STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2017-0116

State of New Hampshire
v.
HEIDI LILLEY, KIA SINCLAIR & GINGER PIERRO

RULE 7 APPEAL OF FINAL DECISION OF
LACONIA DISTRICT COURT

BRIEF OF APPELLANTS/DEFENDANTS, HEIDI LILLEY, KIA SINCLAIR & GINGER PIERRO

APPELLANTS REQUEST
15 MINUTES ORAL ARGUMENT

By: Dan Hynes
Liberty Legal Services
212 Coolidge Ave
Manchester, NH 03102
(603) 583-4444
Bar #17708

TABLE OF CONTENTS

Table of Contents

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

Constitutional Provisions

TEXT OF RELEVANT STATUTES

City of Laconia Ordinance Chapter 180: Indecent Exposure:

[Adopted 11-23-1998 by Ord. No. 10.98.10]

§ 180-1 Purpose and findings.

This article is adopted by the City of Laconia for the purpose of upholding and supporting public health, public safety, morals and public order. The conduct prohibited hereunder is deemed to be contrary to the societal interest in order and morality. In addition, the prohibited conduct has been widely found and is deemed to have harmful secondary effects in places and communities where it takes place, including crimes of various types and reduction of property values, not only in the immediate vicinity, but on a community-wide basis.

§ 180-2 Prohibited conduct.

A.

From and after the effective date of this article, it shall be unlawful for any person to knowingly or intentionally, in a public place:

(1)

Engage in sexual intercourse;

(2)

Engage in deviate sexual conduct;

(3)

Appear in a state of nudity; or

(4)

Fondle the person's genitals or the genitals of another person.

(5)

Urinate, defecate or masturbate in a public place which can be viewed by any person.

[Added 5-14-2001 by Ord. No. 01.2001.01]

B.

From and after the effective date of this article, it shall be unlawful for any person to knowingly or intentionally aid, induce or cause another person to commit any act prohibited under Subsection A, even if the other person:

(1)

Has not been prosecuted for the offense;

(2)

Has not been convicted of the offense;

(3)

Has been acquitted of the offense; or

(4)

Has not engaged in the prohibited conduct.

§ 180-3 Exemption.

A.

Notwithstanding the foregoing, the conduct prohibited hereunder shall not include conduct permitted as part of the operation of a sexually-oriented business pursuant to § 235-42 of the City of Laconia Zoning Ordinance, provided that such sexually-oriented business has been lawfully established and possesses all necessary land use approvals and other required permits at the time the conduct occurs.

B.

Nothing herein is intended nor shall it be construed to alter, affect, enlarge, expand or diminish the range of conduct permitted as part of the operation of a sexually-oriented business that has been lawfully established pursuant to § 235-42 of the City of Laconia Zoning Ordinance.

§ 180-4 Definitions.

For the purpose of this article, the following words shall be defined as follows:

NUDITY

> The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple.

PUBLIC PLACE

A.

Any public street, way, alley, parking area, park, common, beach or other property or public institution of the City.

B.

Any outdoor location, whether publicly or privately owned, which is visible to the public at the time the prohibited conduct occurs.

C.

Any area within any theater, hall, restaurant, food service establishment, shopping mall, business, place of public accommodation or other private property which is generally frequented by the public.

§ 180-5 Violations and penalties.

Any person who violates this article shall be fined $250 for the first offense, $500 for the second offense and $1,000 for the third and each successive offense. Each act of conduct prohibited under this article, whether occurring at separate times on the same day, or on different days, shall constitute a separate violation.

§ 180-6 Intent; construal of provisions.

A.

It is specifically the intention of this article to prohibit as broad a range of the defined conduct as may be lawfully accomplished. To that end, the determination by a court of competent jurisdiction that a given application of this article to certain specific conduct is beyond the authority of the City shall not affect the validity of other applications of the article that may be lawfully enforced.

B.

To the extent that any prohibition under this article is declared overbroad by a court of competent jurisdiction, it is the declared intention to apply the article in a constitutionally permissible manner."

Part 1 Art 2. Of the New Hampshire Constitution: All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness.

Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.

Part 1 Art. 22. Of the New Hampshire Constitution Free speech and liberty of the press are essential to the security of freedom in a state: They ought, therefore, to be inviolably preserved.

First Amendment of the United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment of the United States Constitution:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

N.H. RSA 645:1 Indecent Exposure and Lewdness:

I. A person is guilty of a misdemeanor if such person fornicates, exposes his or her genitals, or performs any other act of gross lewdness under circumstances which he or she should know will likely cause affront or alarm.

II. A person is guilty of a class B felony if:

(a) Such person, under circumstances that may be reasonably construed as being for the purpose of sexual gratification or arousal, purposely fornicates, exposes his or her genitals, or performs any other act of gross lewdness knowing that a child who is less than 16 years of age is present.

(b) Such person purposely performs any act of sexual penetration or sexual contact on himself or herself or another in the presence of a child who is less than 16 years of age.

(c) Such person purposely transmits to a child who is less than 16 years of age, or an individual whom the actor reasonably believes is a child who is less than 16 years of age, an image of himself or herself fornicating, exposing his or her genitals, or performing any other act of gross lewdness.

(d) Having previously been convicted of an offense under paragraph I, or of an offense that includes the same conduct under any other jurisdiction, the person subsequently commits an offense under paragraph I.

III. A person shall be guilty of a class A felony if having previously been convicted of 2 or more offenses under paragraph II, or a reasonably equivalent statute in another state, the person subsequently commits an offense under this section.

Source. 1971, 518:1. 1992, 254:10. 1993, 297:1. 1999, 321:1. 2008, 323:5. 2015, 200:1, eff. Jan. 1, 2016.

N.H. RSA 47:17 Bylaws and Ordinances. – The city councils shall have power to make all such salutary and needful bylaws as towns and the police officers of towns and engineers or firewards by law have power to make and to annex penalties, not exceeding $1,000, for the breach thereof; and may make, establish, publish, alter, modify, amend and repeal ordinances, rules, regulations, and bylaws for the purposes stated in this section. Provisions in this section granting authority to establish and collect fines for certain violations shall not be interpreted to limit the authority hereunder to establish and collect fines for any other violations:

I. In General. To carry into effect all the powers by law vested in the city.

II. Order and Police Duty. To regulate the police of the city; to prevent any riot, noise, disturbance, or disorderly assemblages; to regulate the ringing of bells, blowing of horns or bugles, and crying goods and other things; and to prescribe the powers and duties of police officers and watchmen.

III. Disorderly Houses and Gaming. To suppress and restrain disorderly houses and houses of ill-fame, gambling houses and places, billiard tables, nine or ten pin alleys or tables and ball alleys, and all playing of cards, dice or other games of chance; to restrain and prohibit all descriptions of gaming and fraudulent devices; and to authorize the destruction and demolition of all instruments and devices used for the purpose of gaming.

IV. Sale of Liquor. To establish regulations for groceries, stores, restaurants, and places of public amusement; to authorize the entry of proper officers into all such places to inspect the same, and the seizure and forfeiture of all liquors and the instruments used or designed to be used in the manufacture or sale of the same, in violation of law.

V. Shows. To regulate or prohibit the exhibitions of natural or artificial curiosities, caravans, circuses, theatrical performances, or other shows.

VI. Porters, Vehicles, Etc. To license and regulate porters, cartmen and cartage, runners for boats, stages, cars, and public houses, hackney coaches, cabs, and carriages, and their drivers; the care and conduct of all animals, carriages, and teams, standing or moving in the streets; to prevent horse-racing and immoderate riding or driving in streets and on bridges; and to prevent cruelty to animals.

VII. Use of Public Ways. To regulate all streets and public ways, wharves, docks, and squares, and the use thereof, and the placing or leaving therein any carriages, sleds, boxes, lumber, wood, or any articles or materials, and the deposit of any waste or other thing whatever; the removal of any manure or other material therefrom; the erection of posts, signs, steps, public telephones, telephone booths, and other appurtenances thereto, or awnings; the digging up the ground by traffic thereon or in any other manner, or any other act by which the public

travel may be incommoded or the city subjected to expense thereby; the securing by railings or otherwise any well, cellar, or other dangerous place in or near the line of any street; to prohibit the rolling of hoops, playing at ball or flying of kites, or any other amusement or practice having a tendency to annoy persons passing in the streets and sidewalks, or to frighten teams of horses within the same; and to compel persons to keep the snow, ice, and dirt from the sidewalks in front of the premises owned or occupied by them.

VIII. Traffic Devices and Signals.

(a) To make special regulations as to the use of vehicles upon particular highways, except as to speed, and to exclude such vehicles altogether from certain ways; to regulate the use of class IV highways within the compact limits and class V highways by establishing stop intersections, by erecting stop signs, yield right of way signs, traffic signals and all other traffic control devices on those highways over which the city council has jurisdiction. The erection, removal and maintenance of all such devices shall conform to applicable state statutes and the latest edition of the Manual on Uniform Traffic Control Devices.

(b) The commissioner of transportation shall only approve the installation and modification of traffic signals as to type, size, installation, and method of operation.

IX. Combustibles. To regulate the keeping, conveying and places of deposit of gunpowder and other combustible and dangerous materials; the use of candles, lights, and matches in barns, stables, and other buildings containing combustible and dangerous materials; to regulate the erection or use of buildings within the most compact part of the city, for any purpose which in the opinion of the city councils shall more immediately expose said city to destruction by fire, and to define the limits of such compact part.

X. Stock at Large. To regulate, restrain, or prohibit the keeping or running at large of horses, cattle, sheep, swine, geese, goats and other poultry and animals, or any of them, to create the limits of districts within which the same may be kept and the conditions and restrictions under which they may be kept.

XI. Dogs. To regulate the keeping of dogs and their running at large, require them to be licensed, and authorize the destruction of those kept or running at large contrary to the ordinance.

XII. Markets, Sales. To establish markets and market-places; regulate the place and manner of selling and weighing hay, selling pickled and other fish, and salted and fresh provisions; selling and measuring wood, lime, coal, and other heavy articles; and to appoint suitable persons to superintend and conduct the same; to prevent and punish forestalling and regrating; and to restrain every kind of fraudulent device and practice.

XIII. Vagrants, Obscene Conduct. To restrain and punish vagrants, mendicants, street beggars, strolling musicians, and common prostitutes, and all kinds of immoral and obscene conduct, and to regulate the times and places of bathing and swimming in the canals, rivers and other waters of the city, and the clothing to be worn by bathers and swimmers.

XIV. Nuisances. To abate and remove nuisances; to regulate the location and construction of slaughterhouses, tallow chandlers' shops, soap factories, tanneries, stables, barns, privies, sewers, and other unwholesome or nauseous buildings or places, and the abatement, removal or purification of the same by the owner or occupant; to prohibit any person from bringing, depositing, or having within the city any dead carcass or other unwholesome substance; to provide for the removal or destruction, by any person who shall have the same upon or near

such person's premises, of any such substance, or any putrid or unsound beef, pork, fish, hides, or skins, and, on such person's default, to authorize the removal or destruction thereof by some officer of the city; to authorize and provide for the collection, removal, and destruction of garbage and other waste material, to make necessary regulations relative thereto, and to provide for payment therefor by assessment, or appropriation, or both. A municipality may create fines for violations related to garbage and other waste material regulations and a procedure for the administrative enforcement of such violations and collection of penalties as provided in RSA 48-A:8, VI, or in any other manner authorized by law.

XIV-a. Interfering With Voters. To regulate the distribution of campaign materials or electioneering or any activity which affects the safety, welfare and rights of voters at any election held for any purpose in such city. Such power shall not extend to the display of printed or written matter attached to any legally parked motor vehicle, nor shall such power extend to activities conducted wholly on private property so as not to interfere with people approaching or entering a polling place.

XIV-b. Local Election Reporting Requirements. Requiring the reporting of contributions to, and expenditures by, any candidate or political committee made for the purpose of influencing the election of any candidate for local elective office, or any person or committee for the purpose of influencing the vote on any local ballot or referendum question.

XV. Miscellaneous. Relative to the grade of streets, and the grade and width of sidewalks; to the laying out and regulating public squares and walks, commons, and other public grounds, public lights, and lamps; to trees planted for shade, ornament, convenience, or use, and the fruit of the same; to trespasses committed on public buildings and other public property, and in private yards and gardens; in relation to cemeteries, public burial grounds, the burial of the dead, and the returning and keeping records thereof, and bills of mortality, and the duties of physicians, sextons and others in relation thereto; relative to public wells, cisterns, pumps, conduits, and reservoirs; the places of military parade and rendezvous, and the marching of military companies with music in the streets of the city; relative to precautions against fire; relative to oaths and bonds of city officers, and penalties upon those elected to such offices refusing to serve; and relative to licensing and regulating butchers, petty grocers, or hucksters, peddlers, hawkers, and common victualers; dealers in and keepers of shops for the purchase, sale or barter of junk, old metals or second-hand articles, and pawnbrokers; under such limitations and restrictions as to them shall appear necessary. They may make any other bylaws and regulations which may seem for the well-being of the city; but no bylaw or ordinance shall be repugnant to the constitution or laws of the state; and such bylaws and ordinances shall take effect and be in force from the time therein limited, without the sanction or confirmation of any other authority whatever.

XVI. Warnings and Citations. To establish a procedure for the issuance of warnings and citations for the violation of health, fire, planning board, building, licensing, zoning, and housing codes and ordinances.

XVII. Drug-Free Zones. Establish as a drug-free zone any area inclusive of public housing authority property and within 1,000 feet of such public housing authority property. If such drug-free zones are established, the municipality shall publish a map clearly indicating the boundaries of such drug-free zone, which shall be posted in a prominent place in the district or municipal court of jurisdiction, the local police department, and on the public housing authority

property. The municipality shall also develop signs or markings for the drug-free zone which shall:

(a) Be posted in one or more prominent places in or near the public housing authority property; and

(b) Indicate that the posted area is a drug-free zone which extends to 1,000 feet surrounding such property; and

(c) Warn that a person who violates RSA 318-B, the controlled drug act, within the drug-free zone, shall be subject to severe criminal penalties under RSA 318-B and a penalty of up to $1,000 under this paragraph.

XVIII. Automobile Parking Controls. The city councils shall have the authority to adopt such bylaws and ordinances as are necessary to control the parking, standing and stopping of automobiles within the city limits, including ordinances allowing for the towing or immobilization of automobiles for nonpayment of parking fines and creating parking fines recoverable by means of civil process.

XIX. Businesses Obtaining City Permits. To establish regulations relative to businesses obtaining city permits.

Source**.** 1846, 384:17. GS 44:11. GL 48:10. PS 50:10. 1905, 10:1. 1907, 35:1. 1915, 55:1; 98:1. 1923, 15:1. PL 54:12. 1935, 117:2. 1941, 35:1. RL 66:13. RSA 47:17. 1961, 26:1. 1971, 512:9. 1981, 298:2. 1983, 166:2. 1986, 102:1. 1991, 74:1; 364:7. 1993, 183:1. 1996, 268:1, 5. 2006, 202:1. 2007, 43:2. 2009, 270:2, 3, eff. Jan. 1, 2010.

N.H. RSA 354-A:1 Title and Purposes of Chapter. – This chapter shall be known as the "Law Against Discrimination.'' It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights. The general court hereby finds and declares that practices of discrimination against any of its inhabitants because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin are a matter of state concern, that such discrimination not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants. A state agency is hereby created with power to eliminate and prevent discrimination in employment, in places of public accommodation and in housing accommodations because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes. In addition, the agencies and councils so created shall exercise their authority to assure that no person be discriminated against on account of sexual orientation.

Source. 1992, 224:1. 1997, 108:8, eff. Jan. 1, 1998.

N.H. RSA 354-A:16 Equal Access to Public Accommodations a Civil Right. – The opportunity for every individual to have equal access to places of public accommodation without discrimination because of age, sex, race, creed, color, marital status, physical or mental disability or national origin is hereby recognized and declared to be a civil right. In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's sexual orientation.

Source. 1992, 224:1. 1997, 108:15, eff. Jan. 1, 1998.

N.H. RSA 354-A:25 Construction. – No provision of this chapter shall be deemed to supersede any other provision of law for the protection of minors or for the regulation of the employment of minors. The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of the civil rights law or any other law of this state relating to discrimination because of age, sex, race, creed, color, marital status, physical or mental disability or national origin; but, as to acts declared unlawful by this chapter the procedure provided in this chapter shall, while pending, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned. If such individual institutes any action based on such grievance without resorting to the procedure provided in this chapter, such person may not subsequently resort to the procedure in this chapter, provided, however, that nothing in this section shall prevent any individual from applying for or receiving unemployment compensation while the procedure provided for in this chapter is pending or after the procedure provided in this chapter has been concluded. This section shall not prevent the commission for human rights from investigating and acting upon a complaint of discrimination when the complainant has also filed a claim for unemployment compensation in which the issue of illegal discrimination is raised.

Source. 1992, 224:1, eff. May 13, 1992.

N.H. RSA 132:10-d Breast-feeding. – Breast-feeding a child does not constitute an act of indecent exposure and to restrict or limit the right of a mother to breast-feed her child is discriminatory.

Source. 1999, 121:2, eff. Aug. 9, 1999.

QUESTION PRESENTED

1. Whether the Court erred by denying defendants' motion to dismiss where the city ordinance violates defendants' right to equal protection under the State and Federal Constitution. Preserved through defendants' motion to dismiss pgs. 4-7.

2. Whether the Court erred by denying defendants' motion to dismiss where the city ordinance violates defendant's right to freedom of speech under the State and Federal Constitution. Preserved through defendants' motion to dismiss pgs. 4-6.

3. Whether the Court erred by denying defendants' motion to dismiss where the city ordinance is not permissible under state law because it lacks an enabling statute. Preserved through defendants' motion to dismiss pgs. 7-8.

4. If an enabling statute does authorize the city ordinance, is it still unlawful through pre-emption, contrary or inconsistent to other State law, or repugnant to the State constitution. Preserved through defendants' motion to dismiss pgs. 7-8.

5. Whether the Court erred by denying defendants' motion to dismiss where the city ordinance violates N.H. RSA 354-A. Preserved through defendants' motion to dismiss pgs. 8-9.

STATEMENT OF THE CASE

This is a consolidated case of defendants Heidi Lilley, Kia Sinclair, and Ginger Pierro. All three defendants were charged with violating the same City of Laconia Ordinance Chapter 180, related to Indecent exposure which prohibits the showing/display of a female nipple in public. Their cases were combined at Laconia District Court where defendants' motion to dismiss was denied. Defendants were subsequently found guilty and appeal the Order denying their motion to dismiss and ultimately their convictions.

STATEMENT OF THE FACTS

The facts in this case are primarily not in dispute as all three defendants concede they were in violation of the Laconia City Ordinance Chapter 180 (referred to in this brief as City Ordinance) where their breasts and nipples were visible when they were topless at the beach in Laconia. Defendants are all female and the City Ordinance in question only prohibits females displaying their chest / nipples, while allowing men to display theirs without being in violation of the City ordinance.

Heidi Lilley is a member/supporter of the Free the Nipple Campaign since 2015[1] .

> "Free The Nipple is a film, an equality movement, and a mission to empower women across the world. We stand against female oppression and censorship, both in the United States and around the globe. Today, in the USA it is effectively ILLEGAL for a woman to be topless, breastfeeding included, in 35 states. In less tolerant places like Louisiana, an exposed nipple can take a woman to jail for up to three years and cost $2,500 in fines. Even in New York City, which legalized public toplessness in 1992, the NYPD continues to arrest women. We're working to change these inequalities through film, social media, and a grassroots campaign.
>
> THE MOVEMENT
>
> Free The Nipple has become a "real life" equality movement that's sparked a national dialogue. Famous graffiti artists, groups of dedicated women, and influencers such as Miley Cyrus, Liv Tyler, and Lena Dunham have shown public support which garnered international press and created a viral #FreeTheNipple campaign. The issues we're addressing are equal rights for men and women, a more balanced system of censorship, and legal rights for all women to breastfeed in public.
>
> THE FACTS
>
> Over 75 years ago it was illegal in all 50 states of America for men to be 'Shirtless' on a beach. A small dedicated group fought the puritanical status quo, the police and the courts. After several arrests and protests men finally won their basic human right to be 'TOPLESS' in public in 1936. Today there are 37 states in the USA that still arrest women for this same freedom, in some states that even includes breastfeeding. "See http://freethenipple.com/what-is-free-the-nipple/"[2]

[1] T 20.

[2] Defendants' motion to dismiss pg. 1-2.

The Free the Nipple movement has garnered significant media coverage in New Hampshire[3].

Lilley was previously arrested for being topless in public in the town of Gilford.[4] In that case, defendant filed a motion to dismiss claiming the Town Ordinance was not valid. Hon. Carroll granted that motion on the grounds that the town lacked authority.[5] Co-Defendant Barbara McKinnon attempted to appeal the denial of the motion to dismiss on constitutional grounds, but this court dismissed that case for lack of standing due to the motion to dismiss being granted on other grounds[6].

Lilley previously testified in front of the legislature "[R]egarding the changing of the law to make it illegal for a woman to be -- have bare breasts in the State of New Hampshire."[7] In 2016, in response to Gilford's topless ordinance being invalidated, the legislature proposed two bills addressing this issue.

HB 1525-FN had a unanimous recommendation of 19-0[8] by the House Criminal Justice Committee of Inexpedient to Legislate, and was later voted inexpedient to legislate by the full House[9]. That bill's text would have amended RSA 645:I(b) Public decency to include:

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[3] Defendants' motion to dismiss pg 2 Appendix Ex. E pg 16. Citing: http://www.boston.com/news/local/new-hampshire/2015/08/23/rain-can-stop-free-the-nipple-day-hampton-beach/lR1rtxy2OhlqiKXXRplZHO/story.html
http://www.necn.com/news/new-england/Free-the-Nipple-Movement-Brings-Topless-Protest-to-Hampton-Beach-322641592.html
http://www.seacoastonline.com/article/20150730/NEWS/150739852
http://www.nh1.com/news/it-s-just-boobs-60-plus-go-topless-for-free-the-nipple-event-at-hampton-beach/
http://www.unionleader.com/Free-the-Nipple-movement-gets-day-in-court
http://www.huffingtonpost.com/entry/new-hampshire-topless_us_56e07c3ee4b065e2e3d485cc
http://www.seacoastonline.com/news/20160825/go-topless-day-returns-to-hampton-beach-sunday
http://www.nh1.com/news/3-free-the-nipple-activists-arrested-over-the-weekend-for-topless-sunbathing-at-weirs-beach/

[4] Attached order in Docket #2015-CR-2800,2801. Exhibit A pg 1-7 Appendix.
[5] Id.
[6] See Attached Exhibit B Appendix pg 8 – Case No. 2016-0197 St. v. Barbara MacKinnon
[7] T 21.
[8] 2016 House Journal No. 14 March 4, 2016
http://www.gencourt.state.nh.us/house/caljourns/calendars/2016/HC_14.pdf
[9] See Attached Exhibit C. Appendix pg. 10

Such person purposely exposes his or her anus or, if a woman, purposely exposes the areola or nipple of her breast or breasts in a public place and in the presence of another person with reckless disregard for whether a reasonable person would be offended or alarmed by such act.

The committee's recommendation against the bill was:

"INEXPEDIENT TO LEGISLATE Rep. John Burt for criminal Justice and Public Safety. This bill expands the indecent exposure law to include the anus (regardless of gender) as well as the nipple and areola (only if female). The committee heard testimony from many who warned that, due to likely acts of civil disobedience, the state would face expensive court fees should this become law. The NH civil Liberties Union testified that violation of such a law could be considered protected political speech, indicating that the state would be unsuccessful in litigation. The committee sees no sense in passing a law that cannot be enforced. The committee also believes that this bill violates Part I, Article 2 of the State constitution, which states that "Equality of rights under the law shall not be denied or abridged on account of race, creed, color, sex or national origin." This bill attempts to apply a law to women only. This bill would also place police officers in the uncomfortable position of having to determine the gender of a potential offender. Lastly, an offender (if convicted) would be listed in the state's sex offender registry after a second conviction, which many considered to be an excessive punishment. In a state with an average temperature of only 46 degrees, the risk of rampant nudity seems rather low. The committee considers this legislation Inexpedient to Legislate for these reasons. Vote 19-0."[10]

SB 347 (2016) was also deemed inexpedient to legislate by the House. That bill's text was:

AN ACT enabling the state and municipalities to adopt laws and ordinances regulating attire on state and municipal property.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subparagraph; Powers and Duties of Towns; Power to Make Bylaws. Amend RSA 31:39, I by inserting after subparagraph (p) the following new subparagraph:

(q) Regulating the times and places of bathing, sunbathing, and swimming in municipal parks, beaches, pools, or other municipal properties, and the clothing to be worn by users. Nothing in this subparagraph shall authorize a town to prohibit breastfeeding in such town properties.

2 Powers of City Councils; Bylaws and Ordinances; Power to Make Bylaws. Amend RSA 47:17, XIII to read as follows:

[10] 2016 House Journal No. 14 March 4, 2016
http://www.gencourt.state.nh.us/house/caljourns/calendars/2016/HC_14.pdf

XIII. Vagrants, Obscene Conduct. To restrain and punish vagrants, mendicants, street beggars, strolling musicians, and common prostitutes, and all kinds of immoral and obscene conduct, and to regulate the times and places of bathing, sunbathing, and swimming in the canals, rivers and other waters of the city, or other city properties, and the clothing to be worn by [bathers and swimmers] users. Nothing in this paragraph shall authorize a city to prohibit breastfeeding in such city properties.

3 New Subparagraph; Department of Resources and Economic Development; Rulemaking. Amend RSA 12-A:2-c, II by inserting after subparagraph (f) the following new subparagraph:

(g) The times and places of bathing, sunbathing, and swimming in state waters or in state parks, forests, or other state recreational areas, and the clothing to be worn by users. Nothing in this subparagraph shall prohibit breastfeeding in such state recreational areas.

4 Effective Date. This act shall take effect 60 days after its passage."[11]

The House Municipal and County Government Committee recommended the bill be Inexpedient to Legislate by a vote of 14-1[12]. Like the House Criminal Justice Committee, the Municipal County Government Committee also had harsh criticism of the bill indicating they do not want *any* government entities in New Hampshire to be able to prohibit female toplessness.

"INEXPEDIENT TO LEGISLATE Rep. Keith Ammon for Municipal and County Government. This bill is enabling legislation to allow towns to adopt laws and ordinances regulating attire on state and municipal property. This provision already exists for cities but was lacking in towns. The committee heard two favorable testimonies and ten unfavorable at the hearing. Based on favorable testimony, the main impetus behind this bill seemed to be to allow towns and the state to ban female toplessness. The fear that the enabling legislation could be used to suppress free speech and restrict personal freedoms, possibly creating restrictions that were gender-specific, prevailed among the committee members. The committee might have considered removing this provision from the statutes for cities if it had not been for the fact that this would be retrospective legislation and would not have been upheld in court when existing ordinances were determined illegal. There has been no widespread evidence of the need for this legislation and the possibility of misuse outweighed the benefits. Also, this bill would have allowed the NH Department of Resources and Economic Development additional

[11] SB 347 (2016). Ex D. of Appendix pgs. 12-13 showing bill status.
[12] 2016 House Journal No. 29 May 6, 2016
http://www.gencourt.state.nh.us/house/caljourns/calendars/2016/HC_29.pdf

rulemaking authority to regulate dress codes in state waters or state parks, forests, or other state recreational areas. Vote 14-1.[13]"

Lilley also testified in front of Laconia City council to afford them an opportunity to change their ordinance.[14]

Lilley's reason for being topless on the day she was arrested in Laconia, was "I was at the beach the day that Ginger was arrested and I was very distressed at her arrest. And I was there in protest and I announced to the arresting police officer that I was acting in a protest and that I did not believe that I could be arrested for protesting."[15] On the date she was arrested for this charge, she was sitting in a chair without a top on, not harassing anyone, and no one approached her other than police officers.[16] Part of her intent was to draw attention to the cause.[17]

Defendant Kia Sinclair is "one of the main people who started the Free the Nipple movement here in New Hampshire. It was last summer 2015 and basically the reason I started it and become passionate about it was because I had my first son in July of 2014 and I breastfeed him. He's two; I actually still nurse him. And I realized that there was a very big stigma on breastfeeding and you know women are asked to cover up or leave, go in the bathrooms, and such.

And long before I had ever heard of Free the Nipple, I had already come to the conclusion that because we hypersexualize breasts and specifically the nipple of females and we censor them, we consider them pornographic and taboo, that directly is what results in that stigma and basically the idea is if we say that nipples are harmful to children, it's that sentiment that, you

[13] Id.
[14] T 22. (See also attached minutes of City Council June 13, 2016) Exhibit J. Appendix pgs. 61-63.
[15] T at 22.
[16] T 21-22
[17] T at 26

know, causes that stigma and also I think it's a direct contribu -- contributes to the low breastfeeding rates that the United States has compared to the rest of the world."[18]

Sinclair's intent on the day she appeared topless in Laconia on May 28, 2016, was "On one hand, I -- it's a lifestyle choice that I choose. I whenever I go to a beach or, you know, if it suits me, I don't wear a shirt and I don't cover my nipples. But in this specific incident, I was protesting Ginger's case where she had been arrested a few days prior."[19] She had been to Laconia before with her nipples exposed and hadn't had any trouble.[20] On the day of her arrest Sinclair also did not have any contact with anyone other than police officers.[21] While sunbathing on the beach without a top on, Laconia police approached her and asked her to cover up or be arrested. Sinclair informed the police she would not cover up and asked to be arrested.[22] On the day in question Sinclair saw men on the beach without a shirt displaying their chest/ nipples and they were not arrested.[23] Sinclair felt she did not cause any safety hazard or endangering the health of the public with her conduct.[24] Sinclair on another date appeared in Laconia with her chest/breasts exposed but covering her nipple and was not arrested.[25]

On May 28, 2016 Pierro was topless in Laconia while enjoying the beach and was arrested for violating the City Ordinance.[26] On that day she was "violently harassed" by several citizens.[27] "Their problem seemed to be not just -- not that I was topless, but that I was enjoying myself." "I'm an athletic woman, I do yoga, these things take a lot of work and they take space. I was asked if I could do that in my bedroom and no, I can't do yoga on the beach in my bedroom."[28] Besides people harassing her, there were also people defending her.[29] There was "one woman who seemed to move away from me when I first began practicing with her three-year-old

[18] T at 7-8
[19] T at 9
[20] T at 10
[21] T at 10.
[22] T at 11.
[23] T at 11.
[24] T at 11.
[25] T at 13.
[26] T at 14.
[27] T at 15.
[28] T at 15.
[29] T at 18.

daughter and when I was confronted by three people who were yelling, screaming, swearing, calling me names, she came up and said that this woman is not bothering me at all and she's being very peaceful and that the swearing is very inappropriate in front of children." "There were only out of everybody on the beach, there were only actually a handful that were upset and many people felt supportive as humans for what I was doing."[30] Pierro (like the other defendants) had bottom clothing on and was not nude.[31]

Sargent Black arrested Pierro on May 28.[32] On that day he saw men displaying their nipples but did not arrest them. He has never arrested a man for publicly displaying his chest/breast/nipples.[33] Sgt. Black has no medical training to distinguish a male and female nipple.[34] To determine whether someone is male or female Sgt. Black relies on "outwardly appearances."[35] If Sgt. Black learned after the fact that someone is a male he would unarrest them if he could[36]. Sgt. Black would not arrest a female if her breast was exposed if their nipple was covered.[37] The beach was open to the public and both men and women could be there, but men can have their nipples displayed and women can't.[38]
Sgt. Black did not feel there was a health issue related to Pierro displaying her nipples and she was not disorderly.[39]

Sandra Smith testified for the State that she was a witness to Sinclair being topless on May 31. "There's a thing happened that's the lady came down and walked past us with no shirt on. She walked down to the beach, you know, and I knew it wasn't proper and approved. And I just called the police because I don't think it was right. And the police responded."[40] No children

[30] T at 18.
[31] T at 15.
[32] T at 28.
[33] T at 28.
[34] T at 28.
[35] T at 34.
[36] T at 46-47.
[37] T at 37.
[38] T at 47.
[39] T at 33.
[40] T at 48-50.

complained to her about the conduct of Sinclair.[41] Smith thinks it is ok for men to be topless on the beach.[42] The reason Smith doesn't think it is right for a female to be topless in public is based upon a religious belief.[43]

Officer Callanan testified for the State in part as to how she determines if someone is female.
"Q: *Without the license, were you able to determine whether Ms. Pierro was a female or a male?*
A Yes.
Q What -- how?
A Her appearance.
Q What about her --
A Her anatomy.
Q What about her appearance?
A She -- her breasts were exposed, and they appeared to be female breasts. She was wearing a bathing suit bottom upon contact with her, that didn't appear to be male genitalia. She appears to be a woman. She has long hair, she talks like a woman, she -- I think she even talked about -- I think she might have been a mother. During -- I'm just trying to recall the booking conversation.
Q Yeah.
A I think she has a child.[44]

Officer Callanan confirmed she makes the arrest based upon someone's natural born sex and not their gender[45].

Laconia police department has issues various memorandum around enforcement of this statute.[46] Part of that memorandum states Police should note any disturbance being caused. It also advises the protesters "likely will not cooperate" and to arrest them. "If they comply use discretion".

After the court denied defendants motion to dismiss, they were found guilty. (See Exhibit K pgs 86- 94 Appendix.

[41] T at 51.
[42] T at 51.
[43] T at 53.
[44] T at 64-65.
[45] T at 66.
[46] Defense counsel was only recently made aware of these documents. It was not part of the trial record but is being offered now to show intent and enforcement by Laconia police. See Attached Exhibit I. Appendix pgs. 50-60

SUMMARY OF THE ARGUMENT

Laconia's ordinance violates the equal protection guarantees under the State and federal constitution. The ordinance specifically prohibits only the public display of the female nipple and not the male nipple. Accordingly it criminalizes being female.

The ordinance further violates someone's right to free speech and expression under the state and Federal Constitution. There is inherent value in displaying one's nipple to convey a particular message. Here, there are numerous messages presented, but they include political speech which was to protest the ordinance, and for gender equality.

Both freedom of expression and equal protection based upon sex are subject to strict scrutiny. Laconia's ordinance is not justified by a compelling state interest which is necessary to accomplish a legitimate purpose. It is also not the least restrictive means available.

Laconia's ordinance is unlawful because the State did not provide an enabling statute for it. New Hampshire is not a home rule state, and Laconia only has powers which were granted to them by the legislature.

Even if Laconia could enact legislation regarding how someone dresses/appears in public, this specific ordinance is unlawful as it is pre-empted under state law. Under State law, indecent exposure does not apply to the female breast/nipple. Further, breastfeeding is specifically allowed under State law[47] which would include the display of a female nipple. Finally, under the "Law Against Discrimination", N.H. RSA 354-A, the city is prohibited from discriminating against someone based upon their sex.

Even if the ordinance had an enabling statute, and even if it was not pre-empted, it is repugnant to the State Constitution and other state laws and is accordingly invalid.

N.H. RSA 354-A, the "Law Against Discrimination" prohibits cities and towns from discriminating against someone based upon their sex. Defendants have a civil right to appear in public and be treated the same as a male is treated.

[47] See N.H. RSA 132:10-d (Breast-feeding: "Breast-feeding a child does not constitute an act of indecent exposure and to restrict or limit the right of a mother to breast-feed her child is discriminatory.")

ARGUMENT

I. THE COURT ERRED BY DENYING DEFENDNT'S MOTION TO DISMISS WHERE THE CITY ORDINANCE VIOLATES DEFENDANT'S RIGHT TO EQUAL PROTECTION UNDER THE STATE AND FEDERAL CONSTITUTION

Part 1 Art 2. Of the New Hampshire Constitution requires: **"**All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin".[48]

In denying defendants' motion to dismiss, Hon. Carroll found "This subject ordinance creates no violation of the Equal Protection clause as it treats all females equally.[49]" That rationale appears to be of the type considered "equal application," which has been specifically prohibited by the U.S. Supreme Court in *Loving v. Virginia*, 388 U.S. 1 (1967). If that reasoning were followed then laws requiring separate water fountains for whites and blacks, separate schools for women, and prohibiting any Irish person from working would all be permissible. Essentially, every equal protection claim would be dismissed because they treat members of the same class the same as other members of the class. However, the purpose of the Equal Protection clauses is to prevent discrimination *between* and not *among* groups.

"The first question in an equal protection analysis is whether the State action in question treats similarly situated persons differently." *Appeal of Marmac,* 130 N.H. 53, 58, 534 A.2d 710, 713 (1987). The Laconia ordinance's plain language and the way it is applied treat men and women differently. Both men and women have nipples, yet Laconia has chosen to punish and regulate just those belonging to women. To the extent a female's chest may appear physically different than a male's, that distinction should be of no legal consequence.

[48] Various case-law and statutes often interchange the word sex and gender in interpreting equal rights protections. In this case, all three female defendants did not contest belonging to the female gender.
[49] Ex. F. Appendix pg 28.

The ordinance is specifically prohibiting the display of any part of the female nipple and not their chest/breast. Medical science shows from a biology standpoint there is little distinction between a male and female breast. Males also have breast tissue, just generally less than females who have gone through puberty.[50] Any distinction lacks a nexus to what Laconia is prohibiting. A female nipple/breast is not in any way a health or safety concern that a male nipple/breast is not. To the extent some members of society have made a distinction based upon religious or moral views, that distinction is again unrelated to actual biological differences. In addressing this exact issue, one federal court held:

> [T]he ordinance discriminates against women based on the generalized notion that, regardless of a woman's intent, the exposure of her breasts in public (or even in her private home if viewable by the public) is necessarily a sexualized act. Thus, it perpetuates a stereotype engrained in our society that female breasts are primarily objects of sexual desire whereas male breasts are not. *See, e.g., People v. Santorelli,* 80 N.Y.2d 875, 587 N.Y.S.2d 601, 600 N.E.2d 232, 237 (1992). *Free the Nipple - Fort Collins v. City of Fort Collins*, No. 16-cv-01308-RBJ, 2017 U.S. Dist. LEXIS 24648, WL 713918 at 11-12 (D. Colo. Feb. 22, 2017).
>
> At bottom this ordinance is based upon *ipse dixit*—the female breast is a sex object because we say so. That is, the naked female breast is *seen* as disorderly or dangerous because society, from Renaissance paintings to Victoria's Secret commercials, has conflated female breasts with genitalia and stereotyped them as such. The irony is that by forcing women to cover up their bodies, society has made naked women's breasts something to see. *Id.* at 13. (Attached as Exhibit G. Pgs 32-47 Appendix)

A: The Court should apply strict scrutiny to the equal protection violation

In considering an equal protection violation under the State constitution, the Court "must first determine the appropriate standard of review: strict scrutiny; fair and substantial relationship; or rational basis." *LeClair v. LeClair*, 137 NH 213, 222 (1993) citing *Boehner v. State*, 122 N.H. 79, 83, 441 A.2d 1146, 1148 (1982)."

We apply the strict scrutiny test, in which the government must show a compelling State interest in order for its actions to be valid, when the classification involves a suspect class based

[50] https://www.cancer.org/cancer/breast-cancer-in-men/about/what-is-breast-cancer-in-men.html

on "race, creed, color, gender, national origin, or legitimacy, *State v. LaPorte*, 134 N.H. 73, 76, 587 A.2d 1237, 1239 (1991) (quotation omitted), or affects a fundamental right." *LeClair*, 137 N.H. at 222 (1993).

Under the State constitution, Laconia's ordinance which discriminates on gender/sex is entitled to strict scrutiny.

"[T]o comply with strict judicial scrutiny, the governmental restriction must be justified by a compelling governmental interest and must be necessary to the accomplishment of its legitimate purpose." *Akins v. Secretary of State*, 904 A. 2d 702, 708 (2006) citing *Follansbee v. Plymouth Dist. Ct.*, 151 N.H. 365, 367, 856 A.2d 740 (2004).

Laconia does not have a compelling governmental interest in preventing women (but not men) from displaying their nipples in public. The ordinance states its purpose of "upholding and supporting public health, public safety, morals and public order." City of Laconia Ordinance Ch 180-1. The undisputed testimony at trial was that the health of the public was in no way in jeopardy from defendants' nipples being displayed. There is not even a rational basis to argue that displaying a female nipple and not a male nipple will somehow affect the public's health. The display of a female nipple is also not a public safety issue as the female nipple is not inherently dangerous.

Presumably, the State will be arguing this is an issue of morals and public order. If the display of nipples is a moral and public order issue, then Laconia could have chosen to ban the display of all nipples belonging to males *and* females. Such a regulation would not run afoul of equal protection violations. Yet, Laconia chose to only regulate female nipples.

Regulating morals in a discriminatory fashion is *not* a *compelling government interest.* "Moral disapproval of a group cannot be a legitimate governmental interest under the Equal Protection Clause because legal classifications must not be "drawn for the purpose of disadvantaging the group burdened by the law." *Lawrence v. Texas*, 539 US 558, 583 (2003)

(O'Connor Concurring). Put another way: "irrational prejudice plainly *never* constitutes a legitimate government interest." *Gill v. Office of Personnel Management*, 699 F. Supp. 2d 374, 397 (D.Mass.2010).

If regulating morals did amount to a compelling governmental interest, it is hard to imagine *any* piece of legislation that would not satisfy this prong of the test. Every piece of legislation likely has some person who finds it morally beneficially or morally detrimental. It would be impossible to state which morals are to be fairly applied. As the purpose of the equal protection laws is to protect minorities and protected classes, the standard cannot be whether a majority of a group of people find some arbitrary conduct to be either morally good or morally bad. It is the Court's "obligation is to define the liberty of all, not to mandate our own moral code." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833, 850 (1992).

As noted by one court "Unfortunately, our history is littered with many forms of discrimination, including discrimination against women. As the barriers have come down, one by one, some people were made uncomfortable. In our system, however, the Constitution prevails over popular sentiment. *See Lawrence, 539 U.S. at 577. See also Craig v. Boren, 429 U.S. 190, 210 (1976)* (disapproving of the holding in *Goesaert v. Cleary, 335 U.S. 464, 69 S. Ct. 198, 93 L. Ed. 163 (1948)*, in which the Supreme Court earlier upheld a Michigan law that barred women from bartending that was justified on the grounds that the sight of female bartenders caused "moral and social problems"). *Free the Nipple - Fort Collins v. City of Fort Collins, 2017 U.S. Dist. LEXIS 24648 pg 7 (2017)*

The City Ordinance is not "necessary". It appears the City of Laconia has the only topless ordinance that is presently being enforced in New Hampshire. The conduct is not prohibited under state law. Further, females regularly enjoy being topless in public in this state. That display is perhaps most prominent at the annual Go topless day held at Hampton Beach.[51] In regard to topless women, Hampton police chief has stated: "They're exercising their right under the law. I understand some people are offended by that. We don't plan to pay them any

[51] http://www.seacoastonline.com/news/20160825/go-topless-day-returns-to-hampton-beach-sunday

attention."[52] If all of the other places in New Hampshire[53] can manage to not have this prohibition, it is hard to see how it is *necessary*.

Ironically, Laconia's ordinance also states: "In addition, the prohibited conduct has been widely found and is deemed to have harmful secondary effects in places and communities where it takes place, including crimes of various types and reduction of property values, not only in the immediate vicinity, but on a community-wide basis." This argument was presented by lawmakers who sought to change the law after the Gilford case.[54] The legislature apparently firmly disagreed as the bill was unanimously defeated. The State's tourism has still managed to flourish.

To satisfy strict scrutiny, the ordinance must be the least restrictive means available.

If a less restrictive alternative would serve the [state]'s purpose, the legislature must use that alternative." *United States v. Playboy Entertainment Group,* 529 U.S. 803, 813 (2003) (citation omitted)." *State v. Zidel*, 156 N.H. 684 (2008).

Even if regulating morals could be a *compelling government interest,* the ordinance is not the "least restrictive means" to accomplish this goal. As already argued, Laconia could accomplish this by preventing everyone from displaying their nipple, not just females. There are other avenues the City could utilize to also lessen whatever the perceived harm is. For example, they could put a sign on the beach telling the public that topless sunbathing is legal (although Laconia's ordinance does apply everywhere and not the beach). This would put the public on notice of the behavior so they would be less outraged, scared, or whatever other feeling they might have.

[52] Id.
[53] While the Town of Gilford has a similar ordinance to Laconia, given the prior Order from Laconia District Court, it is unclear whether that ordinance is presently being enforced.
[54] https://www.rt.com/usa/334035-gop-lawmaker-nipple-bill/

In applying strict scrutiny, the United States Supreme Court stated in *Loving v. Virginia* that they "cannot conceive of a valid legislative purpose . . . which makes the color of a person's skin the test of whether his conduct is a criminal offense." Since New Hampshire holds sex discrimination to this same standard of scrutiny, the same rational applies here; one cannot conceive of a valid legislative purpose . . . which makes the sex of a person the test of whether her conduct is a criminal offense.

A law subject to strict scrutiny is presumed unconstitutional. *Bleiler v. Chief, Dover Police Dept., 927 A. 2d 1216, 1222 (2007)*

B: Even under intermediate scrutiny the ordinance is unconstitutional

The City Ordinance is unconstitutional under the Equal Protection clause of the 14th Amendment. Under federal law, sex/gender discrimination is subject to heightened intermediate scrutiny.

"The Court has explicitly devised a heightened scrutiny test by which to review gender-based classifications. Id. at 405. This test, first articulated in *Craig*, 429 U.S. at 197, requires that such classifications serve important governmental objectives and be substantially related to achieving those objectives. This new standard of review is the standard the Court now identifies as intermediate scrutiny. *Clark v. Jeter*, 486 U.S. 456, 461 (1988). Under this standard of review, the defender of the classification has the burden of demonstrating that its proffered justification is 'exceedingly persuasive.' *United States v. Virginia*, 518 U.S. 515, 533 (1996). To meet this 'demanding' burden, the government must demonstrate that its justification is 'genuine, not hypothesized or invented post hoc in response to litigation.' Id. Further, the government 'must not rely on overbroad generalizations.' Id. Federal courts apply this test for intermediate scrutiny to 'discriminatory classifications based on sex or illegitimacy.' Clark, 486 U.S. at 461." *Cmty. Res. for Justice v. City of Manchester*, 154 N.H. 748, 761 (2007). The burden rests with the government when intermediate scrutiny is involved. *Id*.

Even under this lower scrutiny, two Federal courts addressing this exact issue have issued favorable decisions to women who wish to exercise their rights to display their chest in the same manner as men.

In *Free the Nipple - Fort Collins v. City of Fort Collins, 2017 U.S. Dist. LEXIS 24648 (2017)*,[55] Free the Nipple—describing itself as an unincorporated association of individuals—challenged Fort Collins Ordinance No. 134. Which provides: "No female who is ten (10) years of age or older shall knowingly appear in any public place with her breast exposed below the top of the areola and nipple while located: (1) in a public right-of-way, in an natural area, recreation area or trail, or recreation center, in a public building, in a public square, or while located in any other public place; or (2) on private property if the person is in a place that can be viewed from the ground level by another who is located on public property and who does not take extraordinary steps, such as climbing a ladder or peering over a screening fence, in order to achieve a point of vantage."

Plaintiffs sought a preliminary injunction against enforcing the ordinance which was granted. The court granted the preliminary injunction finding "(1) a substantial likelihood of success on the merits of the case; (2) irreparable injury to the movant if the preliminary injunction is denied; (3) the threatened injury to the movant outweighs the injury to the other party under the preliminary injunction; and (4) the injunction is not adverse to the public interest."

The court applied heightened scrutiny to the Equal Protection claim based upon federal law as it relates to sex discrimination. The court cited *Miss. Univ. for Women v. Hogan, 458 U.S. 718, 726 (1982)* (explaining that "[t]he purpose" of intermediate scrutiny is to make sure that sex-based classifications are based on "reasoned analysis rather than . . . traditional, often inaccurate, assumptions about the proper roles of men and women").

[55] Order Attached as Exhibit G. Appendix pg 32. As of the date of filing this brief, Defense counsel believes this case is presently under appeal and ongoing

Fort Collins claimed the ordinance was "necessary in order to maintain public order and to protect children."

The court dismissed these arguments finding it amounted to "little more than speculation." "The constitutional issue is whether there is such a threat to public order that it rises to the level of an important government interest. Frankly, without any significant evidence on this point, I'm skeptical that it does. Rather, it appears that underlying Fort Collins's belief that topless females are uniquely disruptive of public order is the same negative stereotype about female breasts that I discuss in more depth later—namely, that society considers female breasts primarily as objects of sexual desire whereas male breasts are not."

"Nor has Fort Collins provided any meaningful evidence that the mere sight of a female breast endangers children. The female breast, after all, is one of the first things a child sees. Of course, those are very young children, but children of any age might come upon a woman breastfeeding a child and see a naked breast. Yet no one suggests that they are harmed by that experience. Indeed, public \ breastfeeding is permitted by Colorado law. *See C.R.S. § 25-6-302* ("A mother may breast-feed in any place she has a right to be."). It seems, then, that children do not need to be protected from the naked female breast itself but from the negative societal norms, expectations, and stereotypes associated with it." *Id*. 8-9.

This issue was also addressed in *Free the Nipple-Springfield Residents Promoting Equality. v. City of Springfield*, 153 F.Supp.3d 1037 (W.D.Mo. 2015). In that case, "Springfield (''Defendant'') criminalized by ordinance ''the showing of the female breast with less than a fully opaque covering of any part of the nipple" (which happens to be the exact language used by Laconia). Plaintiffs sued to prevent enforcement of the ordinance. Springfield filed a motion to dismiss which was denied in part as it related to Equal Protection claims and 1st Amendment claims. The Court subsequently approved a preliminary injunction against the ordinance being enforced by agreement of the parties. (See Attached Exhibit H. Appendix pg 48)

New York has also upheld the rights of women to appear topless along with men:

> "Although protecting public sensibilities is a generally legitimate goal for legislation *(see, e.g., People v Hollman, supra),* it is a tenuous basis for justifying a legislative classification that is based on gender, race or any other grouping that is associated with a history of social prejudice *(see, Mississippi Univ. for Women v Hogan, 458 US 718, 725* ["(c)are must be taken in ascertaining whether the statutory objective itself reflects archaic and stereotypic notions"]). Indeed, the concept of "public sensibility" itself, when used in these contexts, may be nothing more than a reflection of commonly held preconceptions and biases. One of the most important purposes to be served by the Equal Protection Clause is to ensure that "public sensibilities" grounded in prejudice and unexamined stereotypes do not become enshrined as part of the official policy of government. Thus, where "public sensibilities" constitute the justification for a gender-based classification, the fundamental question is whether the particular "sensibility" to be protected is, in fact, a reflection of archaic prejudice or a manifestation of a legitimate government objective *(cf., People v Whidden, 51 NY2d 457, 461)*." *People v. Santorelli, 80 N.Y.2d 875*, 880, (1989).

C: Equal protection violations have even been held invalid under the lowest level of scrutiny

Discriminating based upon morals might not even survive a rational basis test. "A law branding one class of persons as criminal based solely on the State's moral disapproval of that class and the conduct associated with that class runs contrary to the values of the Constitution and the Equal Protection Clause, under any standard of review." *Lawrence*, 539 US at 585 (O'Connor Concurring). See also generally *United States v. Windsor*, 133 S. Ct. 2675 (2013).

The United States' Supreme Court's recent decision on marriage equality recognizing same-sex couples right to marry is further evidence of evolving social norms of equality where the court will not hesitate to step in and declare a law unconstitutional. In *Obergefell et al. v. Hodges*, Decided June 26 2015, the Court held:

> "Outlaw to outcast may be a step forward, but it does not achieve the full promise of liberty.
>
> This dynamic also applies to same-sex marriage. It is now clear that the challenged laws burden the liberty of same-sex couples, and it must be further acknowledged that they abridge central precepts of equality. Here the marriage laws enforced by the respondents are in essence unequal: same-sex couples are denied all the benefits afforded to opposite-sex couples and are barred from exercising a fundamental right. Especially against a long

history of disapproval of their relationships, this denial to same-sex couples of the right to marry works a grave and continuing harm. The imposition of this disability on gays and lesbians serves to disrespect and subordinate them. And the Equal Protection Clause, like the Due Process Clause, prohibits this unjustified infringement of the fundamental right to marry." *Obergefell v. Hodges*, 135 S. Ct. 2584 pg 22 (2015).

II. THE COURT ERRED BY DENYING DEFENDANT'S MOTION TO DISMISS WHERE THE CITY ORDINANCE VIOLATES DEFENDANT'S RIGHT TO FREEDOM OF SPEECH AND EXPRESSION UNDER THE STATE AND FEDERAL CONSTITUTION

"**[Art.] 22. [Free Speech; Liberty of the Press.]** Free speech and liberty of the press are essential to the security of freedom in a state: They ought, therefore, to be inviolably preserved."

Under the 1st Amendment to the Federal Constitution, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

By appearing topless in public, defendant engaged in speech and expression deserving of constitutional protection. Defendants were not just utilizing their right to be topless under state law, but to demonstrate to others her political viewpoint and message that the female nipple is not a sexual object. Defendants' message further seeks to bring attention to gender equality and how the female nipple is treated different than the male nipple both legally and for social norms. Defendants' message seeks to continue the advancement of women's rights and to have the conduct of being topless be accepted and normalized.

Artistic endeavors involving nudity as part of their expression such as the musical *Hair* have been accorded *First Amendment* protection. *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 550, 557-558 (1975). The Supreme Court has held that "[nudity] alone does not place otherwise protected material outside the mantle of the First Amendment." *Schad v. Mt. Ephraim*, 452 U.S. 61, 65-66 (1981); *see also Brandt v. Bd. of Educ. of City of Chicago*, 480 F.3d 460, 465 (7th Cir. 2007) ("[P]arading in public wearing no clothing at all can, depending on the circumstances, convey a political message").

Moreover, “when nudity is combined with expressive activity, its stimulative and attractive value certainly can enhance the force of expression[.]” *Barnes v. Glen Theatre*, 501 U.S. 560, 581 (1991) (Souter, J., concurring). And that is true in this instance, Defendants toplessness during their protest enhances the force of their expression. Defendants toplessness is an integral part of the emotions and thoughts that their protest wishes to evoke on its viewers. The sight of a fully clothed protester generally will have a far different impact on a spectator than that of a topless protester. “The nudity is itself an expressive component of the [protest], not merely incidental ‘conduct.’” *Barnes*, 501 U.S. at 592.

This message/movement was likely recognized given the significant media coverage[56] as well as through any discussions defendant may have had with the City of Laconia and their police department[57].

The expression of the female nipple also contains artistic value and accordingly is not considered obscene. To be considered obscene and outside of first amendment protections, "the Government must prove that the work, taken as a whole, appeals to the prurient interest, is patently offensive in light of community standards, and lacks serious literary, artistic, political, or scientific value." *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 246 (2002) (citing *Miller v. California*, 413 U.S. 15, 24 (1973)).

> "The First Amendment commands, `Congress shall make no law . . . abridging the freedom of speech." *Ashcroft*, 535 U.S. at 244. "As a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear." *Id.* at 245. "[A] law imposing criminal penalties on protected speech is a stark example of speech suppression." *Id.* at 244. If a statute regulates speech based upon its content, application of the statute is subject to strict scrutiny. *Playboy Entertainment Group, Inc*., 529 U.S. at 813; *see Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989). This places the burden upon

[56] See footnote 3

[57] Laconia Police also referenced the Free the Nipple Protest numerous times in their enforcement documents (See attached Exhibit I. Appendix pgs 50-60)

> the State to prove that the statute is "narrowly tailored to promote a compelling [state] interest. If a less restrictive alternative would serve the [state]'s purpose, the legislature must use that alternative." *Playboy Entertainment Group*, 529 U.S. at 813 (citation omitted)." *Zidel*, 940 A. 2d 255, 257.

Similarly to Equal Protection prohibitions, moral outrage is no basis for restrictions on speech. See *Texas v. Johnson*, 491 U.S. 397 (1989), (Flag burning case); also *Cohen* holding "Fuck the draft" is constitutionally protected *Cohen v. California*, 403 U.S. 15 (1971). Burning a flag and displaying the language "fuck the draft" in a courthouse are possibly more likely to offend a person of average sensibilities as is the non-sexual display of a female nipple at the beach.

To the extent the complaining witnesses were the ones harassing one of the topless women and creating a scene, the First Amendment also offers protection against what is referred to as a "heckler's veto." "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. In public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment." Startzell v. City of Philadelphia, 533 F.3d 183, 200 (3d Cir. 2008). "A heckler's veto is an impermissible content-based restriction on speech where the speech is prohibited due to an anticipated disorderly or violent reaction of the audience." *Id.*

Exercising free speech and free expression are fundamental rights. *In re Brooks*, 140 N.H. 813 (1996). "Strict scrutiny is the correct standard to apply when determining the constitutionality of a statute that touches upon a fundamental right. *In re Sandra H.*, 150 N.H. 634, 638 (2004).

Time, place, and manner analysis is not appropriate for the Laconia ordinance as it is a content-based restriction on Defendants' expressive activity. Further, the regulation is not restricted to a certain time as it is always in effect. It is not a place regulation since it regulates everywhere in public in Laconia (which is a valid public forum under 1st Amendment). Strict scrutiny analysis as used in *Texas v. Johnson* 491 U.S. 397 (1989), is the appropriate standard.

A: Laconia is Engaged in Impermissible Viewpoint Discrimination / Content Based Regulations

Laconia's ordinance constitutes viewpoint discrimination / Content based discrimination in numerous ways. First, someone violates the ordinance by displaying their nipple but not when covering their nipple. Accordingly, Laconia will allow someone to convey the message they do not support women being topless, while prohibiting women from demonstrating the same thing. Second, in regard to promoting a message of equality, the ordinance allows men to promote that message but not women by displaying their nipple. The ordinance criminalizes some instances of toplessness, but not others, based on each instance's function or purpose, *see, e.g., Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015). It criminalizes certain speakers, but not others, for engaging in identical expressive conduct, s*ee, e.g., Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622, 658 (1994).

Laconia prohibits defendants conduct presumably to keep other from being offended, outraged, upset, etc. A law that criminalizes one person's speech based on another person's reaction is the very definition of content based. *See McCullen v. Coakley*, 134 S. Ct. 2518, 2531 (2014) (holding that a law "would not be content neutral if it were concerned with undesirable effects that arise from 'the direct impact of speech on its audience'") (quoting *Boos v. Barry*, 485 U.S. 312, 321 (1988)); *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134 (1992) ([l]isteners' reaction to speech is not a content-neutral basis for regulation"); *Johnson*, 491 U.S. at 412 (holding that this principle applies to expressive conduct; a statute regulating flag desecration was content based because it punished the expressive conduct based on "the emotive impact of [the] speech on its audience").

The Court always uses strict scrutiny to analyze restrictions based on viewpoint.

> "It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96 (1972). Other principles follow from this precept. In the realm of private speech or expression, government regulation may not favor one speaker over another. *City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984). Discrimination against speech because of its message is presumed to be unconstitutional. *See Turner Broadcasting System, Inc.* 512 U. S. 622. When the government targets not subject matter but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. *See R. A. V. v. St. Paul*, 505 U.S. 377, 391 (1992). Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the

specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction. *See Perry Ed. Assn. v. Perry Local Educators' Assn*., 460 U.S. 37, 46 (1983)." *Rosenberger v. University of Va*., 515 U.S. 819, 828-29 (1995).

Any content based restriction is presumptively invalid. *RAV v. St. Paul*, 505 US 377, 382 (1992)

In *Mosley*, the United States Supreme Court struck down a city ordinance as an unconstitutional content-based restriction on free speech because it permitted certain groups to protest but not others. *Police Department of City of Chicago v. Mosley*, 408 U.S. 92 (1972).

B: Laconia's Ordinance regulates speech in a public forum

The Defendant's mode of communication involved a public forum. It is well settled first amendment law that public places or "traditional public forums" afford the most first amendment rights.

"It is no accident that public streets and sidewalks have developed as venues for the exchange of ideas." *McCullen*, 134 S. Ct. at 2529; *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939) ("Wherever the title of streets and parks my rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."). Accordingly, "the government's ability to restrict expression in such locations is very limited." *McCullen*, 134 S. Ct. at 2529 (internal quotation omitted).

C: The Defendants' Speech Does Not Fall Into Any Unprotected Category

If the government wishes to have the Defendant's speech unprotected or less protected, they have the burden of showing it is in one of very few unprotected categories, ie. Obscenity or fighting words.

While Laconia may argue the female nipple is obscene, this is both factually and legally inaccurate. If the female nipple were obscene, New Hampshire would not allow women to breastfeed in public [58]. Further, the male nipple would also be obscene as it is essentially identical to the female nipple.

Another problem related to enforcement of the ordinance regarding a female nipple being obscene or causing moral outrage relates to how the ordinance would apply to certain classes of females.

Presumably, Laconia would not be enforcing the ordinance against pre-pubescent females[59]. Yet the visible surface of their female nipples would essentially be identical to a post-pubescent female. It is also questionable if the City would be enforcing the ordinance against a female who had a double mastectomy who essentially lacks any breast tissue even if their nipples were exposed.

The officers did testify that they enforce the statute based upon sex and not gender. Officer Callanan specifically responded to defense counsel's inquiry: "Q: So you don't actually inquire into anyone's gender during this, correct? You're basing it solely on -- or you would consider their natural born sex, male or female?

A Their natural born sex, yes."[60]

If a transgendered person who is transitioning from male to female is taking hormones or even had elective breast enhancement, their breasts would essentially visibly appear as a female's.

[58] N.H. RSA 132:10-d specifically allows breastfeeding in public. Laconia's ordinance does not make any exception for breastfeeding. None of the involved defendants were breastfeeding at the time of arrest, so it is unclear whether Laconia would attempt to enforce their ordinance against a breastfeeding female. As any breastfeeding exemption would not apply to the defendants, they are not seeking to invalidate the ordinance for its failure to exempt breastfeeding.

[59] Although the ordinance does not have an age exception or exception for pre-pubescent females, given the intent behind the ordinance it is doubtful Laconia intends to prohibit babies and young children from displaying their nipples.

[60] T at 64.

Yet, the officers could not arrest that person, and would unarrest that person if they found out they were biologically a male[61].

On the contrary, a female who is transitioning to a male and who takes hormones, dresses or looks like a male might traditionally look, or even has elective surgery to remove breast tissue would likely not be cited under this ordinance if people could not tell that person is biologically male. Yet, their female nipple would still be identical to their nipple before their transition.

While officers can make an educated guess as to someone's biological sex based upon their outward appearance, it is impossible for an officer to distinguish a male nipple from a female nipple[62].

A nipple is not inherently obscene. In *Cohen*, the Defendant was charged with knowingly disturbing the peace through offensive conduct. The Defendant's action was solely wearing a jacket in a courthouse that said "Fuck the draft". The Court specifically held "This is not, for example, an obscenity case" *Cohen*, 403 U.S. 15, 20 (1971) The court held that to be obscene it must be "in some significant way erotic" *Id.* Here, defendants were not engaged in any sort of erotic or sexual behavior. The mere display of a female nipple in itself is not obscene.

The Supreme Court has ruled that even expression "which is sexually oriented but not obscene is fully protected by the Constitution." *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 78 (1973). Defendants' speech is not even sexually oriented; it is protesting the sexual orientation that is ascribed to women's bodies by men. It is protected expression.

III. THE COURT ERRED BY DENYING DEFENDANT'S MOTION TO DISMISS WHERE THE CITY ORDINANCE IS NOT PERMISSIBLE UNDER STATE LAW BECAUSE IT LACKS AN ENABLING STATUTE

Under state law, it is legal for women to be topless/display their nipple in public. As New Hampshire is not a "Home Rule" state, towns and cities can only pass laws that the legislature gives them permission to pass.

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[61] T at 46.

[62] http://www.dailymail.co.uk/femail/article-4011576/Can-tell-male-female-Genderless-Nipple-account-Instagram-challenges-double-standard-app-s-anti-nipple-policy-close-ups-men-women.html

> "...towns are but subdivisions of the State and have only the powers the State grants to them." *Piper v. Meredith*, 110 N.H. 291 (1970). Further, "[u]nder our State Constitution '(t)he supreme legislative power...(is) vested in the senate and house of representatives ....' N.H. Const. pt. II, art. 2. See also N.H. Const., pt. I, art. For these reasons, we have held that the towns only have 'such powers as are expressly granted to them by the legislature and such as are necessarily implied or incidental thereto.'" *Girard v. Allenstown*, 121 N.H. 268, 270 - 71 (1981).

Unlike some states, New Hampshire does not have any law criminalizing the public display of the female nipple or breast.

The legislature did not pass any enabling legislation to allow Laconia to prohibit the mere display of a person's nipple in public. To the extent the City may rely on RSA 47:17 II, that language cannot be interpreted in a way that is overbroad and invades constitutional rights of Equal protection and Free Speech / Expression. The purpose of the overbreadth doctrine is to protect those persons who, although their speech or conduct is constitutionally protected, "may well refrain from exercising their rights for fear of criminal sanctions by a statute susceptible of application to protected expression." *New York v. Ferber*, 458 U.S. 747 (1982) (quotation omitted) as cited by *State v. Brobst*, 151 N.H. 420, 422 (2004).

A criminal statute is unconstitutionally overbroad when it unnecessarily invades the area of a protected freedom. *See State v. Pike*, 128 N.H. 447, 450-51 (1986).

The mere display of a nipple does not meet the criteria of RSA 47:17 II. If it did, Laconia would have prohibited *all* nipples from being displayed in public.

Further, RSA 47:17 XIII cannot be read so broadly as to enable Laconia's ordinance. Again, if the mere display of a nipple in a non-sexual manner was obscene or immoral, then Laconia would have banned all nipples. As women can breastfeed and presumably not be in violation of the

ordinance (particularly where State law specifically says they can), it is clear even a female nipple is not in itself immoral or obscene.

The language in N.H. RSA 47:17 XIII that may apply to clothing worn by bathers and swimmers is inapplicable as Laconia chose to ban the display of the female nipple everywhere in public. They were not concerned with bathers or swimmers.

The court can look to legislative intent to further conclude the language does not encompass what Laconia wishes to do. In 2016, in direct response to females appearing topless in public, a bill was put forth in the legislature to expand RSA 47:1 XIII to include:

XIII. Vagrants, Obscene Conduct. To restrain and punish vagrants, mendicants, street beggars, strolling musicians, and common prostitutes, and all kinds of immoral and obscene conduct, and to regulate the times and places of bathing, sunbathing, and swimming in the canals, rivers and other waters of the city, **or other city properties**, and the clothing to be worn by [bathers and swimmers] users. **Nothing in this paragraph shall authorize a city to prohibit breastfeeding in such city properties** (Text in bold is the submitted change to the law and text in brackets would have been removed). This bill was defeated in the house[63].

Finally, RSA 47:17 XV includes language: "They may make any other bylaws and regulations which may seem for the well-being of the city; but no bylaw or ordinance shall be repugnant to the constitution or laws of the state". That phrase cannot be read so broadly as to allow this ordinance. The sentence should not be interpreted as allowing *anything*, otherwise the rest of Chapter RSA 47:17 would be unnecessary. It would also turn New Hampshire into a "home rule" state as far as it applies to Cities. The Court must "interpret a statute in the context of the overall statutory scheme and not in isolation." *State v. Langill*, 157 N.H. 77, 84 (2008).

In looking at recent legislative history, it is very clear the legislature does not want to either prohibit women from appearing topless in public or providing authority to towns or cities to prohibit women from appearing topless in public. After Hon. Carroll issued his order finding the similar Gilford ordinance unenforceable due to lack of authority, there were two bills proposed to the legislature to allow towns and cities to prohibit female toplessness. (HB 1525-FN would

[63] See attached Exhibit C Appendix pg. 10

have added female breasts to the public indecency statute and SB 347 would allow government subdivisions to regulate sunbathing while prohibiting breastfeeding). The House resoundingly defeated and criticized both bills[64].

IV. EVEN IF AN ENABLING STATUTE DOES AUTHORIZE THE CITY ORDINANCE, IT IS STILL UNLAWFUL THROUGH PRE-EMPTION, CONTRART OR INCONSISTENT TO OTHER STATE LAW, OR REPUGNANT TO THE STATE CONSTITUTION

> "(S)tate law prempts local law also when there is an actual conflict between State and local regulation." *North Country Environmental Services, Inc. v. Town of Bethlehem*, 150 NH 606, 611 (2014). "A conflict exists when a municipal ordinance or regulation permits that which a State statute prohibits or vice versa. "(Citing *North Country v. Bethlehem,* 150 NH 606) *Town of Carroll v. William Runes*, 164 NH 523, 528 (2013). Such is the case in the present matter.
>
> "(t)he preemption doctrine flows from the principle that municipal legislation is invalid if it is repugnant to, or inconsistent, with State law. *Arthur Whitcomb, Inc. v. Town of Carroll*, 141 NH 402, 406 (1996). Municipal legislation is therefore preempted if it expressly contradicts State law of 'runs counter to legislative intent underlying a statutory scheme" *Casciso, Inc. v. City of Manchester*, 142 NH 312, 315 (1997).
>
> Moreover, even when a local ordinance does not expressly conflict with a State statute, it will be preempted when it frustrates the statute's purpose. *Id.*" *Forster v. Town of Henniker*, 167 N.H. 745, 756 (2015).

The ordinance is pre-empted under **"**N.H. RSA 645:1 Indecent Exposure and Lewdness**. –**

I. A person is guilty of a misdemeanor if such person fornicates, exposes his or her genitals, or performs any other act of gross lewdness under circumstances which he or she should know will likely cause affront or alarm."

The court will "interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language it did not see fit to include" *State v. Hynes*, 159

[64] See House Committee Comments & House vote as discussed in Statement of Facts

N.H. 187, 193 (2009). Further, subsequent legislative attempts to broaden this statute or to allow the towns and cities authority to regulate female toplesness have been defeated.

The ordinance is also preempted under N.H. RSA 354-A[65].

Finally, local ordinances cannot "be repugnant to the constitution of the State." *Dover News Inc. v. City of Dover*, 117 N.H. 1066 (1977). Even if something in RSA 47:17 did allow Laconia to prohibit someone from displaying their nipple, the legislature certainly didn't authorize the city to prohibit the conduct for women and not men. Any such law, as discussed, is repugnant to the State Constitution and specifically prohibited under RSA 354-A.

V. THE COURT ERRED BY DENYING DEFENDANT'S MOTION TO DISMISS WHERE THE CITY ORDINANCE VIOLATES N.H. RSA 354-A

Defendants have a statutory right to not be discriminated against in public by the City of Laconia.

N.H. RSA 354-A:1 Title and Purposes of Chapter holds:

> This chapter shall be known as the "Law Against Discrimination." It shall be deemed an exercise of the police power of the state for the protection of the public welfare, health and peace of the people of this state, and in fulfillment of the provisions of the constitution of this state concerning civil rights. The general court hereby finds and declares that practices of discrimination against any of its inhabitants because of age, sex, race, creed, color, marital status, familial status, physical or mental disability or national origin are a matter of state concern, that such discrimination not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants…

While Laconia' ordinance's purpose specifically states it is for "upholding and supporting public health, public safety, morals and public order", the legislature has expressly mandated the opposite to be true. Discriminating upon sex "threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and

[65] See Section V of this brief.

threatens the peace, order, health, safety and general welfare of the state and its inhabitants" N.H. RSA 354-A:1.

Laconia lacks the authority to just declare the opposite is true in order to validate an unlawful ordinance.

Laconia's ordinance is violating defendants Civil Rights. N.H. RSA 354-A:16 mandates:

> The opportunity for every individual to have equal access to places of public accommodation without discrimination because of age, sex, race, creed, color, marital status, physical or mental disability or national origin is hereby recognized and declared to be a civil right…

Further, The Law Against Discrimination is to be construed liberally to accomplish its purpose. See N.H. RSA 354-A:25.

> In matters of statutory interpretation, we are the final arbiter of legislative intent as expressed in the words of the statute considered as a whole. See Crowe, 148 N.H. at 224. We first examine the language of the statute and ascribe the plain and ordinary meanings to the words used. See id. "[W]hen a statute's language is plain and unambiguous, we need not look beyond it for further indication of legislative intent, and we refuse to consider what the legislature might have said or add language that the legislature did not see fit to incorporate in the statute." In re Baby Girl P., 147 N.H. 772, 775 (2002). "Furthermore, we interpret statutes in the context of the overall statutory scheme and not in isolation." In the Matter of Coderre & Coderre, 148 N.H. 401, 403 (2002) (quotation omitted). *In the Matter of Watterworth & Watterworth*, 149 NH 442, 445 (2003)

Under RSA 354-A, a town or city cannot exclude someone from being on public property based solely on that person's sex/gender. Yet, that is precisely what this ordinance accomplishes. The ordinance makes it illegal to be a topless female in public while allowing a male to be topless in public. There is no applicable exception to regulate conduct based upon sex. Accordingly, Laconia is in violation of the Law Against Discrimination and the ordinance should be struck down.

CONCLUSION

For the foregoing reasons, Defendants ask this court to vacate their conviction by invalidating City of Laconia Ordinance Ch. 180-2 and Ch. 180-4 as it applies to prohibiting display of the female nipple in public.

REQUEST FOR ORAL ARGUMENT

Defendants request fifteen minute oral argument before the full Court.

Respectfully Submitted,

_____

Dan Hynes
Liberty Legal Services
212 Coolidge Ave.
Manchester, NH 03102
(603) 583-4444
Bar #17708

CERTIFICATION

I hereby certify that two copies of the brief and exhibits will be forwarded to the Attorney General , 33 Capitol St. Concord, NH 03301 & NH ACLU on this day, July 24, 2017 by first class mail.

_____

Dan Hynes
Liberty Legal Services
212 Coolidge Ave.
Manchester, NH 03102
(603) 583-4444
Bar #17708

APPENDIX

Ex. A. Order from St of New Hampshire v. Heidi Lilley & Barbara Mackinnon #2015-CR-2800,2801

Ex. B. Order from State of New Hampshire v. Barbara MacKinnon #2016-0197

Ex C. HB 1525-FN (2016) Bill Status

Ex. D. SB 347 (2016) Bill Status

Ex. E. Defendant's motion to dismiss in *State of New Hampshire v. Heidi Lilley, Kia Sinclair, Ginger Pierro* Docket #450-2016-CR-1603,1623,1879

Ex. F. Order from *State of New Hampshire v. Heidi Lilley, Kia Sinclair, Ginger Pierro* Docket #450-2016-CR-1603,1623,1879

Ex G. Order from Free the Nipple - Fort Collins v. City of Fort Collins, 2017 U.S. Dist. LEXIS 24648

Ex H. Order Granting Plaintiff's Motion for Preliminary Injunction Free the Nipple Springfield v. City of Missouri Case No 15-3467-CV-S-BP

Ex I. Minutes from Laconia City Council June 13, 2016

Ex J. Laconia Police Memoranda Regarding Free the Nipple

Ex K. Guilty Findings & Sentencing for Sinclair, Lilley, Pierro

Copy of appealed decision denying Defendants motion to suppress and subsequent conviction

BELKNAP, SS. 4TH CIRCUIT COURT-DISTRICT DIVISION
LACONIA

STATE OF NEW HAMPSHIRE

V.

HEIDI LILLEY, KIA SINCLAIR, GINGER PIERRO

DOCKET #450-2016-CR-1603, 1623, 1879

ORDER

The parties appeared October 14, 2016, with counsel in response to the Defendants' Motion to Dismiss.

At issue is Laconia, NH Ordinances Chapter 180, s. 4 (1998). The Ordinance defines "Nudity' and prohibits "the showing of the female breast with less than a fully opaque covering any part of the nipple..." where the action occurs at "any public street, way, alley, parking area, park, common, beach or other property or public institution of the City."

The basis of the prohibition was intended to exclude 'harmful secondary effects in places and communities where it takes place- that is, crimes of various types and the reduction of property values wherein recreation and tourism have high profiles'.

The Defendants argue that substantive Constitutional rights prohibit the legislating sanctions for the Defendants' conduct. The State asserts that the legislature has empowered local municipalities through RSA 41 with the authority to police the activities which the entity finds detrimental to their communities.

"But while general statutes must be enacted by the legislature, it is plain the power to make local regulations, having the force of law in limited localities may be committed to other bodies representing the people in their local division, or to the people of those districts themselves. Our whole system of local government in cities, villages, counties and towns, depends upon that distinction. The practice has existed from the foundation of the state, and has always been considered a prominent feature in the American system of government." ***Marine Corps League v. Benoit***, 96 NH 423; ***State v. Roger,*** 105 NH 366", ***State v. Grant***, 107 NH 1, 3 (1965).

The present associated cases are reasonably, similar factually to several cases that involved the township of Gilford earlier. In that matter, the Court

25

reviewed the Defendants' line of claims which are analogously aligned in the present series of cases.

The Defendants argue that "(D)efendant's(s') conduct involved expression and political speech and has artistic value". (Motion to Dismiss).

Facts:

Gina Peirro testified that she went to Weirs Beach to enjoy the day. She was topless and her breasts were fully exposed. She was doing Yoga on the beach. She asserted that she was not nude.

She described being violently harassed by other beach goers. She testified that she bothered no one. She described one woman with a 3 year old who was not bothered by her dress. However, she described a 'handful' of individuals who were upset with the display.

She acknowledged that there was a male photographing her as she exercised. There was no identification, as to the connection or lack thereof, of the photographer. She acknowledged that people were staring at her as she exercised. She indicated that there were children as well as elderly at the beach on that date.

The Defendant Kia Sinclair testified that she had joined the "Free the Nipple" movement in 2015. She expressed concern for the public's stigmatizing and sexualizing the female breast. She believed that the sexualization of the female breast, as if pornographic, led to less women breast feeding their infants.

She described herself purposely exposing herself so as to be arrested. She indicated that she was 'publicly protesting Ginger's arrest' for exposing her breasts.

She described arriving at the beach at the Weirs, going swimming topless and then sunbathing on her stomach. When the officer approached her and asked her to cover herself or she would be arrested, she asked to be arrested.

Heidi Lilley testified to being involved in the "Free the Nipple" movement since May 2015. She indicated that she has attempted to change the public and government's view of the exposure of the female breast. She indicated that she had appeared in front of the City's Council, the elected body that administers the community. She indicated that she had testified before the legislature and, specifically, a House Committee, reviewing proposed legislation to authorize communities to respond the Gilford situation upon which the Court has been

previously ruled. She indicated that the NH Legislature declined to pass such legislation.

She described supporting the other Defendant, particularly, Ms. Pierro. She expressed concern for the enforcement through arrest of Ms. Pierro who was civilly protesting.

She indicated that she was not approached by anyone. She acknowledged that she was aware of the city statute and aware that her actions violated the City Ordinance. She acknowledged activating social media in her efforts to reverse the ordinance which had been in effect since 1998.

The State called Sgt. Black who reported receiving a number of complaints of 'nude yoga' on Weirs Beach on May 28. He was examined as to his ability to recognize the difference between the female and male breast.

He testified to responding to the Weirs and, particularly, the Endicott Parking Lot. He indicated that the response did not call for emergency lights or sirens.

He observed numerous families on the beach. He observed a topless female performing yoga on a beach towel and a male photographing her. He was able to identify the female. He indicated that he assigned Officer Callahan to assist him.

He reported his observations as to the state of clothing worn by the Defendants as well as the activities of the various Defendants. The officer noted his observations as to the surrounding environment on the date of the Defendants' alleged activities.

Officer Callahan also testified as to her response to the area and interaction with the Defendants and others on the beach on that date.

Sandra Smith, who is Easter Seals chaperone of disabled clients, and Ian Davis, a citizen enjoying the day at the beach with his family, testified as to their observations, concerns, and reservations as to the Defendants' actions that day.

Equal Protection:

The Defendants argue that their appearance topless as alleged in the complaints were "enjoyed'(enjoined) from the value of the right afforded to males under the town(city) ordinance, but also engaged in promoting an idea and message." (Defendants' Motion to Dismiss.)

The Defendants' argue that their prosecutions, based upon the alleged violations of their 'due process/equal protection clause of the US Constitution as well as Article I and Article 2 of the NH Constitution', are impermissible.

Arguing the ordinance's violation of their equal protection expectations by ordaining a gender/sex based regulation and, therefore, gender discrimination, the Defendants urge that the Court must apply Strict Scrutiny standard of review, the highest and strictest standard of review of legislation in Judicial Review. In doing so, the Defendants would be arguing that, if the Court finds a violation of the Defendants' equal protection guarantees, the Court must require the State to establish a Compelling Interest in the regulation.

The Court must, first, find that the ordinance violates the right of Equal Protection, that is, that all persons similarly situated are to be treated equally. In the present matter, the ordinance ordains that all women who wish to be, present in "public place" which includes "(a)ny public street, way, alley, parking area, park, common, ***beach*** or other property or public institution of the City" must properly clothed. (Emphasis added.)

The Court finds that the regulatory powers of the city are designated in RSA 47:17, XIII, in regulating "times and place of bathing and swimming in... the water of the city and the clothing to be worn by bathers and swimmers". That authorizing legislation is consistent with the cited, Judicial recognition of ***State v. Grant*** and its progenies. The Court finds that RSA 47:17, XIII is only prohibited when it is "repugnant to the constitution and law of the state". ***Dover News, Inc., v. City of Dover***, 117 NH 1066, 1069 (1977).

The Defendants' urge the Court adopt a continuation of its Gilford ruling as the legislature has recently declined to remedially address what was perceived as flawed Judicial ruling. Analogously, ***Dover News, Inc.*** cited the failure to enact "is not legislative action in this area..." ***Dover***, 1069.

This subject ordinance creates no violation of the Equal Protection clause as it treats all females equally. There is, albeit, an omission of males to the ordinance; however, the ordinance on its face creates no classification as to the female body. The Court finds that the proper standard of review is intermediate. The Court finds that the governmental regulation is well established by case law and legislative empowerment of municipalities.

"Protecting the public sensibilities is an important government interest based on an indisputable difference between the sexes. (Which the Defendants argued was not indisputable.) Further, the prohibition against females baring their breasts in public, although not offensive to everyone, as shown by the testimony of all three witnesses in this cases, is still seen by society, as unpalatable.

Therefore, the ordinance does not violate the Equal Protection Clause of the Fourteenth Amendment.

"We agree. Restrictions on exposure of the female breast are supported by the important governmental interest in safeguarding the public's moral sensibilities, and this ordinance is substantially related to that interest. Hence, the ordinance satisfies both the deferral and state tests for equal protection.

A gender-based distinction challenged under the Equal Protection Clause of the United States Constitution is gauged by the so-called 'intermediate level of scrutiny: the distinction must be justified by an important governmental interest that is substantially accomplished by the challenged discriminatory means. ***United States v. Morrison***, 529 US 598, 620 (2000)..." ***State of New Jersey v. Arlene E. Vogt*** 775 A.2d. 551, 557 (2001)

The ordinance does not limit the use of the public accommodation by discriminating against individual by gender thereby restricting the access of the public property. ***Franklin Lodge of Elks v. Sally Marcoux*** 149 NH 581, 587 (2003). The ordinance prohibits conduct at that public accommodation. That regulation has been found to be validated by the statutory authorization.

Free Speech/Expression/Artistic Expression:

"It is established, of course, that the 14th Amendment, is made applicable to the State's 1st Amendment guaranteed of free speech." ***Douglas v. City of Jeannette*** 319 US 157, 162 (1943)

The Defendants argue that their rights to the freedom of their expression are being violated. The Defendants argue that their appearance topless in public in the manner alleged constituted action of expressions. They further argue that such action was intended to "demonstrate to others her (their) political viewpoint and message that the female is not a sexual object." (Defendant's Motion to Dismiss).

The Defendants testified that they were seeking the normalization of the human body.

"As a general rule, in such a forum, the government may not selectively...shield the public from some kinds of speech on the ground that they are more offensive than others..." "The plain, if at times, disquieting truth is that, in our pluralistic society, constantly proliferating new and ingenious forms of expression, 'we are inescapably captive audiences from many purposes." ***Erznoznik v. City of Jacksonville***, 422 US 205, 209-210 (1975). "No one would suggest that the First Amendment permits nudity in public places.." ***Erzoznik***, supra 211.

In the present cases, the Defendants' actions are being presented in 'pubic areas' as defined by the ordinance.

The Defendants further argue that their actions are protected as 'artistic endeavors' as articulated in the Supreme Court's protection of the musical ***Hair.***

"(I)nvariably, the Court has been obliged to condemn systems in which the exercise of such authority was not bounded by precise and clear standards. The reasoning has been, simply, that the danger of censorship and of abridgement of our precious First Amendment freedoms, too great where officials have unbridled discretion over a forum's use. Our distaste for censorship—reflecting the natural distant of a free people- is deep written in our law." ***Southeastern Promotions Ltd. v. Conrad***, 420 US 546, 554 (1975).

In ***Conrad***, the production was disputing the municipality prohibiting and/or limiting access to municipally owned locales was, in actuality, an act of prior restraint. In the present case, the Defendants are not being prohibited from using the public property but ***in manner*** in which their demonstration is actioned. "(T)he basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule." ***Joseph Burstyn, Inc. V. Wilson***, 343 US 495, 503 (1952)

In the present ordinance, there is no evidence that the ordinance inhibited the effectiveness of their ability to express their opinion- there is no prohibition to where they might express their opinions. Their conduct was restricted but they were not prohibited from lobbying on the beach or with beach goers as to their agenda. The ordinance "leaves open ample alternative channels for communications..." ***Clark v. Community for Creative Nonviolence*** 468 US 288, 293 (1984) cited in ***McCullen v. Coakley***, 12-1168, June 26, 2014.

The ordinance does not attack the content of the message and thereby restrict the expressions of the Defendants. The ordinance is not content based but is conduct based which distinguishes the reach and the prohibitions and which defines the ordinance's relationship between the Defendants' Constitutional rights and the validity to protecting public sensibilities.

The Court further anticipates, though not articulated, the Defendants' argument that ***Southeastern*** establishes the artistic value of the female nipple. The argument is misplaced to ***Conrad*** as the case addresses the municipality's decision-making seeded in prior restraint in restricting the public forum in which the performance is allowed and, therefore, confines the free exercise of expression and not the content as artistic, and therefore expressive value.

In the present case, the prohibition of the exposure of the female nipple is found by the Court not to restrict impermissibly the Defendants' free speech. The Court finds that the ordinance is not impermissibly restrictive.

The Defendants' argument that there are alternative venues for those who object to the Defendants' crusade is also without merit. The area of prohibition is a public facility. Said locale is defined by statute, presumptively, due to the geographically limited nature of access to the lake. Further, the presence of children is valid consideration for the cited 'protection of public sensibilities'.

Conversely, there are ample alternatives for the Defendants to promote their views on the ordinance.

Further, not included within the Defendants' argument per se is an implied argument that there is violation of the Defendants' right of association under the First Amendment. "The plaintiffs are not, after all, prevented from advocating the concept of nude sunbathing (toplessness). I conclude, therefore nude (as defined by the ordinance) sunbathing is not constitutionally protected activity." ***South Florida Free Beaches v. City of Miami*** 548 F. Supp. 53, 57 (1982). "In short, while nudity in the privacy of one's own property and nudity in the context of artistic expression may be protected, it seems clear that nude sunbathing on a public beach is not a right of Constitutional dimensions." ***New England Naturalist Association Inc. v. Howard Larsen, et al.***, 692 F. Supp. 75,79 (1988)

Preemption:

For reasons cited above, the Court, as indicated in the case law cited above, finds that the subject ordinance is neither invalidated nor repugnant by legislative regulatory preemption in RSA 645:1. The Court finds that the validity of the regulatory action in the present is clearer than the former order of the Court in Gilford.

Motion to Dismiss is denied.

Date: November 20, 2016

Judge James M. Carroll

DOCKET #: 450-16-1623 CHARGE ID: 1244569C

COMPLAINT (VIOLATION ONLY)

☐ You **DO NOT** have to come to court. You **MUST** answer this complaint to the Department of Safety within (30) days from the date of issuance. DATE OF ISSUANCE: _____

TO AVOID ANY ADDITIONAL ADMINISTRATIVE FEES OR REINSTATEMENT FEES SEE REVERSE SIDE FOR INSTRUCTIONS AND PENALTY INFORMATION.

DEPARTMENT OF SAFETY
FINANCIAL RESPONSIBILITY SECTION
PO BOX 3838, CONCORD NH 03305
603-227-4010
http://www.nh.gov/payticket

DOCKET #: _____ CHARGE ID: _____

You must come to the court indicated listed at 0815 o'clock (AM) PM on July 25th yr 2016 to answer this complaint.

4th Circuit District Division – Laconia
DISTRICT COURT

26 Academy St.
STREET

Laconia NH 03246
TOWN/CITY STATE ZIP CODE

THE UNDERSIGNED COMPLAINS THAT THE DEFENDANT: (Please Print)

LAST NAME	FIRST NAME	MIDDLE INITIAL
SINCLAIR	Kia	A

141 Wild meadow Rd. Danbury NH 03230
ADDRESS CITY STATE ZIP CODE

12 29 91
DOB: MO DAY YR.

OP LICENSE #	STATE	CLASS

SEX	RACE	HEIGHT	WEIGHT	COLOR EYES	COLOR HAIR
F	W	5'4"	120	Brown	Red

LICENSE PRESENTED: ☐ YES ☐ NO

ON THE 31st DAY OF May YR 2016 AT 1256 AM PM

DID OPERATE M.V. REGISTRATION # _____ PLATE TYPE _____ STATE _____

MAKE _____ YR _____ TYPE _____

☐ COMMERCIAL VEHICLE ☐ HAZMAT ☐ 16+ PASSENGER

AT/LOCATION: Laconia, NH GPS _____

Upon a certain public highway, to wit - 17 Endicott North St

☐ at a speed greater than was reasonable and prudent under the conditions prevailing, to wit, at a rate of _____ m.p.h., the prima facia lawful speed at the time and place of violation being _____ m.p.h.
Contrary to RSA 265:60 ☐ Radar ☐ Aircraft ☐ Clocked ☐ Laser

☐ traveling at a rate of _____ m.p.h., the same being in excess of the maximum lawful speed limit of 65 m.p.h.

☐ did fail and neglect to stop the said vehicle for a certain:
- ☐ stop sign (contrary to RSA 265:31)
- ☐ traffic light (contrary to RSA 265:9) before entering intersection of: _____

☐ did fail and neglect to have the said vehicle inspected in accordance with the regulations of the Director of Motor Vehicles. Contrary to RSA 266:5.

☐ did fail and neglect to have said vehicle registered in accordance with law. Contrary to RSA 261:40.

☑ other: Public Nudity

Contrary to ~~RSA~~ LEO 180-2 p3 Against the peace and dignity of the State.

Laconia Police Gary Ott #239
Department Complaintant Badge number

☑ SERVED IN HAND

FINE FROM SCHEDULE $ Must Appear

YOU MUST COMPLETE THE REVERSE SIDE OF THIS FORM
SEE REVERSE FOR INSTRUCTION AND PENALTY INFORMATION

DOS/COURT DS № 752369 DSMV 428 (REV. 02/11)

89

PLEA: ☐ Guilty ☒ Not Guilty ☐ Nolo Contendere
☐ Change of Plea ☐ Not Guilty to Guilty ☐ Not Guilty to Nolo
☐ Negotiated Plea

FINDING: ☒ Guilty 02/07/17 ☐ Not Guilty ☐ Dismissed
☐ Waiver of Counsel and Rights Acknowledged
☐ Appearance of _____ for the defendant
☐ Nolle Prossed by _____ on _____ DATE
Continued from _____ to _____ by _____
Continued from _____ to _____ by _____

SENTENCE:
☒ Fine of $ 100 amount suspended $ 100 P.A. $ _____ Total $ _____
(amount suspended on conditions stated below)
☐ Time Payment: _____
☐ Ordered ☐ Recommended defendant's license (privileges) to operate a motor vehicle be:
☐ suspended ☐ revoked for a period of _____ ☐ License Forwarded
☐ Defendant placed on probation for a period of _____
☐ Case continued for sentence ☐ Complaint placed on file ☐ with ☐ without finding
(This disposition may not apply to CDL operators or commercial vehicle offenses)
☐ Other
Lyn. Good Behavior

DEFAULT:
Fine $ _____ P.A. $ _____ Admin. Fee ☐ imposed $ _____ ☐ waived Total $ _____
Defendant failed to ☐ appear on _____ DATE ☐ pay on _____ DATE
☐ Bench Warrant: Ordered _____ (date) issued _____ (date)
☐ for ☐ non-appearance ☐ non-payment
☐ Bail to be determined by Bail Commissioner $ _____
☐ Bail set by Court $ _____ PR / CASH / SURETY
☐ Other _____

_____ _____
Justice Signature
☐ Recommended license suspension

APPEAL:
☐ To Superior Court (De Novo trials only): _____ The Defendant appears.
☐ To Superior Court: To be perfected within 30 days or sentence will be invoked.

_____ _____
Default Date Justice Signature
02/07/17
Conviction Date Justice Signature

Original abstract forwarded _____ (date)

DOCKET #: 450-16-1603 CHARGE ID: 1244406C

COMPLAINT (VIOLATION ONLY)

☐ You **DO NOT** have to come to court. You **MUST** answer this complaint to the Department of Safety within (20) days from the date of issuance. DATE OF ISSUANCE: _____

TO AVOID ANY ADDITIONAL ADMINISTRATIVE FEES OR REINSTATEMENT FEES SEE REVERSE SIDE FOR INSTRUCTIONS AND PENALTY INFORMATION.

DEPARTMENT OF SAFETY
FINANCIAL RESPONSIBILITY SECTION - PB
PO BOX 3838, CONCORD NH 03305
603-227-4010
http://www.nh.gov/payticket

2016 JUN 29 A 9:

You must come to the court indicated listed at 0815 o'clock (AM)/PM on July 25th
yr 2016 to answer this complaint.
4th Circuit District Division - Laconia
DISTRICT COURT
26 Academy St.
STREET
Laconia, NH 03246
TOWN/CITY STATE ZIP CODE

THE UNDERSIGNED COMPLAINS THAT THE DEFENDANT: (Please Print)

LAST NAME	FIRST NAME	MIDDLE INITIAL
LILLY	Heidi	C

ADDRESS	CITY	STATE	ZIP CODE
12 Bretton Road	Gilford	NH	03249

DOB: MO	DAY	YR.	OP LICENSE #	STATE	CLASS
10	23	60			

SEX	RACE	HEIGHT	WEIGHT	COLOR EYES	COLOR HAIR
F	W	5'3"	190	GRN	GRY

LICENSE PRESENTED: ☐ YES ☐ NO

ON THE 31st DAY OF May YR 2016 AT 1257 AM/PM

DID OPERATE M.V. REGISTRATION # _____ PLATE TYPE _____ STATE _____

MAKE _____ YR _____ TYPE _____

☐ COMMERCIAL VEHICLE ☐ HAZMAT ☐ 16+ PASSENGER

AT/LOCATION: Laconia, NH GPS _____

Upon a certain public highway, to wit - 17 Endicott North St.

☐ at a speed greater than was reasonable and prudent under the conditions prevailing, to wit: at a rate of _____ m.p.h., the prima facia lawful speed at the time and place of violation being _____ m.p.h. Contrary to RSA 265:60 ☐ Radar ☐ Aircraft ☐ Clocked ☐ Laser

☐ traveling at a rate of _____ m.p.h., the same being in excess of the maximum lawful speed limit of 65 m.p.h.

☐ did fail and neglect to stop the said vehicle for a certain:
- ☐ stop sign (contrary to RSA 265:31)
- ☐ traffic light (contrary to RSA 265:9) before entering intersection of: _____

☐ did fail and neglect to have the said vehicle inspected in accordance with the regulations of the Director of Motor Vehicles. Contrary to RSA 266:5.

☐ did fail and neglect to have said vehicle registered in accordance with law. Contrary to RSA 261:40.

☑ other: Public Nudity

Contrary to ~~RSA~~ LOC 180-2 pg 3 Against the peace and dignity of the State.

Laconia Police Department — Complainant: Gary Ott #239 Badge Number

☑ SERVED IN HAND

FINE FROM SCHEDULE $ Must Appear

YOU MUST COMPLETE THE REVERSE SIDE OF THIS FORM
SEE REVERSE FOR INSTRUCTION AND PENALTY INFORMATION

DOS/COURT

DS № 752368

DSMV 428 (REV. 02/11)

DOCKET #: _____ CHARGE ID: _____

PLEA: ☐ Guilty ☒ Not Guilty ☐ Nolo Contendere
☐ Change of Plea ☐ Not Guilty to Guilty ☐ Not Guilty to Nolo
☐ Negotiated Plea

FINDING: ☒ Guilty 02/07/17 ☐ Not Guilty ☐ Dismissed
☐ Waiver of Counsel and Rights Acknowledged
☐ Appearance of _____ for the defendant
☐ Nolle Prossed by _____ on _____ DATE
Continued from _____ to _____ by _____
Continued from _____ to _____ by _____

SENTENCE:
☒ Fine of $ 100 amount suspended $ 100 P.A. $ _____ Total $ _____
(amount suspended on conditions stated below)
☐ Time Payment
☐ Ordered ☐ Recommended defendant's license (privileges) to operate a motor vehicle be:
☐ suspended ☐ revoked for a period of _____ ☐ License Forwarded
☐ Defendant placed on probation for a period of _____
☐ Case continued for sentence ☐ Complaint placed on file ☐ with ☐ without finding
(This disposition may not apply to CDL operators or commercial vehicle offenses)
☐ Other ① 1yr. Good Behavior

DEFAULT:
Fine $ _____ P.A. $ _____ Admin. Fee ☐ imposed $ _____ ☐ waived Total $ _____
Defendant failed to ☐ appear on _____ DATE ☐ pay on _____ DATE
☐ Bench Warrant: Ordered _____ (date) issued _____ date
☐ for ☐ non-appearance ☐ non-payment
☐ Bail to be determined by Bail Commissioner $ _____
☐ Bail set by Court $ _____ PR / CASH / SURETY
☐ Other _____

_____ _____
Justice Signature
☐ Recommended license suspension

APPEAL:
☐ To Superior Court (De Novo trials only): _____ The Defendant appeals.
☐ To Superior Court: To be perfected within 30 days or sentence will be invoked.

_____ _____
Default Date Justice Signature
02/07/17
_____ _____
Conviction Date Justice Signature
Original abstract forwarded _____ (date)

DOCKET #: 450-16-1879 CHARGE ID: 1251093C

COMPLAINT (VIOLATION ONLY)

☐ You **DO NOT** have to come to court. You **MUST** answer this complaint to the Department of Safety within (30) days from the date of issuance. DATE OF ISSUANCE: _____

TO AVOID ANY ADDITIONAL ADMINISTRATIVE FEES OR REINSTATEMENT FEES, SEE REVERSE SIDE FOR INSTRUCTIONS AND PENALTY INFORMATION.

JUL 11 A 8:22

DEPARTMENT OF SAFETY
FINANCIAL RESPONSIBILITY SECTION - PBM
PO BOX 3838, CONCORD NH 03305
603-227-4010
http://www.nh.gov/payticket

You must come to the court indicated listed at 0815 o'clock AM/PM on 7-25-16
yr _____ to answer this complaint.

4th Circuit Court - Laconia District
DISTRICT COURT
26 Academy St Laconia, NH
STREET
Laconia NH 03246
TOWN/CITY STATE ZIP CODE

THE UNDERSIGNED COMPLAINS THAT THE DEFENDANT: (Please Print)

Pierro	Ginger	M
LAST NAME	FIRST NAME	MIDDLE INITIAL

70 Dorchester Rd	Canaan	NH	03741
ADDRESS	CITY	STATE	ZIP CODE

07-14-88	07PG98141	NH	NH ID
DOB: MO DAY YR.	OP LICENSE #	STATE	CLASS

F	W	5'03	110 lbs	blue	Red
SEX	RACE	HEIGHT	WEIGHT	COLOR EYES	COLOR HAIR

LICENSE PRESENTED: ☐ YES ☐ NO

ON THE 28th DAY OF May YR 2016 AT 1615 AM/PM
DID OPERATE M.V. REGISTRATION # _____ PLATE TYPE _____ STATE _____
MAKE _____ YR _____ TYPE _____
☐ COMMERCIAL VEHICLE ☐ HAZMAT ☐ 16+ PASSENGER
AT/LOCATION: Laconia GPS _____
Upon a certain public highway, to wit - Endicott Park Beach

☐ at a speed greater than was reasonable and prudent under the conditions prevailing, to wit, at a rate of _____ m.p.h., the prima facia lawful speed at the time and place of violation being _____ m.p.h.
Contrary to RSA 265:60 ☐ Radar ☐ Aircraft ☐ Clocked ☐ Laser

☐ traveling at a rate of _____ m.p.h., the same being in excess of the maximum lawful speed limit of 65 m.p.h.

☐ did fail and neglect to stop the said vehicle for a certain:
- ☐ stop sign (contrary to RSA 265:31)
- ☐ traffic light (contrary to RSA 265:9) before entering intersection of: _____

☐ did fail and neglect to have the said vehicle inspected in accordance with the regulations of the Director of Motor Vehicles. Contrary to RSA 266:5.

☐ did fail and neglect to have said vehicle registered in accordance with law. Contrary to RSA 261:45.

☒ other: Indecent Exposure - did appear in a state of nudity by exposing both of her breasts and nipples in a public place

Contrary to RSA 645:1 180-2 Against the peace and dignity of the State.

Laconia PD — Department
H. Callanan — Complainant
240 — Badge Number

☒ SERVED IN HAND

FINE FROM SCHEDULE $ Miss appear

YOU MUST COMPLETE THE REVERSE SIDE OF THIS FORM
SEE REVERSE FOR INSTRUCTION AND PENALTY INFORMATION

DOS/COURT

DS № 987806

DSMV 428 (REV. 02/11)

DOCKET #: _____ CHARGE ID: _____

PLEA: ☐ Guilty ☒ Not Guilty ☐ Nolo Contendere
☐ Change of Plea ☐ Not Guilty to Guilty ☐ Not Guilty to Nolo
☐ Negotiated Plea

FINDING: ☒ Guilty 02/07/17 ☐ Not Guilty ☐ Dismissed
☐ Waiver of Counsel and Rights Acknowledged
☐ Appearance of _____ for the defendant
☐ Nolle Prossed by _____ on _____ DATE

Continued from _____ to _____ by _____
Continued from _____ to _____ by _____

SENTENCE:
☒ Fine of $ 100 amount suspended $ 100 ⊗ P.A. $ _____ Total $ _____
(amount suspended on conditions stated below)
☐ Time Payment: _____
☐ Ordered ☐ Recommended defendant's license (privileges) to operate a motor vehicle be:
☐ suspended ☐ revoked for a period of _____ ☐ License Forwarded
☐ Defendant placed on probation for a period of _____
☐ Case continued for sentence ☐ Complaint placed on file ☐ with ☐ without finding
(This disposition may not apply to CDL operators or commercial vehicle offenses)
☐ Other

⊗ Lyl. Good Behavior

DEFAULT:
Fine $ _____ P.A. $ _____ Admin. Fee ☐ imposed $ _____ ☐ waived Total $ _____
Defendant failed to ☐ appear on _____ DATE ☐ pay on _____ DATE
☐ Bench Warrant: Ordered _____ (date) issued _____ (date)
☐ for ☐ non-appearance ☐ non-payment
☐ Bail to be determined by Bail Commissioner $ _____
☐ Bail set by Court $ _____ PR / CASH / SURETY
☐ Other _____

_____ _____
☐ Recommended license suspension Justice Signature

APPEAL:
☐ To Superior Court (De Novo trials only): _____ The Defendant appeals.
☐ To Superior Court: To be perfected within 30 days or sentence will be invoked.

_____ _____
Default Date Justice Signature

02/07/17 _____
Conviction Date Justice Signature
J CARROLL

Original abstract forwarded _____ (date)