.
- G. Equipment or structures of any kind that are placed on City Hall grounds in connection with an event or exhibit shall be entirely removed at the conclusion of the event or exhibit.
- H. No sound amplifying equipment may be used if sound level interferes with the conduct of public business by the departments which occupy or use City Hall or which otherwise interferes with or disrupts the comfort of nearby residents or businesses.

APPEAL

If a person or organization is aggrieved by a decision of the Risk Manager, an appeal may be made to the Mayor or designee(s) within three (3) business days of that decision. The appeal shall be in writing, stating the basis therefore and the relief sought. The Mayor or designee(s) will review the decision of the Risk Manager and announce its decision as promptly as possible, but no later than ten (10) business days after receipt of the appeal.



DISTRICT OF COLUMBIA
109 Second Street NE
Washington, DC 20002
Tel 202-289-1776
Fax 407-875-0770
LC.org

FLORIDA
PO Box 540774
Orlando, FL 32854
Tel 407-875-1776
Fax 407-875-0770

VIRGINIA
PO Box 11108
Lynchburg, VA 24506
Tel 407-875-1776
Fax 407-875-0770
Liberty@LC.org

REPLY TO FLORIDA

January 16, 2024

Via Email to Counsel

Steven A. Bolton, Esq.
boltons@nashuanh.gov
Corporation Counsel
City of Nashua, NH
229 Main Street
Nashua, NH 03061

RE: City of Nashua flag raising request

Dear Attorney Bolton:

Liberty Counsel is a national nonprofit litigation, education, and public policy organization with an emphasis on First Amendment liberties, particularly regarding religious liberty. We have affiliated attorneys across the nation, including New Hampshire.

Liberty Counsel has been contacted by several citizens of the City of Nashua ("City") regarding the display of non-government flags on the City's "Citizen flag pole." We understand that one citizen made several requests to fly the "Save Women's Sports" flag, with each of these requests being denied. Another citizen, Karen Thoman, recently requested to fly the "Pro-Life" flag on the Citizen flag pole. This request was also denied by the City, because the flag was supposedly "not in harmony with the message that the City wishes to express and endorse." This, even though multiple other citizens and groups have made requests to fly their chosen flags, and the City granted such requests.

Based on our belief that the City has in fact created a limited public forum for the purpose of communicating ideas, we are writing to request that the City reconsider and approve Ms. Thoman's request. Please provide a written **response by January 30, 2024, to prevent the need for further action by Liberty Counsel.**

We understand that Ms. Thoman made the formal request to fly the Pro-Life flag, a white flag with two blue and pink lengthwise stripes in the middle of which rests a circle containing the hands of a mother encircling two baby's feet, on November 16, 2023. Ms. Thoman wished to fly

City of Nashua flag raising request
January 16, 2024
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this flag on the fifty-first anniversary of *Roe v. Wade* on January 22, 2024. A true and correct depiction of the flag follows:



On December 5, 2023, Risk Management Employee Jennifer Deshaies denied the request, stating in applicable part:

We have reviewed your application dated November 16, 2023, requesting to fly the Pro-Life flag on the Citizen's flag pole. The Flag is not in harmony with the message that the City wishes to express and endorse. Therefore, we must deny your request as the flag pole is not intended to serve as a forum for free expression by the public.

First, it is difficult to understand how a flag depicting the tiny footprints of newborn or preborn babies, lovingly encircled within a shape symbolizing a mother's womb, outside of which are a mother's hands lovingly caressing her pregnant belly is "not in harmony with the message that the City wishes to express and endorse." What is more wholesome about humanity than the miracle of life, the birth of children, and motherhood?

Second, this response fails to consider other requests for flag raisings over the past two years that were routinely approved by the City upon request by members of the public, including but not limited to the flags of half a dozen countries, the Sunshine Week Flag, the Porcupine Flag, the Pride Flag, the Cancer Awareness flag, and the Nashua Lions flag. These are not the only comparison groups, and we know of no flag requests denied by the City except for Ms. Thoman's request to fly the Pro-Life flag and previous requests to fly the Save Women's Sports flag; flags representing conservative, religious viewpoints.

This denial of Ms. Thoman's request necessitates this letter, prior to Liberty Counsel taking additional action. The City cannot claim a "governmental forum" and then in policy and practice operate a limited public forum available to all citizens (except those espousing viewpoints City Administration dislikes).¹ While the City may have had "meaningful" involvement in permitting multiple requests for flag raisings by private parties, such involvement does not obviate the creation of a limited public forum. Indeed, while the City's flag policy

¹ <https://www.nashuanh.gov/543/City-Hall-Plaza-Flag-Pole-Events>

City of Nashua flag raising request
January 16, 2024
Page 3

claims that it “is not intended to serve as a forum for free expression by the public,” the policy also acknowledges that any citizen may submit a request to be approved by the City so long as the flag is deemed to represent a “worthy cause.” As recent records requests have indicated, this is why the 2023 request by several citizens to fly the Save Women’s Sports flag was denied, because the City did not deem it to represent a “worthy cause.”

Having created a limited public forum by allowing use of the Citizen flag pole to all “worthy” causes, the City is not permitted to deny requests based on the viewpoint of the speaker. First, despite the City’s assertions to the contrary, a settled practice of allowing flag requests as a matter of course displays a municipality’s intent to create a limited public forum. *Shurtleff v. City of Bos., Massachusetts*, 142 S. Ct. 1583, 1592-93 (2022). Second, the Supreme Court and various federal courts have confirmed that organizations and individuals holding a religious viewpoint may not be subjected to discrimination on the basis of that viewpoint; nor may government consider religious viewpoint in order to censor private speech:

This Court has since made plain, too, that the Establishment Clause does not include anything like a “modified heckler’s veto, in which ... religious activity can be proscribed” based on “‘perceptions’” or “‘discomfort.’” *Good News Club v. Milford Central School*, 533 U.S. 98, 119, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001) (emphasis deleted). An Establishment Clause violation does not automatically follow whenever a public school or other government entity “fail[s] to censor” private religious speech. *Board of Ed. of Westside Community Schools (Dist. 66) v. Mergens*, 496 U.S. 226, 250, 110 S.Ct. 2356, 110 L.Ed.2d 191 (1990) (plurality opinion). Nor does the Clause “compel the government to purge from the public sphere” anything an objective observer could reasonably infer endorses or “partakes of the religious.” *Van Orden v. Perry*, 545 U.S. 677, 699, 125 S.Ct. 2854, 162 L.Ed.2d 607 (2005) (BREYER, J., concurring in judgment). In fact, just this Term **the Court unanimously rejected a city’s attempt to censor religious speech based on *Lemon* and the endorsement test.** See *Shurtleff*, 142 S.Ct., at 1587–1588; *id.*, at 1595 (ALITO, J., concurring in judgment); *id.*, at 1587, 1588–1589 (opinion of GORSUCH, J.).

Kennedy v. Bremerton Sch. Dist., 142 S. Ct. 2407, 2427–28 (2022) (Emphasis added) (quoting *Shurtleff v. City of Boston*, 142 S. Ct. 1583 (2022)).

As you may know, *Shurtleff* was a Liberty Counsel case decided two terms ago 9-0 by the Supreme Court in favor of our clients. The City of Boston censored our clients based upon religious viewpoint and denied a similar request to fly a flag as the one requested here, using a similar (specious) argument that a public forum had not been created. One of the undersigned sent a similar letter to the City of Boston in 2017. The City of Boston continued its discrimination and created a First Amendment test case with a 9-0 unanimous decision against it. Then, the City of [Boston paid Liberty Counsel \\$2,125,000.00](#) for attorney’s fees and costs.

In addition to the City of Nashua’s denial, Ms. Thoman has received from the City no standards by which the City considers which requests represent a “worthy cause,” and upon information and belief, the City uses an ad hoc process and has thus far considered requests using its unbridled discretion. Of course, “without standards governing the exercise of discretion,

City of Nashua flag raising request
January 16, 2024
Page 4

a government official may decide who may speak and who may not based upon the content of the speech or view-point of the speaker.” *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 763–64 (1988). “Without determinate standards, ***post hoc rationalizations by the licensing official and the use of shifting or illegitimate criteria are far too easy...***” *Id.* at 758–59. (Emphasis added).



The Supreme Court has prohibited unbridled discretion in traditional public forums, and the risks of unbridled discretion “are just as present in other forums,” and the prohibition on unbridled discretion is a constant in forum analysis. *Child Evangelism Fellowship of MD, Inc. v. Montgomery Cnty. Pub. Sch.*, 457 F.3d 376, 386 (4th Cir. 2006). This has been a matter of consensus among the courts of appeals. *Id.* at 386–87 (citing *Atlanta Journal & Constitution v. City of Atlanta Dep’t of Aviation*, 322 F.3d 1298, 1306–07, 1310–11 (11th Cir.2003); *DeBoer v. Village of Oak Park*, 267 F.3d 558, 572–74 (7th Cir.2001); *Lewis v. Wilson*, 253 F.3d 1077, 1079–80 (8th Cir.2001); *Summum v. Callaghan*, 130 F.3d 906, 919–20 (10th Cir.1997); *Sentinel Commc’ns Co. v. Watts*, 936 F.2d 1189, 1200 n. 11 (11th Cir.1991)).

The City’s addition of purported “magic words” to its website (“This potential use of the City Hall Plaza is not intended to serve as a forum for free expression by the public”) and flag pole policy (“This potential use of a City flag pole is not intended to serve as a forum for free expression by the public”) is a transparent and futile attempt to evade the First Amendment’s mandates. Notwithstanding, the City continues to operate the City Hall Plaza and its Citizen flag pole as limited public forums and has exercised unbridled discretion in the apparent approval of all flags except those that represent Christian or conservative messages.

We urge the City of Nashua to carefully consider its past practices; and not discriminate against flag raising requests based on religious or political viewpoint. We are asking that you **please provide a written response by January 30, 2024**, that Ms. Thoman’s request has been approved, **to prevent the need for further action by Liberty Counsel.**

If we do not receive this response, we will conclude that the City is indifferent to the concerns expressed herein, and Liberty Counsel will take further action to prevent irreparable harm to cherished liberties. Thank you for your attention to this request.

Sincerely,


Richard L. Mast[†]

Hugh C. Phillips^{††}

[†]Licensed in Virginia

^{††}Licensed in Florida

^{†††}Licensed in New Hampshire

RLM/tge

City of Nashua flag raising request
January 16, 2024
Page 5

CC

Via Email

Roy McCandless^{††}

ROYSMCCANDLESS@GMAIL.COM

Nashua City Mayor

James W. Donchess

NASHUAMAYOR@NASHUANH.GOV

Nashua Board of Aldermen

Tim Sennott

SENNOTTT@NASHUANH.GOV

Ben Clemons

CLEMONSB@NASHUANH.GOV

Christopher Thibodeau

THIBODEAUCH@NASHUANH.GOV

Richard A. Dowd

DOWDR@NASHUANH.GOV

Tyler Gouveia

GOUVEIAT@NASHUANH.GOV

Ernest A. Jette

JETTEE@NASHUANH.GOV

Shoshanna Kelly

KELLYS@NASHUANH.GOV

Patricia Klee

KLEEP@NASHUANH.GOV

Thomas Lopez

LOPEZT@NASHUANH.GOV

Melbourne Moran, Jr.

MORANM@NASHUANH.GOV

John Sullivan

SULLIVANJ@NASHUANH.GOV

Derek Thibeault

THIBEAULTD@NASHUANH.GOV

Gloria Timmons

TIMMONSG@NASHUANH.GOV

Lori Wilshire

WILSHIREL@NASHUANH.GOV

Michael B. O'Brien, Sr.

OBRIENM@NASHUANH.GOV

Grassett, Kimberly

From: Maria Ulloa [REDACTED]
Sent: Thursday, January 18, 2024 4:07 PM
To: Grassett, Kimberly
Subject: Citizen Flag Pole Request

Redactions of personal information
pursuant to RSA 91-A:5 IV;
disclosure would constitute
invasion of privacy.

Categories: Awaiting Response

CAUTION: This email came from outside of the organization. Do not click links/open attachments if source is unknown.

Hello Kimberly,

To celebrate 180 years of Dominican Republic's independence that falls on February 27th, we would like to request the opportunity to raise our flag to sing our national anthem as in past years, and at the same time, invite Mayor Jim Donchess to attend the celebration.

Due to last year's frigid conditions, if there is a conference room or similar space to have the opportunity to share words of our culture and traditions with the attendees and community, that would be greatly appreciated.

We request the following date and time:

Day: Saturday, February 17th

Time: 10am

Contact: María Ulloa, representative of Dominican Residents in Nashua, NH

Please feel free to contact me at [REDACTED] with any questions.

Thank you for your time,
Maria Ulloa

Grassett, Kimberly

From: Grassett, Kimberly
Sent: Wednesday, February 14, 2024 9:56 AM
To: Maria Ulloa
Subject: RE: Flag raising 2024

Redactions of personal information pursuant to RSA 91-A:5 IV; disclosure would constitute invasion of privacy.

Hi Maria,

I will make sure someone is available for 2:30pm to assist.

Thank You,

Kimberly Grassett | Senior Risk Coordinator



**City of Nashua – Risk Management Department
Administrative Services Division**

229 Main Street, Nashua, NH 03060
Tel. (603) 589-3345

From: Maria Ulloa
Sent: Tuesday, February 13, 2024 6:24 PM
To: Grassett, Kimberly
Subject: Re: Flag raising 2024

CAUTION: This email came from outside of the organization. Do not click links/open attachments if source is unknown.

Hi Kimberly,

I talked you him and he will stop at 2:30 pm tomorrow ,
Thank you very much again.

On Tue, Feb 13, 2024 at 3:57 PM Maria Ulloa [REDACTED] wrote:

Good afternoon Kimberly,
The name is Richard Salas, is the same guy of the last year. I think he's is all set, but I do double check.
Thank you!

On Mon, Feb 12, 2024 at 4:47 PM Grassett, Kimberly <grassettk@nashuanh.gov> wrote:

Good Morning Maria,

This is a reminder to please contact me with a date and time you are coming in to Risk Management to retrieve the flag pole tool and get a lesson on how to use the tool. You will need to schedule so that I have the proper staff on site to assist you. Without the tool you will be unable to raise your flag at your upcoming event.

Additionally, please be advised that you will also need to return the tool **no later than February 23** as we have other groups that will need to take the tool out on loan.

Thank You,

Redactions of personal
information pursuant to RSA
91-A:5 IV; disclosure would
constitute invasion of privacy.

Kimberly Grassett | Senior Risk Coordinator



City of Nashua – Risk Management Department

Administrative Services Division

[229 Main Street, Nashua, NH 03060](#)

Tel. (603) 589-3345

From: Grassett, Kimberly
Sent: Wednesday, January 31, 2024 11:28 AM
To: 'Maria Ulloa' [REDACTED]
Subject: RE: Flag raising 2024

Good Morning Maria,

Attached please find your approved application for the use of City Hall Plaza for your event. Be sure to bring a copy of the approved application with you to the event. The plaza has been reserved for you from 9:30am to 11:30am to account for any set up and break down you may need to do. Your flag will be flown for a duration of one week. Attached you will also find the ordinances and procedures for use of the City Hall Plaza. Please review these prior to your event.

Be advised that you will need to stay within the plaza and not block the sidewalk. The plaza can hold more than 50 people easily, so this should not be a problem.

As your event is on a weekend, you will need to schedule a time to come in to the Risk Management Office at City Hall and get the flag pole tool and a lesson on how to use the tool. Please let me know a date **and** time that you will be arriving so that I can ensure someone is on site and available to assist you. We will

need the tool returned **no later than February 23** as we have other groups that will need to take the tool out on loan.

This email is only for approval of the use of the plaza and the flag pole. You will need to confirm with the Mayor's Office separately regarding the Mayor's presence and/or a proclamation from the Mayor. If you are still looking for space to use inside, you will need to reserve that space through the City Clerk's Office.

Should you have any questions, please let me know.

Redactions of personal information pursuant to RSA 91-A:5 IV; disclosure would constitute invasion of privacy.

Thank You,

Kimberly Grasset | Senior Risk Coordinator



City of Nashua – Risk Management Department

Administrative Services Division

229 Main Street, Nashua, NH 03060

Tel. (603) 589-3345

From: Maria Ulloa [REDACTED]
Sent: Monday, January 29, 2024 3:05 PM
To: Grasset, Kimberly <grassettk@nashuanh.gov>
Subject: Re: Flag raising 2024

CAUTION: This email came from outside of the organization. Do not click links/open attachments if source is unknown.

Hi Kimberly,

Can you please let me know if the attachment works! Thank you

On Mon, Jan 29, 2024 at 1:57 PM Grasset, Kimberly <grassettk@nashuanh.gov> wrote:

Hi Maria,

That document is still unable to be opened. Please attach the document to the email – it appears that this may be a link.

Thank You,

Redactions of personal information
pursuant to RSA 91-A:5 IV;
disclosure would constitute
invasion of privacy.

Kimberly Grasset | Senior Risk Coordinator



City of Nashua – Risk Management Department
Administrative Services Division

229 Main Street, Nashua, NH 03060

Tel. (603) 589-3345

From: Maria Ulloa [REDACTED]
Sent: Monday, January 29, 2024 1:40 PM
To: Grasset, Kimberly <grassettk@nashuanh.gov>
Subject: Flag raising 2024

CAUTION: This email came from outside of the organization. Do not click links/open attachments if source is unknown.

Attached application for use of City Hall,

Sorry about that, here it is.

SPECIAL EVENT APPLICATION (2024)

Grassett, Kimberly

From: Grassett, Kimberly
Sent: Monday, January 22, 2024 9:15 AM
To: Maria Ulloa
Cc: Mayors Office Email
Subject: RE: Citizen Flag Pole Request
Attachments: SPECIAL EVENT APPLICATION.pdf

Categories: Awaiting Response

Good Morning Maria,

Attached please find the application for use of the City Hall Plaza. You will have to fill this out and return it to me to start the reservation process.

You will need to reach out to the Mayor's office to check on the Mayor's availability to attend the event. I have cc'd them on this email to get the process started.

If you're wishing to reserve a conference room or the auditorium for remarks, you will need to do so through the City Clerk's office. You can email them at CityClerkDept@NashuaNH.gov or call them at 603-589-3010.

Best,

Kimberly Grassett | Senior Risk Coordinator



**City of Nashua – Risk Management Department
Administrative Services Division**

229 Main Street, Nashua, NH 03060
Tel. (603) 589-3345

From: Maria Ulloa
Sent: Thursday, January 18, 2024 4:07 PM
To: Grassett, Kimberly
Subject: Citizen Flag Pole Request

CAUTION: This email came from outside of the organization. Do not click links/open attachments if source is unknown.

Hello Kimberly,

To celebrate 180 years of Dominican Republic's independence that falls on February 27th, we would like to request the opportunity to raise our flag to sing our national anthem as in past years, and at the same time, invite Mayor Jim Donchess to attend the celebration.

Due to last year's frigid conditions, if there is a conference room or similar space to have the opportunity to share words of our culture and traditions with the attendees and community, that would be greatly appreciated.

We request the following date and time:
Day: Saturday, February 17th
Time: 10am

Contact: María Ulloa, representative of Dominican Residents in Nashua, NH

Please feel free to contact me at [REDACTED] with any questions.

Thank you for your time,
Maria Ulloa

Redactions of personal
information pursuant to RSA
91-A:5 IV; disclosure would
constitute invasion of privacy.



Exhibit M

City Hall Plaza Events

The plaza in front of City Hall may be provided for use by persons or group to have an event. This potential use of the City Hall Plaza is not intended to serve as a forum for free expression by the public. Any message sought to be permitted will be allowed only if it is in harmony with city policies and messages that the city wishes to express and endorse. This policy recognizes that an event in front of City Hall will be deemed by many as City support for the sentiment thereby expressed, city administration reserves the right to deny permission it considers contrary to the City's best interest. All City Hall Plaza Events must be submitted for approval and follow all guidelines and procedures provided below.

Effective 10/7/2024, the flagpoles on city hall grounds shall henceforth be exclusively controlled by city government. The city shall determine what flags will be flown and during what time periods and does not seek input from other sources. The flagpoles are not public or open to others for expression but are solely for city government to convey messages it chooses. All previous policies related to flagpoles on city hall grounds are hereby repealed.

For More Information

For more information, please contact the Risk Management office at 603-589-3350.

- [2022_SPECIAL EVENT APPLICATION](#)
- [2022_SPECIAL EVENT PROCEDURES](#)
- [20241007 Flag Pole Policy](#)

Contact Us

Risk Management

Physical Address

229 Main Street
Nashua, NH 03060

Mailing Address

P.O. Box 2019

Nashua, NH 03061

Phone: 603-589-3350

Fax: 603-589-3359

Directory

 **Government Websites by CivicPlus®**



NEWS

[Politics \(https://nhjournal.com/category/politics/\)](https://nhjournal.com/category/politics/)

Nashua Mayor Donchess Furls Public Flagpole As 'Pine Tree Flag' Lawsuit Looms

Posted to [Politics \(https://nhjournal.com/category/politics/\)](https://nhjournal.com/category/politics/) October 13, 2024

by [Michael Graham \(https://nhjournal.com/author/michaelgraham/\)](https://nhjournal.com/author/michaelgraham/)

It's time to play "Taps" for Nashua's public flagpole tradition.

After being slapped with a lawsuit (<https://nhjournal.com/nashua-slapped-with-lawsuit-after-banning-pine-tree-flag/>) over free speech violations for refusing to allow citizens to fly the historic Pine Tree Flag, Nashua Mayor Jim Donchess quietly pulled down the city's

flagpole policy earlier this week.

In a response to the lawsuit, the city told the U.S. District Court:

"On October 7, 2024, during the pendency of this action, Mayor Donchess repealed the 2022 Flagpole Policy and any other previous policies related to the flagpoles outside City Hall. In place of these policies, Mayor Donchess signed a new City Hall Flagpole Policy stating that 'The flagpoles on city hall grounds shall henceforth be exclusively controlled by city government. The city shall determine what flags will be flown and during what time periods and does not seek input from other sources. The flagpoles are not public fora open to others for expression but are solely for city government to convey messages it chooses.'"

(The city's new flagpole policy [can be found here. \(https://www.nashuanh.gov/DocumentCenter/View/25217/20241007-Flag-Pole-Policy\)](https://www.nashuanh.gov/DocumentCenter/View/25217/20241007-Flag-Pole-Policy))

For years the City of Nashua had a policy of making a flagpole at City Hall available, upon request, to citizens who wanted to celebrate or demonstrate on behalf of an idea or group. In the past, that included the flags of Ireland, India, and Ukraine, along with the "Suffrage" flag, the "Children of the American Revolution" flag, and the Lion's Club flag.

What the city would not allow was the flying of a flag promoting women's rights/girls-only sports or the historic "Appeal to Heaven" Pine Tree Flag. The pine tree symbol is tied to the Pine Tree Riot in Weare, N.H. Some historians believe a version of the flag flew over Gen. George Washington's army at the historic Battle of Bunker Hill.

Nashua resident and political activist Beth Scaer told the city she wanted to fly the flag to commemorate the anniversary of the Bunker Hill battle, in which several New Hampshire residents took part. The city refused.

"The flag is not in harmony with the message that the city wishes to express and endorse. Therefore, we must deny your request," wrote Jennifer L. Deshaies, whose job title in the Donchess administration is "Risk Manager."

Just days later, Donchess and his administration pulled down the New Hampshire state flag and replaced it with the “Progress Pride” flag.

Told of the city’s decision to wave the white flag on its flagpole policy rather than allow her to fly the Pine Tree banner, Scaer told NHJournal she was “disappointed that Nashua abruptly changed its flag policy instead of addressing how they used it to discriminate against certain viewpoints.

“However, I feel this sudden shift validates our position. By scrapping their old policy entirely, the city has essentially admitted that it violated our First Amendment rights. The city’s actions have only strengthened our resolve to see this through.”

Scaer is being represented in the lawsuit by [the Institute for Free Speech \(https://www.ifs.org/\)](https://www.ifs.org/) (IFS), which advocates for First Amendment rights in cases across the country.

“The abrupt repeal of Nashua’s flag policy is a tacit admission that the old policy was unconstitutional,” IFS attorney Nathan Ristuccia told NHJournal.

“This last-minute change is a transparent attempt to avoid judicial scrutiny and sidestep the serious constitutional issues raised by Nashua’s actions toward our clients. We look forward to continuing to litigate this matter and working to protect every citizen’s right to free speech in the public square.”

The IFS is also representing the families in the [lawsuit against Bow High School \(https://nhjournal.com/court-to-hear-bow-pink-wristband-parents-request-for-tro-tuesday/\)](https://nhjournal.com/court-to-hear-bow-pink-wristband-parents-request-for-tro-tuesday/) over punishing parents who wore pink wristbands with XX written on them at a soccer game to indicate their opposition to allowing biological males to play on girls sports teams.

One former free speech organization that has not publicly taken a position on either case is the ACLU of New Hampshire. Its legal director, Gilles Bissonnette, declined to respond to multiple requests for comment on the two cases.

Steven A. Bolton, the city’s corporation counsel, denied that the mayor had made any change to the city’s flagpole policy, despite the city itself calling it a “new City Hall flag pole policy.”

“I don’t agree that we’ve ended any tradition. The mayor’s policy is intended to make it clear that this is, and has always been, a city flagpole. We are merely clarifying the existing policy,” Bolton told NHJournal.

Bolton confirmed the “clarification” was in response to the lawsuit, but he denied that it bolsters the argument that the previous policy violated the First Amendment.

“The policy now is what the policy is now,” Bolton said.

Author



Michael Graham (<https://nhjournal.com/author/michaelgraham/>).

Michael Graham is Managing Editor of insideSources.com.

View all posts (<https://nhjournal.com/author/michaelgraham/>) ✉ (<mailto:news@insidesources.com>)

More from New Hampshire Journal

Exhibit O

From: **Derek Thibeault** <thibeaultfornashua@gmail.com>

Date: Mon, Oct 21, 2024 at 8:19 AM

Subject: Ward 8 Newsletter Week of 10/21/2024

To:

Good morning,

Sorry for the late response; it was a busy weekend. Last week was a slow week for meetings, but this week will pick up. The BOA meeting does not have much on the agenda this week, but the Human Affairs, Infrastructure, and Zoning Board all have controversial issues.

First, Human Affairs will debate the Human Rights resolution that some want us to pass. I still don't see this as something the city should be involved with. We cannot control the Middle East conflict from a city perspective.

At Infrastructure, the barriers will be discussed. We will be given a presentation on how the barriers impact usage. We have an app that tracks cell phones and how long someone is outside at a restaurant. We ARE NOT tracking any other personal data. This has been transparent, we have discussed cost and data from the app previously. We will be able to see over time the use. The proposed ordinance also has an increase of fees to use the parking spaces from \$500 to \$1000. If passed, I would like to maybe shorten the season a bit. I am not on this committee but may go to it as I expect the people who dislike the barriers to come out in full force and I also have some questions I would like to ask.

Lastly, the Disc Golf Course at Roby Park is at the Zoning board looking for an exemption to be able to continue building. Again, I expect the abutters to be out in full force. I have been for this. I think it should go forward. The abutters have really done a nice job of stopping its advancement, as this was planned before I took office 3 years ago. If you are passionate either way, you may want to attend.

Citizen Flag Pole

Another controversial issue is the citizen's flag pole. There was a push in the recent past by a couple of citizens to get their flag for Protecting Women's Sports and Anti-Transition Day put up at City Hall. These had been denied by city staff as being not fit with the city's values. They are not pro-people they are anti-people. Recently, they tried to get the Pine Tree flag flown, saying it was for people who fought at the Battle of Bunker Hill. It was also a flag used at the Jan 6th event. No one before that ever tried to put this flag up. This was also denied by City Hall and now they are suing the city. One of them is currently running for election to the State Senate. The mayor has not repealed the citizen flag pole which had been reported in the press but has updated some language, nothing has changed and the city is still being sued. So, nothing really changed except the policy was not repealed. I have been for repealing it just to avoid dealing with figuring out what constitutes appropriate and not. I have been to many flag raisings, I enjoy them, but having to deal with suits may not be worth it.

New Crosswalk Signal Approved

I forgot to mention this but an approval has gone through for a crosswalk signal at the corner of DW Highway and Spitbrook. There was a crosswalk but no signal. This literally crosses from Ward 8 into Ward 7 or vice versa. Alderman Sennott took the lead on this, and I was happy to co-sponsor. Should be done once the equipment comes in.

Highlights of Past Week's Meetings

Finance Committee: <https://www.youtube.com/watch?v=UwMQSNU-CH4>

Planning Board: <https://www.youtube.com/watch?v=j3f0uiGJ56Y>

Aldermanic Meetings for the Week Ending 10/26/2024

Just a reminder, all meetings can be found on Comcast Channel 16 and 1075 live and on YouTube the next day.

Highlights:

- Adding, going forward, the Joint School Board Committee meetings to this table as it has become a topic of conversation. I always included it below, but I haven't highlighted it or included the video afterward.
- Disc Golf
- Human Rights Declaration
- BARRIERS!

Monday 10/21/2024 7:00 PM	Human Affairs Committee – Aldermanic Chamber, Nashua City Hall Agenda: https://www.nashuanh.gov/AgendaCenter/ViewFile/Agenda/_10212024-7362 Legislation: R-24-082 RELATIVE TO THE ACCEPTANCE OF UP TO \$610,000 FROM THE STATE OF NEW HAMPSHIRE DEPARTMENT OF SAFETY HOMELAND SECURITY GRANT PROGRAM INTO POLICE GRANT ACTIVITY “FY25 HOMELAND SECURITY GRANTS” NEW BUSINESS – ORDINANCES TABLED IN COMMITTEE
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	R-24-075 RECOGNIZING THE UNITED NATIONS' UNIVERSAL DECLARATION OF HUMAN RIGHTS AND URGING THE RESPONSIBLE AND MORAL OVERSIGHT OF AND ACCOUNTABILITY FOR MILITARY EQUIPMENT USED BY INTERNATIONAL ALLIES
Tuesday 10/22/2024 7:30 PM	<p>Board of Alderman - Aldermanic Chamber, Nashua City Hall</p> <p>Agenda: https://www.nashuanh.gov/AgendaCenter/ViewFile/Agenda/_10222024-7364</p> <p>Legislation:</p> <p>R-24-082 RELATIVE TO THE ACCEPTANCE OF UP TO \$610,000 FROM THE STATE OF NEW HAMPSHIRE DEPARTMENT OF SAFETY HOMELAND SECURITY GRANT PROGRAM INTO POLICE GRANT ACTIVITY "FY25 HOMELAND SECURITY GRANTS"</p> <p>R-24-090 RELATIVE TO THE ADOPTION OF THE CITY OF NASHUA HAZARD MITIGATION PLAN 2024 UPDATE</p>
Tuesday 10/22/2024 6:30 PM	<p>Zoning Board – 3rd Fl Auditorium, Nashua City Hall</p> <p>Agenda: https://www.nashuanh.gov/AgendaCenter/ViewFile/Agenda/_10222024-7351?html=true</p> <p>Properties:</p> <p>Joseph P. & Lisa A. Law (Owners) 25 Pelham Street (Sheet F Lot 247) requesting variance from Land Use Code Section 190- 17 (E)(1) to maintain existing maximum driveway width, 24 feet permitted, 36 feet existing. R9 Zone, Ward 1.</p> <p>Woodlands at Nashua, LLC (Owner) Metro Sign & Awning (Applicant) 3 Sapling Circle (Sheet A Lot 27) requesting the following variances from Land Use Code Section 190-101, Table 101-7: 1) to exceed maximum number of ground signs, 1 permitted, 2 proposed; 2) to exceed maximum ground sign area, 10 square feet permitted, a total of 59.57 square feet proposed; 3) to encroach 9 feet into the 10 foot required front yard setback for both proposed signs; 4) to</p>

	<p>exceed maximum ground sign height for proposed sign at “location #1”, 6 feet permitted, 7’ - 3” proposed; and, 5) to encroach into ground sign setback from intersecting right-of-way’s, 25 feet required, 10 feet proposed for both ground signs. RC Zone, Ward 8.</p> <p>Wild Rose Condo’s & Mahboud Kavoosi (Owners) “L” Pine Hill Road and 23 Wild Rose Drive (Sheet F Lot 33) requesting special exception from Land Use Code Section 190-112 to work in a 40-foot “other” wetland buffer to plant 6 trees. R30 (PRD) Zone, Ward 1.</p> <p>City of Nashua (Owner) “L” Spit Brook Road, Roby Park (Sheet B Lot 2189) requesting special exception from Land Use Codes 190-134 and 190-112 to work in a critical wetland buffer to Planning & Zoning 589-3090</p> <p>Fax 589-3119 WEB www.nashuanh.gov remove trees and brush, install nine wooden pedestrian bridges, tee pads, disc chain baskets, directional signage, wetland markers and trash barrels for a proposed 18-hole disc golf course. R18 Zone, Ward 9.</p>
<p>Wednesday 10/23/2024 7:00 PM</p>	<p>Committee on Infrastructure - Aldermanic Chamber, Nashua City Hall</p> <p>Agenda: https://www.nashuanh.gov/AgendaCenter/ViewFile/Agenda/_10232024-7363</p> <p>Discussion: Parking Garages Update</p> <p>Legislation:</p> <p>O-24-034 ASSIGNING THE PINE STREET EXTENSION PARKING LOT TO ZONE III</p> <p>O-24-036 RELATIVE TO SEASONAL ROAD CLOSURES AND ELIMINATION OF CERTAIN ON-STREET PARKING FOR EXTENDED OUTDOOR DINING AND OTHER NON-VEHICULAR USE</p>
<p>Thursday 10/24/2024</p>	<p>Joint Special School Building Committee – Nashua North High School, Nashua</p>

7:00 PM	
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OTHER MEETINGS FOR THE WEEK ENDING OCTOBER 26, 2024

MONDAY 10/21/2024

11:30 AM Board of Public Works Retirement System Trustees [848 West Hollis Street](#)

6:00 PM Board of Education – Curriculum Committee Nashua High North

TUESDAY 10/22/2024

6:00 PM Board of Education – Policy Committee Nashua High North

WEDNESDAY 10/23/2024

12:00 PM Cultural Connections Committee Auditorium

THURSDAY 10/24/2024

FRIDAY 10/25/2024

8:00 AM Pennichuck Water Works, Inc. Board Meeting 25 Walnut Street

8:05 AM Pennichuck East Utility, Inc. Board Meeting 25 Walnut Street

8:15 AM Pittsfield Aqueduct Company, Inc. Board Meeting 25 Walnut Street

8:20 AM Pennichuck Corporation Board Meeting (includes an anticipated non-public 25 Walnut Street

Session)

9:30 AM CTAB Budget Subcommittee Aldermanic Chamber

***** All agendas can be found here: <https://www.nashuanh.gov/agendacenter>

Have a great week!

Derek

Exhibit P

From: **Derek Thibeault** <thibeaultfornashua@gmail.com>

Date: Mon, Oct 21, 2024 at 11:55 AM

Subject: Correction to Flag Comments

To:

Good morning, I hate sending you all too many emails, but I also don't want to send out misleading or wrong information. Sorry to fill up your inbox.

I heard from the city's legal department and this is what they said about the citizen flag policy.

"The old policy was repealed, and a new policy was instituted to make it even more clear that the flying of any flag on a city flagpole represented the position of the city and not any private individual/s."

So I misspoke but as you can see we never got any kind of press release or communication so trying to get the correct information was difficult. I thought what I had received was correct.

Thanks

Derek

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Bethany R. Scaer and Stephen Scaer

v.
City of Nashua, et al.

Case # 1:24-cv-00277-LM-TSM

EXHIBITS

OFFERED BY:
Defendant

NUMBER/LETTER	DESCRIPTION
1 (ID)	City Hall Flagpole Policy dated October 7, 2024
2 (ID)	June 14, 2024, email from Nick Scalera to Risk Management Dept. titled: Flag Raising Application
3 (ID)	Special Event Application – City Hall Plaza – Request to fly Palestinian Flag dated June 14, 2024
4 (ID)	Letter dated June 24, 2024 from Risk Management to Mr. Scalera – response to request to fly Palestinian Flag: Denied



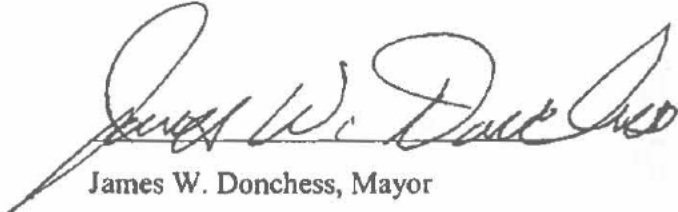
CITY HALL FLAGPOLE POLICY

The flagpoles on city hall grounds shall henceforth be exclusively controlled by city government.

The city shall determine what flags will be flown and during what time periods and does not seek input from other sources. The flagpoles are not public fora open to others for expression but are solely for city government to convey messages it chooses.

All previous policies related to flagpoles on city hall grounds are hereby repealed.

10/7/24
Date


James W. Donchess, Mayor

Grassett, Kimberly



From: Nick Scalera <nwscalera@redacted>
Sent: Friday, June 14, 2024 12:08 PM
To: Risk Management Dept
Subject: Flag Raising Application
Attachments: Flag Raising Application.pdf

Redactions of private email address pursuant to 91-A:5,IV, confidential information and disclosure would constitute invasion of privacy

CAUTION: This email came from outside of the organization. Do not click links/open attachments if the source is unknown.

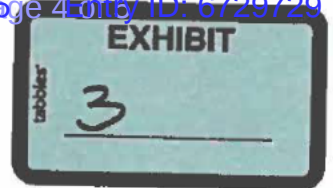
To Whom it May Concern,

Attached is an application to raise a flag at City Hall on June 25th. If there are any questions or concerns please reach out.

Best Regards,
Nicholas Scalera



SPECIAL EVENT APPLICATION City Hall Plaza



☐ Complete the application in its entirety. Submit the application along with any additional requirements at least ten (10) calendar days prior to the event - City of Nashua, Risk Management Department, 229 Main Street, Nashua NH 03061, fax to 603-589-3359 or Risk@NashuaNH.gov.

☐ If applicable, applicant must submit a certificate of insurance naming the City of Nashua as the certificate holder and as an additional insured; reflecting \$1,000,000/\$2,000,000 general liability insurance.

☐ If applicable, contact the Permits Coordinator, 603-589-3276, to obtain a Permit to Encumber. Any applicant that would like to place an obstruction in the City right-of-way (sidewalk abutting the plaza) will need to obtain a Permit to Encumber. This includes signage, materials or participants.

Redactions of private phone number pursuant to 91-A:5, IV, confidential information and disclosure would constitute invasion of privacy

1. Organization: Southern NH for Palestine
2. Address: 2 Padlington Place
3. Contact Name: Nicholas Scaler Contact Number: (603) [REDACTED]
4. Name of Event: Anti-Apartheid Day Flag Raising
5. Requested Date(s) of Event: 6/25/2024 Requested Time(s) of Event: _____

Event Details (Please include approximate number of attendees, whether or not sidewalk will be utilized and additional details that may be pertinent to the event) If your request is to have a flag flown, but with no ceremony, please indicate as such below.

In accordance w/ Anti-Apartheid Day, & in remembrance of the
fight against South African Apartheid, we request the Palestinian
flag be flown. There will be no need for a ceremony.

OBSERVANCE OF LAWS AND ORDINANCES

The undersigned shall faithfully observe, keep and obey all terms and conditions of the permit, laws, rules and ordinances of the City of Nashua. The undersigned shall also faithfully observe, keep and obey all laws, rules and regulations of any other governmental entity including, State and federal regulations which may apply.

INDEMNIFICATION

The undersigned shall have the power to act on behalf of the organization. The undersigned shall save and protect, hold harmless, indemnify and defend the City, its commissions, officers, agents, and employees against any and all liability, causes of action, claims, loss damages or cost and expenses arising from, allegedly arising from, or resulting directly or indirectly from any acts of the applicant or any of its officers, employees, or agents done in the performance or operations of the event, or any act done under pretended authority of this application. This agreement to indemnify and hold the City harmless shall include any costs incurred by the City in defending any action involving an act by the applicant or any of its officers, employees, or agents, and shall include attorney's fees incurred by the City.

I certify that the answers given herein are true and complete to the best of my knowledge, and I have not omitted any information. I further understand the conditions herein. False, misleading, or omitted information in my application form may disqualify the organization from holding this event.

Signature: _____

Date: _____

(For insurance purposes: signed application serves as a contractual obligation in regards to naming the City of Nashua as an additional insured)



City of Nashua
Risk Management Department
229 Main Street - Nashua, NH 03060



June 24, 2024

Mr. Nicholas Scalera
Southern NH for Palestine
2 Paddington Place
Nashua NH 03064-1502

Emailed: nwsscalera@gmail.com

RE: FLAG POLE REQUEST

Mr. Scalera:

We have reviewed your application dated June 14, 2024, requesting to fly the Palestinian Flag on a City Plaza flag pole. The flag is not in harmony with the message that the City wishes to express and endorse. Therefore, we must deny your request as the flag poles are not intended to serve as a forum for free expression by the public.

Attached please find our Flag Pole Policy and Special Event Procedures for the City Hall Plaza that can also be found on the Risk Management page of the City website.

If you wish to appeal this decision it may be made to the Mayor's office within three business days of after receiving our decision. The appeal shall be in writing, stating the basis therefore and relief sought. The Mayor's office will review our decision and announce its decision as promptly as possible, but no later than ten business days after receipt of the appeal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer L. Deshaies", is written over a horizontal line.

Jennifer L. Deshaies
Risk Management

Encl.
SPECIAL EVENT APPLICATION City Hall Plaza
FLAG POLE POLICY
SPECIAL EVENT PROCEDURES City Hall Plaza

Cc: Megan Caron, Chief of Staff
Attorney Steve Bolton, Corporation Counsel
Tim Cummings, Administrative Services Director

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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BETHANY SCAER AND STEPHEN SCAER

v.

CITY OF NASHUA, NEW HAMPSHIRE, ET
AL

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24-cv-277-LM-TSM

November 5, 2024

10:39 a.m.

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE TALESHA SAINT-MARC

APPEARANCES:

For the Plaintiffs:

Nathan Ristuccia, Esq.
Endel Kolde, Esq.
Institute for Free Speech

Roy S. McCandless, Esq.
McCandless Law Firm

For the Defendants:

Jonathan A. Barnes, Esq.
Steven A. Bolton, Esq.
City of Nashua
Office of Corporation Counsel

Peter G. Callaghan, Esq.
Kat J. Mail, Esq.
Preti, Flaherty, Beliveau, Pachios, LLP

Adam B. Pignatelli, Esq.
Piper Fenoff, Esq.
Rath, Young & Pignatelli, PA

Court Reporter:

Susan M. Bateman, RPR, CRR
Official Court Reporter
United States District Court
55 Pleasant Street
Concord, NH 03301
(603) 225-1453

P R O C E E D I N G S

THE CLERK: This Court is now in session and has before it a hearing on a motion for preliminary injunction in the matter of Scaer, et al. versus City of Nashua, et al., 24-cv-277-LM.

Would counsel please identify themselves for the record, starting with counsel for the plaintiff.

MR. RISTUCCIA: Nathan Ristuccia, your Honor.

These are my clients, Bethany and Stephen Scaer.

THE COURT: Good morning.

MR. KOLDE: Del Kolde for the plaintiff also.

Mr. Ristuccia will be arguing today.

THE COURT: All right. Thank you.

MR. MCCANDLESS: And Roy McCandless, local counsel.

THE COURT: All right.

MR. BARNES: Good morning.

Jonathan Barnes, assistant corporation counsel for the City of Nashua.

With me is Steve Bolton. He's corporation counsel.

THE COURT: Good morning.

MR. BOLTON: Good morning.

MR. PIGNATELLI: Good morning, your Honor.

Adam Pignatelli for Mayor Donchess.

And with me is my colleague, Piper Fenoff.

THE COURT: Good morning.

1 MR. CALLAGHAN: And Peter Callaghan for Jennifer
2 Deshaies.

3 And Kat Mail is with me as well for Ms. Deshaies.

4 THE COURT: All right. Good morning, everybody.

5 I'll turn that on so you can hear me a little bit
6 better.

7 All right. So we're here on the preliminary
8 injunction motion.

9 I'll start off by hearing from the plaintiffs, and I
10 would like to start out with the mootness argument before you
11 get into any argument on the merits.

12 And because we have a court reporter, I'll just
13 remind everybody to just speak slowly.

14 And, Susan, remind me if I start speaking too fast
15 to do the same, please.

16 All right.

17 MR. RISTUCCIA: Thank you, your Honor.

18 Your Honor, this case is in no way moot. I would
19 like to remind the Court, your Honor, that mootness is a burden
20 on the defendant's side. They must prove what the Supreme
21 Court has called a formidable burden of showing that it's
22 absolutely clear that the alleged wrongful behavior could not
23 reasonably be expected to occur, and they have by no means met
24 this burden.

25 Indeed, defendants themselves in their opposition

1 admit implicitly that this case is not moot. They claim that
2 two of the three of the injunctions that we've asked for before
3 this Court are moot, but they give various merit-based reasons
4 why this Court should reject the third one which they admit
5 would operate against their current 2024 Flag Policy just as it
6 would against their past previous repealed 2022 Flag Policy.

7 That is a concession that this case is not moot. If
8 this Court can grant some relief that would operate against the
9 defendants, then it is in fact not moot.

10 THE COURT: Would that leave just one piece of the
11 case that's not moot?

12 MR. RISTUCCIA: It is the plaintiffs' position, as I
13 will go on, your Honor, to explain, that in fact there's
14 significantly more that is not moot, both another one of the
15 two requested injunctions, as well as of course our request for
16 declaratory relief and nominal damages, all of which are not --

17 THE COURT: So with regard to the preliminary
18 injunction, one of the requests that the plaintiffs are asking
19 for is that the Court enjoin the 2022 policy. So how is that
20 not moot?

21 MR. RISTUCCIA: So that is the second of the three.

22 We agree that the 2022 Flag Policy has been repealed
23 and that in that sense is moot.

24 Even on that request, your Honor, this Court does
25 still have the authority to enjoin a reversion to the 2022 Flag

1 Policy or to enjoin the shutting down of the forum itself.

2 Various courts have found that if a forum is shut
3 down for viewpoint discriminatory reasons, that shutting down
4 of a public forum itself can be enjoined, and that would
5 certainly be within this Court's possibility and within this
6 Court's power.

7 However, the first of our three as well as -- the
8 third is the one that they themselves confess is not moot.

9 The first of our requested injunctive relief
10 requested this Court enjoin any viewpoint discrimination
11 against flag applications of any sort regardless of whether
12 that viewpoint discrimination occurs through the 2022 policy or
13 through some other policy.

14 And it is clear that flag requests are still fully
15 possible, indeed are encouraged on their own current website,
16 as I'll show your Honor in a moment, and, thus, flag requests
17 are still -- theoretically can still be made. My clients have
18 declared they will still make them, and they would still be
19 discriminated against under the current policy on the basis of
20 viewpoint.

21 Your Honor, if I can show an exhibit or two? Your
22 Honor, these are ones that have already been filed.

23 Looking at Exhibit M here, this is the current
24 website, Nashua's current website. This is after their repeal
25 of the 2022 policy.

1 And going down, your Honor, they have at the top of
2 it, first, a City Hall Plaza Events Policy, using almost
3 exactly the same words as the former 2022 Flag Policy, stating
4 that they will prevent any applications for a ceremony on the
5 plaza which, "expresses a message that is not in harmony with
6 city policies and messages the city wishes to express or
7 endorse."

8 They also state that they will not allow any
9 ceremonies on the plaza if those are contrary to the city's --

10 THE COURT: But how does that relate to the flag
11 policy? Because that's the policy you're challenging, right?

12 MR. RISTUCCIA: Yes, your Honor. I will give a
13 moment, your Honor, on that.

14 They also specifically state on the flag policy that
15 in order to submit for approval you should follow the
16 guidelines and procedures provided below.

17 Going below, your Honor, to those specific
18 guidelines and procedures, they then give three links. One
19 link is to their current flag policy, the one that was passed
20 October the 7th, and the other is the 2022 Special Events
21 Application and the 2022 Special Events Procedures. These are
22 the exact same special events applications, your Honor, and
23 special events procedures that my client applied using on all
24 three of the applications, the flag applications still at
25 issue, and all three documents -- two documents still

1 specifically discuss flag requests.

2 THE COURT: Slow down a little bit.

3 MR. RISTUCCIA: I'm sorry, your Honor.

4 THE COURT: That's okay.

5 MR. RISTUCCIA: Both of these documents that are
6 still on their website, and in fact are being encouraged to be
7 used, explicitly discuss flag requests. So the flag requests
8 are encouraged on their own website.

9 The other two I would like to show, your Honor, are
10 those other two. Here is the current special events procedure.
11 Again, the one that is linked to on the website. It's filed as
12 Exhibit E.

13 And going down, your Honor, you will see that they
14 have still a lengthy discussion of how to make requests for the
15 use of the city flagpole on this very procedure that they are
16 -- on their website, and they are encouraging and in fact
17 telling people to use.

18 And the last is the specific form. This is just one
19 example. Many versions of this form have been filed. This is
20 the particular one that my client, Mr. Scaer, used when
21 applying for his Detransition Awareness flag.

22 And again, if you notice, it's a little hard to see,
23 it specifically addresses flag requests as well as ceremonies.
24 So if you want to have a ceremony, you're supposed to apply
25 using this. If you want to have a flag flown as part of that

1 ceremony, you should apply using this. Far from indicating
2 that they will no longer accept any flag applications.
3 Therefore, they are encouraging on their website the continuing
4 requests of city -- to use the city flagpole.

5 Those requests admittedly will no longer be judged
6 using the 2022 Flag Policy, but we have not only challenged the
7 2022 Flag Policy. We've been challenging viewpoint
8 discrimination in general. And whether or not they
9 discriminated against my client's flag applications on the 2022
10 Flag Policy versus on the 2024 Flag Policy or the 2024 City
11 Plaza Events Policy makes no difference to the requested relief
12 we asked. It is the viewpoint discrimination that we are
13 asking this Court enjoin, not the specific policy.

14 THE COURT: Because when I look at your prayers for
15 relief in your complaint, it says you are looking for a
16 preliminary permanent injunction related to denying flag
17 applications and preventing flags from being flown on the
18 citizen flagpole, enforcing the Nashua flagpole policy, and
19 denying removing any flag because of a citizen complaint.

20 MR. RISTUCCIA: Correct, your Honor.

21 THE COURT: That's all focused on the flag policy.

22 MR. RISTUCCIA: If you look, your Honor, at our
23 proposed order, they have been divided out into three separate
24 requests for injunctive relief.

25 Perhaps I wrote -- that was written perhaps poorly

1 at the end of the plaintiffs' motion, but it's quite clear on
2 the proposed order we're asking for three separate preliminary
3 injunctions.

4 One for denying flag applications, any flags from
5 being flown on the citizen flag policy on the basis of
6 viewpoint, one asking for an injunction of the city's 2022
7 flagpole policy, and the third about denying or removing any
8 flag because a citizen complains or it has been deemed
9 offensive by city officials. So three separate injunctions.

10 As the defendants themselves concede in their
11 opposition, they state that two of these they claim are moot,
12 but they admit the third is in fact not moot but would still
13 operate even on their 2024 flagpole policy.

14 Plaintiff is simply saying that number one would
15 also fully operate on their current policies. It is only the
16 second of the two that would be moot because of the repeal of
17 that policy.

18 THE COURT: Okay.

19 MR. RISTUCCIA: We also question to what extent this
20 repeal has occurred. There's no question that the 2022 policy
21 has been taken down, and as they've stated, it has been
22 repealed, but there's been some mixed messages from defendants
23 themselves. Defendant's own counsel stated to a reporter that
24 this was only a clarification and not an outright change. So
25 it is unclear to me exactly how those two are both true.

1 Admittedly, it's possible that there was some sort of --

2 THE COURT: Well, hasn't their position been from
3 the outset, though, that this is government speech, and so
4 wouldn't that be consistent with that position?

5 MR. RISTUCCIA: It still would mean that -- there's
6 always been government speech, and that would certainly be
7 consistent. What was being said to the reporter seemed to be
8 that this was not a new policy but a clarification of the old
9 policy. And if this is just a rewriting that clarifies
10 language, that would imply that even the '22 Flag Policy is
11 still really just the 2024 Flag Policy clarified and that even
12 our second form of relief then would operate.

13 There also has been no legislative appeal of any
14 kind of this flag policy. There's simply, as they admit in
15 their opposition, an action that was taken by Mayor Donchess
16 himself under his own authority. He is the only one who signed
17 the new policy. He has chosen to revoke the '22 Flag Policy.

18 But the aldermen have not voted in any way to make
19 this change. One of the aldermen has in fact recently called
20 for a legislative appeal because he's concerned about this
21 issue that there's not been an official legislative appeal.

22 And because there has been no legislative appeal,
23 Mayor Donchess can restore the 2022 Flag Policy just as quickly
24 and simply as he revoked the 2022 Flag Policy.

25 We would ask then for an injunction preventing such

1 a reversion to the 2022 policy of one that we sued to enjoin,
2 without which -- it would be too easy for the government to
3 simply manipulate this just briefly -- by mooted something
4 briefly in order to avoid judicial review and with every
5 intention to return to a prior policy once this Court has made
6 its decision.

7 As a result, we don't feel -- the plaintiff claims
8 that this is not close in any way to meeting the burden. This
9 is a formidable burden that has not been met when their own
10 website is clearly stating that people can continue to apply.
11 Regardless of whether those applications would be denied or
12 accepted, that the applications are fully possible and can be
13 discriminated against based on viewpoint, which is what we're
14 asking for an injunction against.

15 THE COURT: All right. Thank you.

16 Let me hear from the defendants on mootness.

17 Then I'll come back to you on your merits argument.

18 MR. RISTUCCIA: Thank you, your Honor.

19 THE COURT: Thank you.

20 MR. BARNES: Thank you, your Honor.

21 It's the city's position that when the 2024 policy
22 repealed all prior policies, that this matter was mooted.

23 They're looking for an injunction. We're here
24 because they want to impose the plaintiffs' will on the city, a
25 lot of what the injunctive relief that they're seeking, and our

1 position is tantamount to compelled speech, which is --
2 everything says -- the allegations contained in their
3 complaint.

4 There is no danger -- given the current policy that
5 has repealed the prior policy, there's no danger that the city
6 is going to go back on -- if this matter were to be dismissed,
7 that it's not in the city's interest to do so.

8 They've presented no evidence that the city has
9 plans to go back to a prior policy. This isn't a situation
10 where they've announced a moratorium on raising flags. It's a
11 permanent repeal.

12 The Mayor's Office has always been in control of the
13 policies concerning the flag. There's no aldermatic action
14 despite what some single alderman might want to do. I don't
15 think that this is a compelling reason to find that this is not
16 moot.

17 THE COURT: But is it sufficient for the mayor who
18 has discretionary authority to change the policy, as he's done
19 a couple of times in this case, just to say I've changed it now
20 to the 2024 policy?

21 There's no evidence here before me in the record
22 that he's not going to change it again. So is that sufficient
23 for me based on this record to say that voluntary succession is
24 satisfied and this case is moot?

25 MR. BARNES: I think there is. Because the whole

1 purpose of enacting the 2022 policy -- I could even go back.
2 The whole purpose of the policy that preceded the 2022 policy
3 was to comport with the law that the First Circuit handed down
4 in Shurtleff. And then when that was overturned by the Supreme
5 Court, the city changed their policy again.

6 And the whole purpose of this evolving policy is to
7 make it abundantly clear to everybody that it's government
8 speech. And, unfortunately, that wasn't clear to the
9 plaintiffs and we're here today.

10 And so the policy was repealed because it's not in
11 the city's best interests to have these disruptions. The city
12 has multiple types of things that they need to handle on any
13 given day, and they don't need to be burdened by things like
14 this.

15 There have been other cases where they have found
16 noncommercial disruptive speech in advertising on the side of a
17 metro train car to be -- it's perfectly reasonable for the
18 government to keep that out, and that's what the city is
19 attempting to do here by exercising its government speech.

20 THE COURT: So if the Court agrees with you that
21 there's some elements that may be mooted by the 2024 policy
22 change, what remains in the case if anything?

23 MR. BARNES: I don't think anything remains.
24 Potentially, the nominal damages, but then that raises the
25 question of whether this Court has jurisdiction because --

1 there's a three-part test that requires that there be federal
2 law, that the government officials are acting in their official
3 capacity, and that they're looking for prospective relief, and
4 if there's no prospective relief, you're just looking at past
5 conduct. I don't think the Court has jurisdiction to hear
6 that. I think we're at state court at that point.

7 THE COURT: Okay. All right.

8 Anything else on the mootness argument?

9 MR. BARNES: There is one thing. It's sort of
10 tangentially related to something my brother said.

11 There's a matter of Rhames versus City of Biddeford,
12 and in that case there was a public access channel that the
13 government allowed its citizens to use and there was some
14 controversy involving some of the citizens, and they put a
15 moratorium on the access to the cable channel until they could
16 craft some sort of guidelines onto what type of programming was
17 allowed, and the District of Maine found that that was
18 permissible. Their reasoning for doing so is they said that --
19 despite the -- I'm sorry. They said that: Because Biddeford
20 has no obligation to operate a public access channel, the Court
21 finds that the plaintiff has not shown a likelihood of success
22 on the merits of his claim.

23 I think that case is applicable here. They haven't
24 demonstrated that the plaintiffs or any citizen is entitled or
25 that the city is obligated to provide them with a flag-raising

1 program. So I don't think that they can succeed on the merits
2 based on that.

3 THE COURT: So as it relates to mootness, one other
4 question.

5 Going back to the exhibits that counsel showed
6 regarding the City Hall Plaza policy, why does the fact that
7 that policy is still in place and it still has language similar
8 to the 2022 policy not act as a kind of stop to the mootness
9 argument?

10 MR. BARNES: Understood.

11 Well, your Honor kind of touched on it earlier.
12 They're talking about a city hall ceremony out front. It has
13 nothing to do with flags.

14 THE COURT: Right. But isn't that evidence, though,
15 that the city could still go back to the 2022 policy and that
16 the mayor is just making this discretionary change now to stop
17 a lawsuit?

18 MR. BARNES: I don't think so, your Honor, and the
19 reason being is that, as the Shurtleff Court noted, when a flag
20 is raised in front of -- as the speech of government is
21 generally thought of as government speech, but a citizen
22 standing in front of city hall waving a flag and speaking
23 whatever they want into a megaphone is probably going to be
24 attributed to the citizen and not the government. So there's
25 less of a concern that the government is going to be embroiled

1 in any kind of controversy or that it's going to be disruptive
2 to their day-to-day business because somebody got out front and
3 started saying, you know, whatever they felt they needed to
4 say.

5 THE COURT: All right. Thank you.

6 Anything else on mootness?

7 MR. BARNES: No, ma'am.

8 THE COURT: All right.

9 Attorney Ristuccia, anything else on the mootness
10 argument before you move on to the merits?

11 MR. RISTUCCIA: May I just respond briefly to the
12 question of qualified immunity, your Honor, since that was
13 brought up?

14 I just wanted to point out, your Honor, first of
15 all, there are no state claims in this case so there would be
16 nothing to send back to state court, you know, if all the
17 claims, the federal claims are dismissed.

18 Moreover, qualified immunity has not in any way been
19 decided, it has not been in any way briefed, and it would not
20 cover the city of Nashua itself, which is not in fact -- we've
21 asked for claims against the city of Nashua as well as against
22 all the individual defendants. Qualified immunity at most
23 covers all of the individual defendants not of the city of
24 Nashua. So even if qualified immunity were granted, there
25 would still in fact be a nominal damages claim against the city

1 of Nashua that would prevent this court case from being mooted.

2 THE COURT: Okay. All right.

3 Let's move into the merits of the argument.

4 I'm going to reserve my decision on the mootness
5 decision.

6 MR. RISTUCCIA: Thank you, your Honor.

7 Nashua has said today that this flagpole is
8 government speech. That's not surprising. They've been saying
9 this flagpole and the flags on it are government speech at
10 least since 2020 despite the fact that they've changed their
11 policy by my count four times in the course of that process.
12 Every time they change the policy they insist that it was
13 government speech and that it was government speech even under
14 the old policy. They continue to say that the old policy, the
15 2022 policy, was constitutional and that it was government
16 speech under that policy, too.

17 Rather, the goal of keeping the change of this
18 policy is that whenever they realize there's some sort of legal
19 problem and that their past policy does not in fact cohere with
20 Shurtleff or does not in fact cohere with how Shurtleff has
21 been applied by the lower courts, then they make a change but
22 say, well, the change is just a clarification, we actually will
23 always just government speech because the history and public
24 perception of a --

25 THE COURT: But aren't they entitled to make changes

1 that comply with the law?

2 MR. RISTUCCIA: Absolutely.

3 THE COURT: If their policy is now out of
4 compliance, isn't it their obligation to update that policy to
5 make it in compliance?

6 MR. RISTUCCIA: It is absolutely allowed for any
7 government to change the policies that affect, in particular, a
8 limited public forum, and plaintiff is not by any means
9 suggesting otherwise.

10 However, when judging government speech, the Supreme
11 Court has made clear that history and public perception, two of
12 the three factors of the government speech test, look quite
13 broadly at history and public perception in general and
14 includes past events as well as present policies.

15 The defendant cannot argue at least under specific
16 Supreme Court precedent that this Court should only look at,
17 for example, the history of the 2024 policy that currently is
18 standing or for that matter the history of only the 2022
19 policy.

20 The Supreme Court in Shurtleff went back all the way
21 to the Middle Ages when it was trying to discuss the history
22 prong of its analysis. And courts have made a clear
23 distinction between the general history of a particular type of
24 expression and the specific history of the particular policy at
25 issue.

1 I point the Court, for example, to the Cajune case,
2 which is 105 F.4th 1170 from the Eighth Circuit, which
3 discusses the difference between general history and specific
4 history quite well, though this is also discussed in Shurtleff
5 itself at 254.

6 I would also point this Court to the McCreary County
7 case. The McCreary County case was an establishment clause
8 case, not a First Amendment free speech case, but it was a case
9 about government speech. It was specifically a case where
10 there was a government display and one of the parties argued
11 this display was a limited public forum and the other party
12 argued the display was government speech. And the government
13 there argued, just as defendants are arguing, that only the
14 last policy should be looked at. The one that's currently
15 under operation. In that case that would be the 2024 policy,
16 but the Court rejected this argument and found that all three
17 of the policies that had been instituted in a series in that
18 case should be looked at when evaluating whether or not the
19 particular forum was government speech or a limited public
20 forum.

21 To quote from the McCreary case, which, by the way,
22 is 545 U.S. 844, to quote from it -- 866, "The world is not
23 made brand new every morning." "Reasonable observers have
24 reasonable memories, and our precedents sensibly forbid an
25 observer to turn a blind eye to the context in which the policy

1 arose."

2 In this case the context was a flag policy that went
3 back all the way to 2017, in which a wide variety of flags were
4 flown. Many of which are not sensibly -- could not sensibly be
5 construed as government speech and in fact would be
6 inappropriate for a government to state, such as religious
7 flags like the Lutheran Rose flag or the Christian flag that
8 were flown only six months ago. But that these flags were
9 flown, were perceived by the public as having been flown, would
10 have naturally be understood to be the speech of the particular
11 applicant, not of the government itself.

12 The government does not play any active role in
13 shaping the flags that fly on the flagpole. The flags are
14 provided by the applicants. They are designed by the
15 applicants or at least they are often raised by the applicants.
16 Government officials often do not attend the flag-raising
17 ceremony. They don't organize those ceremonies. They don't
18 necessarily speak at those ceremonies. After a flag is flown,
19 applicants are free to come and collect their flag and take it
20 home. It remains their property.

21 To quote the Shurtleff decision and a section that
22 was cited by the defendants themselves, this is at 270 -- it's
23 actually from the Alito concurring opinion, but it was cited by
24 the defendants as the standard. "For the adopted expression to
25 qualify as the government's, the private party must alienate

1 control over the medium of expression to the government."

2 "Otherwise, the government is simply providing a forum."

3 There's been no alienation of control over these
4 flags when the flags are the property of the applicant who
5 provides them, who flies them, who takes them home at the end.
6 The only thing that is in the government's control is whether
7 or not those flags get approved or denied.

8 In this case all three factors in the government's
9 speech test clearly point that this is an individual speech on
10 a limited public forum or perhaps a nonpublic forum.
11 Plaintiffs would argue this is a limited public forum. It fits
12 the class and criteria of being a forum that's been opened up
13 for a particular range of speakers or a particular range of
14 expression. In this case, expression that celebrates a
15 particular anniversary or a particular heritage or a special
16 accomplishment or that pushes for some cause. That is a
17 standard language for a limited public forum.

18 But even if it's a nonpublic forum, the standard
19 that this Court would apply would be same. In fact, nonpublic
20 forums and limited public forums, as the First Circuit has
21 recognized, are essentially equivalent.

22 And the defendants themselves acknowledge at one
23 point that this is -- they concede that it is a nonpublic
24 forum. They state this on page 10 of their most recent
25 opposition which, if I could quote from, your Honor, states

1 quite clearly this is a nonpublic forum. Quoting from page 10
2 of the defendant's opposition: "The city's 2022 Flag Policy
3 specifically states that this potential use of this city's flag
4 pole is not intended to serve as a forum for the expression by
5 the public (emphasis added). As such, under that policy the
6 city's flagpoles were a nonpublic forum and continue to be so
7 under the 2024 City Hall Flagpole Policy."

8 Right there a concession this is a nonpublic forum,
9 and, as such, speech on it must -- any regulation of speech on
10 it must be both viewpoint neutral and reasonable in light of
11 the purpose of the particular forum.

12 In this case neither of those requirements were met.
13 It is certainly not viewpoint neutral. The 2022 policy quite
14 explicitly allows, in fact encourages, discrimination on
15 viewpoint. Its messages are exactly what they object to. Any
16 message that the city does not wish to endorse or express can
17 be prevented from being flown, as well as any message that is
18 contrary to the city's best interest or that supports a -- that
19 does not support a "worthy cause."

20 Worthiness -- whether something is in the city's
21 best interest or whether something is a message that the cities
22 wish to endorse or express are straightforward cases of
23 viewpoint discriminatory regulation.

24 It is also unreasonable for the city to insist that
25 particular anniversaries are acceptable and other particular

1 anniversaries are not when their own flag policy simply says
2 anniversaries and causes.

3 My clients applied on the three flags at issue here.
4 All three of them were in honor of particular anniversaries.

5 The Save Women's Sports flag, for example, was in
6 honor of the 50th anniversary of Title IX. That is an
7 anniversary and a wish to be commemorated by my clients, and it
8 is unreasonable for them to insist that that type of
9 anniversary is not acceptable when it fully fits within the
10 criteria that their own flag policy lays out.

11 Public perception also clearly points to the fact
12 that this is not government speech but rather the speech of the
13 particular applicant.

14 Even the name Citizen Flagpole, which was widely
15 used, was on the website of the city for many years and is
16 still widely used today, including by government officials,
17 shows that this is a flagpole for citizens. And though this
18 phrase admittedly is no longer on their website, I'm not sure
19 when it was removed, it is still used by government officials.
20 It was used by defendant Deshaies in an e-mail in December --

21 THE COURT: Counsel, I'm just going to ask you to
22 slow down for the court reporter. Thank you.

23 MR. RISTUCCIA: This name Citizen Flagpole was used
24 by defendant Deshaies herself in December of 2023.

25 It was used by Kathleen Palmer, as the record shows,

1 who is the mayor's own events coordinator. In May 2023 when
2 Kathleen Palmer was applying on the mayor's behalf to use the
3 flagpole, she still referred to this flagpole as a citizen
4 flagpole.

5 It was used by an alderman just a week ago in a
6 newsletter sent to that alderman's constituencies discussing
7 the flagpole, and he repeatedly refers to it as the citizen
8 flagpole. It's used by -- many of the flag applicants
9 themselves refer to it as such in their applications as the
10 record clearly shows.

11 The record has not been called into question in any
12 way by defendants. They have not pushed against the record or
13 said that these are somehow inauthentic documents, but they
14 admitted that these are genuine documents and simply said, for
15 example, that defendant Deshaies misspoke when she -- or used
16 it by accident when she referred to the phrase Citizen Flag
17 Pole. This name is common, it was once official, and it is
18 still widely used. That goes to public perception and shows
19 that regular people who are hearing government officials call
20 it the citizen flagpole are going to think that citizens can
21 use this flagpole and that the flags on the pole are flown by
22 citizens. Particularly when they look and see ceremonies
23 raising those flags in which no government official appears and
24 which the citizen who applied to use the flag is raising that
25 flag and giving a speech and often quite -- and sometimes a

1 quite anti-Nashua speech at that ceremony.

2 Again, in the Shurtleff decision the Supreme Court
3 specifically acknowledged that the ceremonies used to raise
4 flags does in fact go into interpreting whether or not that
5 flagpole is government speech or a limited public forum under
6 the public perception factor of that test.

7 As such, the history, the public perception, and the
8 active shaping of this flagpole all show that this is not in
9 fact government speech but is citizen speech and citizen speech
10 that's being discriminated against on the basis of viewpoint.

11 Plaintiff has also argued and continues to argue
12 that the current policies being used by Nashua also violate the
13 doctrine of prior restraint, of vagueness, and of overbreadth,
14 and all three of those types of First Amendment tests apply to
15 limited public forum and to nonpublic forum alike. They're not
16 just for limited public forum.

17 Since Nashua itself has conceded at least this is a
18 nonpublic forum, and we have argued that this in fact a limited
19 public forum, those tests would still apply, and they cannot
20 justify the boundless discretion, the unbridled discretion
21 that's being given to government officials in deciding what
22 flags should fly on this pole or not.

23 THE COURT: Does the analysis change as it relates
24 to government speech versus limited public or nonpublic speech
25 if the city were to also have some kind of internal guidance as

1 to how the policy were to be implemented, meaning what is
2 harmonious with the city message, what is against the city
3 interests?

4 MR. RISTUCCIA: So if the flag is government speech,
5 your Honor, then none of these -- the First Amendment does not
6 apply to government speech as we recognize.

7 THE COURT: Right.

8 MR. RISTUCCIA: If it is a nonpublic forum versus a
9 limited public forum, such internal guidance might prevent
10 there from being unbridled discretion, but it would still be
11 vague if the -- since vagueness is judged based on the
12 reasonable citizen or the reasonable observer.

13 THE COURT: I guess my question is more so under
14 Shurtleff.

15 Would having some more guidance to go along with the
16 policy convert this policy to a government speech and not the
17 limited public forum that you're arguing?

18 MR. RISTUCCIA: I certainly think there are things
19 that Nashua could do to make this pole into government speech.

20 If they prevented any flags other than government
21 flags from flying on it, for example, your Honor. Every
22 limited forum and every nonpublic forum can be shut down by the
23 government if they take --

24 THE COURT: That wasn't really the requirement of
25 that case. The requirement was really, as I read it, that the

1 government has -- the city has some kind of policy and maybe
2 some other internal policies that would clarify or instruct as
3 to how the policy would be carried out.

4 MR. RISTUCCIA: Yes, your Honor.

5 The holding in that case was that if they had a
6 policy sufficient in order to meet all three factors, that it
7 would be government speech.

8 And the Court held up particularly the policy being
9 used by the city of San Jose as being an example of the kind of
10 policy that was sufficiently developed and showed a level of
11 control and shaping of the flagpole by the city sufficient to
12 qualify as government speech.

13 If you compare the San Jose policy, though, to the
14 2022 policy, it is remarkable how dissimilar the two are alike.
15 San Jose had a strict list of particular flags that could be
16 flown. It must be a flag from that list, not any other flag.
17 And they also limited who was allowed to apply. It actually
18 somewhat depended on the particular flag. If a particular
19 flag, for example the Flag of Foreign Nation, was to be flown,
20 and many such Foreign Nation flags have been flown at Nashua in
21 honor of Irish Independence Day, for example, or Indian
22 Independence Day, those flags could only be applied for by a
23 city official, and it had to be one of a list of countries,
24 countries that had been recognized as countries by the United
25 States government. Only those countries of those flags. So

1 not, for example, the flag of Kurdistan which was flown on the
2 Nashua flagpole. That was not a government-recognized country.
3 It would not have been allowed under the San Jose flagpole
4 policy.

5 So these two policies are quite different, and by no
6 means has the 2022 policy reached anything like the level of
7 control and shaping that the San Jose policy evidenced.

8 THE COURT: I'm sorry. I'm just looking for -- I
9 know that you all provided the San Jose policy in your
10 briefing, but I can't recall which briefing it was attached to.

11 MR. RISTUCCIA: So it was not attached as an
12 exhibit, your Honor, only the section, you know, the Supreme
13 Court discussion was attached. However, the link was attached
14 with --

15 THE COURT: Okay.

16 MR. RISTUCCIA: And the link is in our reply brief.
17 I don't remember the exact page, but I can find it for you if
18 you want, your Honor.

19 THE COURT: That's all right. Thank you. That's
20 enough direction for me. Thank you. I remember seeing it.

21 MR. RISTUCCIA: And that link was simply taken from
22 the particular amicus brief that San Jose filed.

23 So as a result, your Honor, the history prong also
24 clearly points to this being government speech, not -- sorry --
25 being citizen speech, not government speech, despite the fact

1 that the San Jose policy was approved. It's a very different
2 issue.

3 It is true that Nashua claims that they designed
4 their current -- well, not the current. The 2022 Flag Policy
5 was allegedly designed to mirror the San Jose policy, but it
6 does not mirror it closely at all, your Honor.

7 As a result, all three factors go towards the point
8 of this is government speech -- this is citizen speech, not
9 government speech.

10 Any other questions, your Honor?

11 THE COURT: No. I don't have any other questions on
12 that. Thank you.

13 All right. Counsel.

14 MR. BARNES: Thank you, your Honor.

15 THE COURT: I guess my first question for you is,
16 you know, the message -- I mean, it's clear to me that it seems
17 like what the city was trying to do was make this government
18 speech at least through the 2024 policy, maybe earlier. But
19 when I'm looking at the 2022 policy, does the message that the
20 city intends to convey have to be more specific than just in
21 harmony with the city policies and not against city interests?
22 I mean, that seems really broad, right, and discretionary.

23 MR. BARNES: I don't know that it's that broad
24 because there's four categories that it lays out ahead of time.
25 Cultural events, substantial achievement, worthy cause, and

1 anniversary.

2 I mean, my brother would have you believe that we
3 can raise the Nazi flag to commemorate Hitler's birthday. I
4 think that's totally unreasonable, and it certainly wouldn't be
5 in the city's best interests to do that.

6 THE COURT: Well, certainly, though, doesn't the
7 Pine Tree flag commemorate an anniversary?

8 MR. BARNES: It did once upon a time, your Honor.
9 Unfortunately, it's been misappropriated. There's been
10 numerous news articles that talk about how that has been
11 misappropriated by far-right groups as some sort of symbol of,
12 you know --

13 THE COURT: How is a citizen supposed to know that a
14 flag that's been subverted in meaning, even if it fits within
15 one of the categories under the policy, is no longer acceptable
16 until they get the denial notice? What guidance does the city
17 provide for that beforehand or even internal guidance? I mean,
18 I don't have any evidence that there's even internal guidance.

19 MR. BARNES: I think that when it's government
20 speech, I don't know that you need to have, as my brother
21 suggested, as much guidance as, say, the city of San Jose has
22 done. I think you just have to demonstrate that there's some
23 control there, and I think the policy achieves that end.

24 THE COURT: I guess my -- I guess I'm not really
25 sure that there's control here. That's what I'm getting at.

1 If there's no real internal policies that guide you as to how
2 you would implement this policy, how is there control? So
3 meaning, if your -- if Ms. Deshaies were to review the policy
4 and get an application that suggests an anniversary, how would
5 she know whether it's an anniversary that's appropriate to
6 celebrate or not?

7 MR. BARNES: I think that there's discussion with
8 the mayor who is -- the Mayor's Office has always been in
9 control of the flag policy, and is that a message that this
10 administration wants to convey? Is there a problem with it?

11 It's not just the Scaers' applications that have
12 been denied. I submitted some exhibits yesterday that shows
13 that an individual wanted to fly the Palestinian flag, and that
14 was denied because, again, it's not in the city's best
15 interests to wade into that controversy between Israel and
16 Palestine. It's just too disruptive to the ongoing day-to-day
17 business.

18 So what Shurtleff made clear was that -- you know,
19 you look at the history, and they recognize the history as the
20 seat of government, it's typically government speech, but it
21 was critical for the city of Boston because its flag policy --
22 well, there really wasn't one. There was no written policy
23 whatsoever. So that was their concern. They didn't say that
24 you needed to have a policy exactly like the city of San
25 Jose's. They used it as an illustrative example of saying this

1 is a city that has a policy.

2 So as long as there's some written policy to give a
3 person of reasonable intelligence an idea of what would and
4 would not be acceptable, then it's government speech.

5 THE COURT: Okay. Well, assuming it's not, what's
6 your -- you know, I've read your brief, obviously, so I know
7 you have other arguments as it relates to the constitutional
8 challenges of overbreadth and vagueness.

9 Is there anything else you want to highlight in that
10 regard?

11 MR. BARNES: Well, I mean, I don't think we get
12 there because I think it's government speech and there's the
13 mootness issue.

14 But with respect to viewpoint discrimination, the
15 city of Nashua doesn't believe that it's in its best interests
16 to raise flags that are blatantly controversial that can
17 disrupt city business.

18 And in American Freedom Defense Initiative versus
19 Washington Metro Area Transit Authority, the citation is
20 91 F.3d 356, that's out of the D.C. Circuit Court, it was
21 decided in 2018, they said that -- in that case the Court held
22 that limiting their advertising space to "less controversial
23 advertising did not rise to viewpoint discrimination," and
24 that's what the city has done here.

25 And with respect to prior restraint, New England

1 Regional Council of Carpenters, you know, in that case the
2 Supreme Court upheld a total ban on leafletting in a particular
3 nonpublic forum. That's what has happened here with the 2024
4 policy. And if you go by the 2022 policy, that's even more
5 narrow than an outright ban on flag raising.

6 And with vagueness, the issue of vagueness, the
7 whole point of trying to avoid vagueness is to run afoul of the
8 law unknowingly, but that would never happen here because they
9 would apply ahead of time and then the city would accept or
10 reject the flag ahead of time.

11 THE COURT: Right. But the fact that you have
12 applied without knowing the circumstances under which the city
13 would reject your application, doesn't that suggest the law is
14 vague? So if I don't know what Mayor Donchess would feel is
15 inappropriate for the city, doesn't that make the policy vague?

16 MR. BARNES: I don't think it makes it unreasonably
17 vague. There has to be some criteria, and the city has
18 established some criteria, and it certainly -- I know with the
19 2024 policy there is no vagueness argument whatsoever, but
20 under the 2022 policy you have the four categories that the
21 city is looking for and then best interests, and I think a
22 person exercising some common sense about who's in office and
23 the kind of messages that they get behind could come to the
24 conclusion about what is and isn't acceptable and what is and
25 isn't considered to be disruptive to --

1 THE COURT: But isn't that viewpoint discrimination
2 if you're trying to focus on who's in office and what's
3 acceptable? Wouldn't that be focusing on the viewpoint that's
4 acceptable to the person in office?

5 MR. BARNES: I don't think it's the viewpoint. I
6 think it's the subject matter that they want to steer away from
7 in order to not disrupt, you know, what's going to be
8 controversial here.

9 I mean, take the Palestinian flag, for example. If
10 someone applied to fly the Israel flag, I would say you would
11 probably reject that, too, because it's just -- you don't want
12 to wade into those waters. You want to be able to conduct your
13 city business without getting inundated with angry phones,
14 e-mails, and people threatening you on Twitter, or X, whatever
15 it's called now.

16 THE COURT: Well, certainly, though -- I mean, I
17 think at one point the city accepted the Pride flag. That's
18 still a controversial position.

19 MR. BARNES: Yes, but the -- as -- one moment, your
20 Honor.

21 (Pause)

22 So in American Freedom Defense Initiative the ban on
23 less controversial advertising was upheld. It wasn't all
24 controversial advertising.

25 So in the grand scheme of things, you know, there

1 are Pride flags flown all over the country. The White House
2 lights up with the colors in June. There are parades all over
3 the country. There might be some people that are upset by
4 that, but there are some people that are upset by the American
5 flag. They would sooner have, you know, the Soviet flag fly.
6 Most reasonable citizens don't find that subject matter to be
7 controversial.

8 THE COURT: The Pride flag?

9 MR. BARNES: Correct.

10 THE COURT: I think some reasonable citizens may
11 disagree, right?

12 MR. BARNES: Some might, but it's less controversial
13 than, say, a swastika.

14 THE COURT: Okay. Anything else?

15 MR. BARNES: I don't believe so, your Honor, unless
16 you have other questions for me.

17 THE COURT: I don't think I do.

18 Anything else from plaintiffs' counsel?

19 MR. RISTUCCIA: I would merely respond to the issue
20 of controversy that was just brought up by defendant.

21 THE COURT: Certainly.

22 MR. RISTUCCIA: So defendants are claiming that it
23 is reasonable for them to deny flags if those flags are
24 controversial or at least extremely controversial or like a
25 Nazi flag or apparently the Palestinian flag.

1 We think that the fact that they denied the
2 Palestinian flag is another great example of their viewpoint
3 discriminatory behavior.

4 While my particular clients by no means agree with
5 the gentleman who flew the Palestinian -- wanted to fly the
6 Palestinian flag, we believe he should have been allowed to fly
7 the flag and that that was a legitimate opinion of a citizen
8 that was viewpoint discriminated against.

9 And we have stated in our briefing from the start
10 that we've never claimed that they are only discriminating
11 against conservative voices. The city is discriminating
12 against voices on either the right or the left if they find
13 those viewpoints to be controversial or extreme, as they admit.
14 That is exactly viewpoint discrimination to say anything on
15 either of the sort of edges out. We will only take stuff
16 that's in the middle.

17 Moreover, they cite a 2018 D.C. Circuit case
18 claiming that regulations against controversy is reasonable. I
19 would note, your Honor, that that case is prior to the Supreme
20 Court's 2019 Brunetti decision which sort of redefined or at
21 least clarified what viewpoint discrimination is. So prior
22 cases before Brunetti are quite unreliable about understanding
23 what qualifies as viewpoint versus content-based
24 discrimination. This court case is not mooted and it does not
25 fit with what the recent Fikre case requires for mootness, and

1 we look forward to the Court's decision on this.

2 THE COURT: All right. Thank you.

3 Anything from any other defendants or anyone else?

4 MR. CALLAGHAN: No, your Honor.

5 MR. PIGNATELLI: No, your Honor. Thank you.

6 THE COURT: All right. Thank you.

7 All right. I'll take this motion under advisement,
8 and I'll get an order out as soon as I can.

9 Thank you. Court is adjourned.

10 (Conclusion of hearing 11:29 p.m.)

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C E R T I F I C A T E

I, Susan M. Bateman, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings to the best of my knowledge, skill, ability and belief.

Submitted: 12-10-24 /s/ Susan M. Bateman
SUSAN M. BATEMAN, RPR, CRR

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

BETHANY R. SCAER and STEPHEN SCAER, Plaintiffs, v. CITY OF NASHUA, <i>et al.</i> , Defendants.	Case No. 1:24-cv-00277-LM-TSM
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PLAINTIFFS' NOTICE OF APPEAL

Plaintiffs Beth and Stephen Scaer now appeal to the U.S. Court of Appeals for the First Circuit from the order of the U.S. District Court for the District of New Hampshire, entered on March 28, 2025, denying Plaintiffs' motion for preliminary injunction for failure to show likelihood of succeed on the merits.

Defendants and their counsel are receiving notice of this appeal via notice of electronic filing.

Dated: April 4, 2025

/s/ Roy S. McCandless

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Respectfully submitted,

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**Pro hac vice*

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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2025, a copy of the foregoing document was served on all counsel of record, using the Court's CM/ECF system.

Dated: April 4, 2025

s/ Nathan J. Ristuccia

† Not a D.C. Bar Member but providing legal services in the District of Columbia exclusively before federal courts, as authorized by D.C. Ct. App. R. 49(c)(3).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

APPEAL COVER SHEET

1. USDC/NH Case No. 24-cv-277-LM-TSM
2. TITLE OF CASE: Scaer et al. v. Nashua, NH City of et al.
3. TYPE OF CASE: Civil
4. NAME OF APPELLANT(S) & COUNSEL FOR APPELLANT(S):
See certified copy of docket (ECF registered users not provided with a copy of docket)
5. NAME OF APPELLEE(S) & COUNSEL FOR APPELLEE(S):
See certified copy of docket (ECF registered users not provided with a copy of docket)
6. NAME OF JUDGE: Judge Landya McCafferty
7. DATE OF JUDGMENT OR ORDER ON APPEAL: **March 28, 2025**
8. DATE OF NOTICE OF APPEAL: **April 4, 2025**
9. FEE PAID or IFP :YES
10. COURT APPOINTED COUNSEL: Not Applicable
11. COURT REPORTER(S): and DATES: Motion Hrg. 11/5/2024 – Susan Bateman
12. TRANSCRIPTS ORDERED/ON FILE: YES
13. HEARING/TRIAL EXHIBITS: YES
14. MOTIONS PENDING: -
15. GUIDELINES CASE: Not Applicable
16. RELATED CASES or CROSS APPEAL:
17. SPECIAL COMMENTS:

Activity in Case 1:24-cv-00277-LM-TSM Scaer et al v. Nashua, NH, City of et al Order on Motion to Dismiss

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U.S. District Court

District of New Hampshire

Notice of Electronic Filing

The following transaction was entered on 5/9/2025 at 11:28 AM EDT and filed on 5/9/2025

Case Name: Scaer et al v. Nashua, NH, City of et al

Case Number: [1:24-cv-00277-LM-TSM](#)

Filer:

Document Number: No document attached

Docket Text:

/// ENDORSED ORDER granting [45] Joint Motion to Dismiss the Official Capacity Claims Against the Individual Defendants. *Text of Order: Doc. no. 45 is granted without objection given defendants' agreement in their reply (doc. no. 47) that dismissal of the official-capacity claims will not affect the scope of discovery or available relief. So Ordered by Chief Judge Landya B. McCafferty.(de)*

1:24-cv-00277-LM-TSM Notice has been electronically mailed to:

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1:24-cv-00277-LM-TSM Notice, to the extent appropriate, must be delivered conventionally to: