

STATE OF NEW HAMPSHIRE
HILLSBOROUGH COUNTY SUPERIOR COURT, NORTHERN DIVISION

Docket No. _____

DENNIS HIGGINS
Homeless
Encampment at Pine and Manchester Streets
Manchester, NH 03103

and

FREEMAN TOTH
697 Hall Street
Manchester, NH 03104

v.

CITY OF MANCHESTER
One City Hall Plaza
Manchester, NH 03101

**VERIFIED¹ PETITION FOR DECLARATORY JUDGMENT, PRELIMINARY
INJUNCTION, AND FINAL INJUNCTIVE RELIEF**

[REQUEST FOR AN IMMEDIATE HEARING]

NOW COME Dennis Higgins and Freeman Toth (collectively, the “Petitioners”) and respectfully petition this Court, pursuant to RSA 491:22, to issue a judgment declaring as unlawful the City of Manchester’s planned eviction of the encampment of unhoused individuals located at Pine and Manchester Streets. This eviction is scheduled to occur as early as 12:00 a.m. (midnight) on the early morning of Tuesday, January 17, 2023, immediately following the Martin Luther King, Jr. holiday. Petitioners also seek preliminary and final injunctive relief pursuant to Superior Court Rule 48. Petitioners further state as follows:

¹ Petitioners plan to submit verifications at any hearing. Verifications were unable to be secured at the time of filing given the emergent nature of this filing. Blank verifications are attached to this Petition.

FACTUAL BACKGROUND AND SUMMARY OF CLAIMS

1. On Sunday afternoon on January 8, 2023, the City informed certain members of the Manchester community that the City will ask unhoused individuals at the encampment at Pine and Manchester Streets “to vacate the area,” and that these individuals “must vacate themselves and their belongings by 12 AM [midnight] on Tuesday January 17th or they will be subject to citation.” See *Exhibit A* (Jan. 8, 2023 Email).

2. This encampment may contain up to 50 individuals.

3. The City’s January 8, 2023 announcement email states that Manchester “started the operation of the overnight warming station at the Cashin Senior Activity Center [‘Center’] this weekend” where the Center has “offered cots, charging stations, waters, and off site storage,” among other things. See *Exhibit A* (Jan. 8, 2023 Email).

4. The Center’s use for this purpose began on Friday, January 6, 2023.² It is open for this purpose from 7:00 p.m. to 6:00 a.m. This unhoused population has to leave at 6:00 a.m.—which is one hour before it was originally scheduled to close as a warming shelter³ and is about the coldest time of the day. “Wake up” occurs at approximately 5:00 a.m., and the bus leaves from the Center at approximately 5:45 a.m.

5. Those using the Center apparently cannot bring their property into the Center beyond what can fit in a small bag, with the only current option provided being off-site storage for other possessions according to the City’s January 8, 2023 email. See *Exhibit A* (Jan. 8, 2023 Email).

² There is also a warming station at 1269 Café at 465 Union Street that can accommodate 53 people and is open in evenings, but where no beds are provided.

³ See Paul Feeley, “City Hall: Plan to use Cashin Center as shelter unveiled, safety concerns aired,” *Union Leader* (Jan. 7, 2023), https://www.unionleader.com/news/politics/city_hall/city-hall-plan-to-use-cashin-center-as-shelter-unveiled-safety-concerns-aired/article_a9090fd7-e6a9-537c-99b1-d9b6f32a67f6.html (“City officials announced later Wednesday the Cashin Center would open as a shelter from 7 p.m. to 7 a.m. two days later.”).

6. The City’s January 8, 2023 announcement followed the Tuesday, January 3, 2023 meeting of the Board of Mayor and Aldermen in which some in Manchester, including several business owners, complained about the presence of unhoused individuals in the City and the encampment.⁴

7. As explained in more detail below, this proposal is unlawful and should be enjoined for several reasons.

8. *First*, the proposed eviction fails to comply with the very Manchester ordinance that was enacted in 2021 to address this situation. In 2021, Manchester enacted Section 130.13(B) of Manchester’s City Ordinances entitled “camping in public places.” Under Section (A) of the ordinance, “[i]t shall be unlawful for any person to use or cause to be used any of the streets, sidewalks, square or any other public place, excepting parks as governed by Chapter 96, as a camping place absent prior written permission from the Board of Mayor and Aldermen or its designee.” However, Section (B) of the ordinance—and in recognition of the constitutional limitations set forth in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019)—states the following: “The Manchester Police shall enforce this camping section only when the individual is on public property and there is an **available overnight shelter**. The term AVAILABLE OVERNIGHT SHELTER shall mean that the person can, at the time of citation, go to **a local homeless shelter**, that said shelter has an available overnight space for the individual at no charge to the person, that said available overnight space will be available to that person upon their arrival” (emphasis added).

⁴ See Andrew Sylvia, “Tensions rise at Aldermanic meeting over homelessness on Manchester Street,” Manchesterinklink.com (Jan. 3, 2023), <https://manchesterinklink.com/tensions-rise-at-bma-over-homelessness-on-manchester-street/>

9. Here, there currently is not an “available overnight shelter”—defined as “a local homeless shelter”—that is available under the ordinance for everyone in the encampment and that would, thus, trigger the ordinance’s “no camping” ban. Capacity at the Families in Transition (“FIT”) Adult Emergency Shelter is approximately 138 beds, and it is full almost every night, with many of those then staying in the encampment. And the newly-refashioned Center—while a commendable first step—is not “a local homeless shelter” under Section 130.13(B) because, among other reasons, it does not meet the definition of an “emergency shelter” in He-M 314.02(a) and He-M 1007.02(e), which is defined as “any facility, the *primary purpose* of which is to provide temporary shelter for homeless individuals or families,” excluding transitional housing. Further, the Center does not provide mattresses, meals, or shower facilities—all of which are required for “emergency shelters” under He-M 314.02(d)’s mandate that the following be provided: “a. Adequate bedding and mattress; b. Basic food at no cost to the guest; c. Soap and hot water for personal hygiene; and d. First aid.” Nor does the Center meet the definition of He-M 314.05(g), which requires that an “emergency shelter” must not “exclude guests *for any part of the day*, from October 1 through April 30, unless reasonable arrangements are made for guests to use an alternative indoor site which is available for guests’ use while the shelter is closed.” (emphasis added). The Center, given its limited hours, does not meet this definition.

10. *Second*, independent of any statutory authority cited by the City, this proposed eviction violates the constitutional rule set forth in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019). As noted in *Martin*, “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” *Id.* at 617. But the Center’s use does not constitute available beds that meaningfully provide the “option of sleeping indoors” under *Martin*—an option

that was envisioned by the Court to require the practical accessibility of *shelter* beds as a precondition for enforcing any laws criminalizing life-sustaining outdoor activities. Indeed, the Court was clear that municipal action “violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no *alternative shelter* is available to them.” *Id.* at 604 (emphasis added). Here, shelter beds that provide life-sustaining activities are not provided. This is especially the case where the Center does not offer beds or “shelter” space all day, offers no shower facilities, and offers no meals and, thus, does not meet the criteria set forth in He-M 314.02(d) or He-M 314.05(g) for an “emergency shelter.” The “shelter” terminology on Section 130.13 of Manchester’s City Ordinances likely was designed to codify the *Martin* standard.

11. *Third*, this eviction also violates procedural due process under the Fourteenth Amendment and Part I, Article 15 to the New Hampshire Constitution, as it is essentially a “no-trespass” order being imposed on an entire group of people (including Petitioner Dennis Higgins) without individualized notice to residents and without an opportunity to be heard. *See Catron v. City of St. Petersburg*, 658 F.3d 1260, 1264 (11th Cir. 2011) (holding that the trespass ordinance at issue caused a substantial risk of erroneous deprivation of liberty because it was seemingly easy for the City – through a variety of agents – to issue a trespass warning and because no procedure was provided for the recipient of a trespass warning to challenge the warning or for the warning to be rescinded).

12. *Finally*, the City’s January 8, 2022 email (*Exhibit A*) and “Notice to Vacate” (*Exhibit B*) are overbroad insofar as they evict individuals from public property even if they are not camping, which would even include instances of expressive activity.

13. The community to be evicted is among the most marginalized in New Hampshire, with many suffering from mental illness and substance use disorder. Here, the City is following a rushed eviction process and arbitrary time frame, especially when the City has no immediate answer to the obvious question that will stem from this eviction—namely, where will these people go? The recent agreement to use the Tirrell House as a homeless shelter is a good step, but it will only house women and there has been no date formally established for its opening.⁵

14. Though this eviction is apparently occurring because of “growing safety concerns” according to the City’s January 8, 2023 email (*Exhibit A*), this eviction does not actually address any such public safety concerns. The City’s current eviction decision is part of a pattern of the government continuously evicting unhoused individuals—the Superior Courthouse in November 2020 (there, conducted by the State)⁶, the Amoskeag campsite in February 2021⁷, the Firestone campsite in April 2021⁸, parks after the enactment of a 2021 ordinance, etc.—only to have encampments later materialize because the systemic problems leading to homelessness remain unaddressed. The City’s proposed eviction will only exacerbate public safety concerns by simply moving these unaddressed concerns to other parts of the City, including parts of the City that will be less visible and less accessible to public safety officials. Pushing this population out further

⁵ See Paul Feely, “Agreement reached to use Tirrell House as women’s homeless shelter,” *Union Leader* (Jan. 12, 2023), https://www.unionleader.com/news/politics/agreement-reached-to-use-tirrell-house-as-womens-homeless-shelter/article_de858132-4207-58bf-9ac6-03994325c272.html.

⁶ See Carol Robidoux, “Gimme shelter: As emergency shelter beds are prepared, how did we get here and what’s next?,” *Manchesterinklink.com* (Jan. 6, 2023), <https://manchesterinklink.com/gimme-shelter-as-emergency-shelter-beds-are-prepared-how-did-we-get-here-and-whats-next/> (“In November of 2019, a large encampment of people took over the state-owned Hillsborough County Superior Courthouse lawn. They were dispersed by NH State Police without any provisions for alternative care. About 15 of those were transported to respite beds in Derry. Within a month nearly all of those people were back on the streets. Those few who were left to figure out a plan were told the state-funded respite was ending on Dec. 31 and they had to go.”).

⁷ See Josie Albertson-Grove, “City clears homeless camp under Amoskeag Bridge following fire,” *Union Leader* (Feb. 6, 2021), https://www.unionleader.com/news/social_issues/city-clears-homeless-camp-under-amoskeag-bridge-following-fire/article_d85116af-7745-5d39-a9d8-358f6226daf2.html.

⁸ See Mark Hayward, “Homeless camp adjacent to Firestone to be cleared Thursday,” *Union Leader* (Apr. 9, 2021), https://www.unionleader.com/news/homes/homeless-camp-adjacent-to-firestone-to-be-cleared-thursday/article_1dea2912-26e6-5864-b14c-85e24b1658c5.html.

will only hinder the ability of health officials to monitor and track this population and, where appropriate, administer care. The City could also help facilitate public safety by providing trash bins and toilets, but it has, to date, declined to do so even in the face of requests.⁹

15. Petitioners do not dismiss the City’s efforts undertaken to date to set up a “warming station” at the Center. They are meaningful for those who have used this service. And the need for long-term housing for unhoused individuals should not solely fall on the City. It is the State’s responsibility as well, and the State reduced houseless shelter funding in the current budget (starting July 1, 2021 to June 30, 2023) by at least \$800,000 per year. *See Exhibit 5* (Email). As the inadequacy of long-term solutions from the government persist, this eviction cannot legally proceed. In fact, this eviction will only perpetuate a costly cycle of “chasing” those unhoused from place to place¹⁰, and will only further ostracize, stigmatize, and endanger the safety of this community.

PARTIES

16. **Dennis Higgins:** Petitioner Dennis Higgins, age 57, is unhoused. He has been unhoused since around 2019. He currently lives at the encampment at Pine and Manchester

⁹ See Andrew Sylvia, “Tensions rise at Aldermanic meeting over homelessness on Manchester Street,” Manchesterinklink.com (Jan. 3, 2023), <https://manchesterinklink.com/tensions-rise-at-bma-over-homelessness-on-manchester-street/> (“In response to concerns from others regarding litter and feces, he said that porta-potties and sharps boxes would solve the problem “tomorrow” and provide evidence to those on the street that action will be taken to address the problem.”); Andrew Sylvia, “Tensions rise at Aldermanic meeting over homelessness on Manchester Street,” Manchesterinklink.com (Jan. 3, 2023), <https://manchesterinklink.com/tensions-rise-at-bma-over-homelessness-on-manchester-street/> (“In response to concerns from others regarding litter and feces, he said that porta-potties and sharps boxes would solve the problem ‘tomorrow’ and provide evidence to those on the street that action will be taken to address the problem.”); Mark Hayward, “Mark Hayward’s City Matters: Winter is coming. Is the city ready to take care of the homeless?,” Union Leader (Dec. 4, 2022), https://www.unionleader.com/voices/city_matters/mark-haywards-city-matters-winter-is-coming-is-the-city-ready-to-take-care-of/article_86886236-d5c7-5344-a4cc-dd054453cf34.html (“But the biggest unmet necessity? ‘Public toilets. That’s the biggest problem right now,’ Higgins said The FIT homeless shelter also won’t allow the homeless living outside their doors to use the bathroom, Savard confirmed.”).

¹⁰ See Rudy Perez, “Homeless Encampment Sweeps May Be Draining Your City’s Budget,” *Housing Matters* (Jan. 4, 2023), <https://housingmatters.urban.org/feature/homeless-encampment-sweeps-may-be-draining-your-citys-budget>, (“Sweeps reduce the visibility of homelessness, but evidence shows they only further displace unhoused people and do not address its root causes. Sweeps exacerbate negative outcomes for people experiencing homelessness while straining city budgets.”).

Streets, Manchester, NH 03103. He has lived there since around the end of October 2022. He has three children.

17. He has stayed at FIT in the past. He has also stayed at the Cashin Senior Activity Center, which he did for one night when it was opened on Friday, January 6, 2023. He was not given a meal or a shower. He laid down on a cot without a mattress, and he was given some paper sheets. He was allowed to bring only a small number of possessions into the Center in a tote bag. The police woke the people staying there in the morning.

18. Mr. Higgins is known around the neighborhood as “the mechanic.” He has a large collection of bicycles, most in disrepair, that he keeps outside his tent. Mr. Higgins previously operated automotive shops in Nashua, Hudson, and Windham. But those situations ended badly, including being evicted.

19. As he explained in one instance to the *Manchesterinklink*, he was unknowingly subleasing from another person who was leasing the property (but Mr. Higgins thought that person owned the property): “The owners showed up and told me to leave. I thought the guy I was paying rent to owned the property. I was paid up through December, but they wanted money from me. I lost all my tools. Everything.”¹¹ He added in the interview that he has been diagnosed with attention deficit disorder and finds it hard to focus. “My mind is everywhere,” he says. He also says he suffers from narcolepsy. “I was at an appointment the other day and they told me I fell asleep 48 times.”¹² He noted in this interview that “all he wants now is a place where he can get a fresh start. Nothing big, just a shop where he can work on cars or bikes.”¹³ He stated: “I’d be

¹¹ See Carol Robidoux, “Keeping ahead of the stuff: City removes unwanted items, provides more storage for homeless outside shelter,” *Manchesterinklink.com* (Dec. 8, 2022), <https://manchesterinklink.com/keeping-ahead-of-the-stuff-city-removes-unwanted-items-provides-more-storage-for-homeless-outside-shelter/>.

¹² *Id.*

¹³ *Id.*

willing to work for someone, but without a place to go home to, or shower or sleep, and no tools – that’s hard.”¹⁴

20. Mr. Higgins has been a vocal advocate for unhoused individuals living in the encampment, including through engaging in expressive activity in the encampment area. As he told *WMUR*:

“There’s just no one solution,” Higgins said. “Everyone’s like, ‘Here, we’re going to put money here, and that’s going to solve it.’ That’s not how it works.”

Higgins said another problem is a lot of people who are homeless don’t have anywhere to go during the day. He said a potential solution could be more education and preventative measures.¹⁵

He added in a subsequent interview:

“It’s not just one problem. It’s a lot of problems to solve this,” Higgins said. “I don’t wish this on anybody. I really don’t.”¹⁶

21. Mr. Higgins will be directly injured by the City’s planned eviction, as it will effectively remove him from the place and community in which he has lived now for over two months. He fears that removal will cause him to be less safe, as it will compel him to leave for other parts of the City that likely are further away from resources. As the *Union Leader* described Mr. Higgins:

Higgins said the sidewalks are safe as opposed to living in the woods, where the vulnerable can be victimized and things can get out of control.

At times, citizens and church groups visit and distribute food and warm drinks.

But the biggest unmet necessity?

“Public toilets. That’s the biggest problem right now,” Higgins said.¹⁷

¹⁴ *Id.*

¹⁵ Hannah Cotter, “Manchester opens Emergency Operations Center to help navigate homelessness problem,” *WMUR* (Jan. 7, 2023), <https://www.wmur.com/article/manchester-emergency-center-homeless-1623/42420964>.

¹⁶ See Jessie Kisluk, “City of Manchester to begin evicting homeless encampment due to growing safety concerns,” *WMUR* (Jan. 9, 2023), <https://www.wmur.com/article/manchester-evict-homeless-encampment-new-hampshire-1923/42427271>.

¹⁷ Mark Hayward, “Mark Hayward’s City Matters: Winter is coming. Is the city ready to take care of the homeless?” *Union Leader* (Dec. 4, 2022), https://www.unionleader.com/voices/city_matters/mark-haywards-city-matters-winter-is-coming-is-the-city-ready-to-take-care-of/article_86886236-d5c7-5344-a4cc-dd054453cf34.html.

He added in a subsequent interview after the City announced its eviction plan on January 8, 2023:

.... He’s not sure where he’ll go after the city of Manchester announced it would ask homeless residents living here to leave the area.

“It’s not where I want to be. I definitely don’t want to be here,” Higgins said. “You’re left up in the air. It’s not a good feeling. That’s for sure.”¹⁸

22. **Freeman Toth:** Mr. Toth resides at 697 Hall Street in Manchester. While he engages in homeless outreach in his professional capacity (including in Manchester), he is only bringing this case in his individual capacity. He is *not* bringing this case on behalf of his employer, and he is *not* speaking for his employer in this matter. Mr. Toth has owned his Hall Street property since 2003 and pays property taxes to the City—including property taxes that likely will go directly to pay for the eviction. Accordingly, Mr. Toth has standing to challenge the use of funds allocated for this eviction pursuant to RSA 491:22 and Part I, Article 8 of the New Hampshire Constitution—an eviction he believes is problematic for the reasons explained in this lawsuit. *See* N.H. Const. Pt. I, art. 8 (“The public ... has a right to an orderly, lawful, and accountable government. Therefore, any individual taxpayer eligible to vote in the State, shall have standing to petition the Superior Court to declare whether the State or political subdivision in which the taxpayer resides has spent, or has approved spending, public funds in violation of a law, ordinance, or constitutional provision. In such a case, the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced beyond his or her status as a taxpayer”).¹⁹

¹⁸ *See* Jessie Kisluk, “City of Manchester to begin evicting homeless encampment due to growing safety concerns,” WMUR (Jan. 9, 2023), <https://www.wmur.com/article/manchester-evict-homeless-encampment-new-hampshire-1923/42427271>.

¹⁹ This taxpayer standing provision added to Part I, Article 8 in 2018 was recently interpreted in *Carrigan v. N.H. Dep’t of Health and Human Servs.*, 174 N.H. 362 (2021). While the *Carrigan* decision establishes some limits on the contours of taxpayer standing, it does not prohibit the claim in this case. In *Carrigan*, the plaintiff challenged the Department of Health and Human Services’ “poor allocation of resources, which relate to a series of spending the decisions the Department has made and continues to make” and its “unconstitutional budgetary decision-making in the face of uncontroverted evidence regarding the connection between the absence of resources and the inability of New Hampshire to abide by its mandated legal obligations.” *Id.* at 365 (cleaned up). The Court concluded that Part I, Article 8 did not permit a taxpayer to challenge “a governmental body’s comprehensive response to a complex issue,

23. **City of Manchester:** Respondent City of Manchester is a municipal entity created under the laws of the State of New Hampshire. The City of Manchester, and all of its agents, acted under color of law with respect to the actions in this Petition.

24. The City’s planned eviction of the encampment will require the use of public funds, including funds of Manchester city taxpayers.

JURISDICTION

25. This is an action by Petitioners seeking declaratory and injunctive relief pursuant to RSA 491:22, I and Superior Court Rule 48.

26. Petitioners request a judicial declaration stating that the City of Manchester’s planned eviction of the encampment of unhoused individuals located at Pine and Manchester Streets is unlawful. This eviction is scheduled to occur as early as 12:00 a.m. (midnight) on the early morning of Tuesday, January 17, 2023. RSA 491:22, I provides in part, “Any person claiming a present legal or equitable right or title may maintain a petition against any person claiming adversely to such a right or title to determine the question as between the parties, and the court’s judgment or decree thereon shall be conclusive.” The Court has subject matter jurisdiction pursuant to RSA 491:22 and Superior Court Rule 48.

27. The Court has personal jurisdiction over the Respondent City of Manchester, which is in the Northern Division of Hillsborough County Superior Court.

such as child welfare, which encompasses many decisions to spend or approve spending, as well as decisions not to spend or approve spending.” *Id.* at 370. That constitutional provision, the Court held, “does not provide the judiciary with the authority to . . . decide whether the State or a local government has ‘invested sufficient resources to address’ alleged shortcomings or has properly ‘funded the agencies with responsibility for abiding by the legal requirements enacted by the legislature at levels that facilitate legal functioning.’” *Id.* By contrast, here, Mr. Toth is not generally challenging the City’s “comprehensive response to a complex issue,” but is rather challenging a discrete action (here, an eviction) that obviously necessitates specific expenditures.

28. The venue in Hillsborough County Superior Court, Northern Division is proper because the four Petitioners, as well as the Respondent City of Manchester, are located in the Northern Division of Hillsborough County.

THE EVICTION'S UNLAWFULNESS

I. The Eviction Violates Section 130.13 of Manchester's City Ordinances, and this Section Does Not Provide Authority for the Eviction.

29. One of the City's cited bases for the eviction in its "Notice to Vacate" (*Exhibit B*) is Section 130.13 of Manchester's City Ordinances. However, the eviction fails to comply with this very ordinance that was enacted in 2021 to address this very situation.

30. In 2021, Manchester enacted Section 130.13(B) entitled "camping in public places." Under Section (A) of the ordinance, "[i]t shall be unlawful for any person to use or cause to be used any of the streets, sidewalks, square or any other public place, excepting parks as governed by Chapter 96, as a camping place absent prior written permission from the Board of Mayor and Aldermen or its designee."

31. However, Section (B) of the ordinance—and in recognition of the constitutional limitations set forth in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019)—states the following: "The Manchester Police shall enforce this camping section only when the individual is on public property and there is an available overnight shelter. The term AVAILABLE OVERNIGHT SHELTER shall mean that the person can, at the time of citation, go to a local homeless shelter, that said shelter has an available overnight space for the individual at no charge to the person, that said available overnight space will be available to that person upon their arrival" (emphasis added). Section (B) further states that: "No person shall be cited unless and until a police officer receives confirmation of available overnight shelter as defined above, and the person has been advised that overnight shelter is available, warned that they will be cited should they not go to the

available overnight shelter and continue to camp, and they have been given a reasonable opportunity to comply with the request.”

32. Under Section (D) of the ordinance, “[a]ny person who violates this provision shall be subject to a fine of up to \$250.”

33. At the time the Manchester Board of Mayor and Aldermen considered Section 130.13 in early 2021 following the eviction by the State of individuals at the Manchester Superior Court encampment, it was fashioned as an anti-camping ordinance, but only when adequate shelter space was unavailable. As one press outlet described the January 2021 Board of Mayor and Aldermen meeting in which this was discussed:

[Chairman Bill Barry (Ward 10)] noted that the goal of these amendments was not to fine individuals, but to let them know that camping on public property was unacceptable while alternatives are available, allowing police more ability to *move homeless individuals into shelters*.

...

[Alderman Dan O’Neil (At large)] also pressed for an answer as to why the state was able to remove homeless individuals camping on the lawn of Hillsborough Superior Court, a state-owned property, while Manchester police are limited their ability to move homeless individuals *unless a shelter bed is available*.²⁰

A. There is No “Local Homeless Shelter” in Manchester with Capacity Under the Ordinance, and Therefore the “No Camping” Ban is Not Triggered.

34. Here, there currently is not an “available overnight shelter”—defined as “a local homeless shelter”—that is available under the ordinance for everyone in the encampment. Thus, the ordinance’s “no camping” ban has not been triggered.

²⁰ See Andrew Sylvia, “Aldermen discuss public camping ordinance,” Manchesterinklink (Jan. 4, 2021), <https://manchesterinklink.com/aldermen-discuss-homeless-camping-ordinance/> (emphasis added).

35. Capacity at the Families in Transition (“FIT”) Adult Emergency Shelter is approximately 138 beds and, most nights, that shelter is full.²¹ One person interviewed by undersigned counsel on January 10, 2023 stated that she was unable to get a bed at FIT for four days in a row. It has also been reported that two women seeking shelter there were recently turned away because the two open beds were designated for men. As the City itself has acknowledged, this unhoused population currently has nowhere else to go on a sustainable basis for 24 hours per day, 7 days per week.

36. The City has been candid about the lack of community-based and long-term resources for this unhoused population. Mayor Joyce Craig has stated in a joint letter with several other mayors that “New Hampshire’s systems of care for individuals experiencing or at-risk of homelessness are not meeting the needs of communities across the state and are contributing to a statewide homelessness crisis.”²² Similarly, the Emergency Operations Center’s January 8, 2023 press release acknowledges that it is continuing “to seek suitable space for a 24/7 emergency shelter, due to the lack of capacity at state-funded shelters across New Hampshire.” See *Exhibit C* (Jan. 8, 2023 Emergency Operations Order Press Release). Chief Allen Aldenberg has also noted that there is no current solution to permanently addressing the needs of this population on a 24-hour basis, stating on Monday, January 9, 2023 that “the question becomes, where are they going to go? That’s for the folks in the outreach community to figure out That’s the complicated part.”²³

²¹ See Carol Robidoux, “Gimme shelter: As emergency shelter beds are prepared, how did we get here and what’s next?,” Manchesterinklink.com (Jan. 6, 2023), <https://manchesterinklink.com/gimme-shelter-as-emergency-shelter-beds-are-prepared-how-did-we-get-here-and-whats-next/>.

²² See Carol Robidoux, “Craig joins with other NH mayors calling on Sununu, statewide officials for action on homelessness crisis,” Manchesterinklink.com (Jan. 3, 2023), <https://manchesterinklink.com/craig-joins-with-other-nh-mayors-calling-on-sununu-statewide-officials-to-solve-homelessness-crisis/>.

²³ See Paul Feely, “As notices to vacate Manchester encampment posted, dozens meet to discuss city’s homeless crisis,” *Union Leader* (Jan. 9, 2023), https://www.unionleader.com/news/social_issues/as-notices-to-vacate-

37. But, in the absence of this “local homeless shelter” housing solution under Section 130.13, a no-camping ban cannot be implemented and provide the basis for the eviction under the ordinance.

B. The Cashin Center is Not A “Local Homeless Shelter” Under the Ordinance

38. The Cashin Senior Activity Center is not a “local homeless shelter” under Section 130.13(B). Thus, the existence of the Center does not justify both the City’s prohibition on camping in this area and the City’s proposed eviction under the ordinance.

39. As the City’s January 8, 2023 email states, the Center is only an “overnight warming station” and is “meant to be a temporary relief due to the emergency of safety and cold weather.” See *Exhibit A* (Jan. 8, 2023 Email). Further, both the Emergency Operations Center and the Mayor have described the Center a “warming center” or “warming station” in their respective January 8, 2023 press releases. See *Exhibit C* (Jan. 8, 2023 Emergency Operations Order Press Release); See *Exhibit D* (Jan. 8, 2023 Mayor Press Release).

40. The Center’s “warming station” function is fundamentally different from a traditional “homeless shelter,” as the Center’s “warming station” is not permanent, but rather is a “short-term, limited duration, no-services facility that becomes operational when temperatures or a combination of precipitation, wind chill and temperatures become dangerous.”²⁴ Indeed, the Center’s station only provides thin sheets and economy “cots” (that lack mattresses) in a communal space. This is clear from the pictures below taken on January 10, 2023 by undersigned counsel:

[manchester-encampment-posted-dozens-meet-to-discuss-citys-homeless-crisis/article_8f05393a-7c72-5186-bff9-4a55fe3118a4.html?block_id=1120512](https://www.manchester-encampment-posted-dozens-meet-to-discuss-citys-homeless-crisis/article_8f05393a-7c72-5186-bff9-4a55fe3118a4.html?block_id=1120512).

²⁴ See Paul Feeley, “City Hall: City to operate warming station at Cashin Senior Activity Center,” *Union Leader* (Oct. 16, 2022), <https://finance.yahoo.com/news/city-hall-city-operate-warming-081100384.html>.



41. The Center also does not meet the definition of “emergency shelter” in He-M 314.02(a) and He-M 1007.02(e), which is defined as “any facility, *the primary purpose of which is to provide temporary shelter for homeless individuals or families,*” excluding transitional housing. Here, the Center’s “primary purpose” is obviously not “to provide temporary shelter,” but rather to provide activities for seniors.²⁵

²⁵ <https://www.manchesternh.gov/Departments/Senior-Services/William-B-Cashin-Senior-Activity-Center>.

42. Further, an “emergency shelter” defined under these rules must provide under He-M 314.02(d) the following: “a. Adequate bedding and mattress; b. Basic food at no cost to the guest; c. Soap and hot water for personal hygiene; and d. First aid.” The Center does not fit this definition because it does not provide adequate bedding (and instead only offers an economy cot without any mattress), does not provide meals (and instead only provides “snacks”), and does not provide shower facilities for bathing.

43. Under He-M 314.05(g), an “emergency shelter” must also not “exclude guests *for any part of the day*, from October 1 through April 30, unless reasonable arrangements are made for guests to use an alternative indoor site which is available for guests’ use while the shelter is closed.” (emphasis added). The Center, given its limited hours from 7:00 p.m. to 6:00 a.m., does not meet this definition.

44. This usage of the Center is in stark contrast to FIT’s Adult Emergency Shelter, which is an obvious “homeless shelter” under Section 130.13(B) and is subject to the provisions of He-M 314. FIT, for example, offers, residents “hot showers, a bed each night, nutritious meals, and day programming.”²⁶ At this shelter, residents “can connect with a case manager who will help them access local resources they can utilize for housing, job training and placement, and other services, including healthcare through Health Care for the Homeless (HCH) Program of Manchester at Catholic Medical Center, located on-site.”²⁷

45. Similarly, even if the Center is “a local homeless shelter,” it is not an “overnight” shelter under the ordinance. The Center is not open during the full “overnight” time in which camping would be banned. Under Section (A), the prohibited “camping” under the ordinance is limited to “the use of public property as a temporary or permanent place of dwelling, lodging or

²⁶ <https://www.fitnh.org/services/emergency-homeless-services/shelter/>.

²⁷ *Id.*

residence, or as a living accommodation at any time between sunset and sunrise as defined on the date of offense by the official government record, or as a sojourn that has not been authorized by the Board of Mayor and Aldermen or its designee.” (emphasis added). Thus, on January 17, 2023, camping purportedly becomes prohibited under the ordinance when nighttime begins at approximately 4:39 p.m. (sunset) and it is prohibited when nighttime ends at 7:13 a.m. the next day (sunrise)—an over 14-hour window. However, the Center is only open for 11 hours, and is not open for this full 14-hour “overnight” period. It is not open from 4:39 p.m. to 7:00 p.m. and from 6:00 a.m. to 7:13 a.m. the next day—times when camping is prohibited. During these time windows, this population has nowhere to go, as not even the Center’s warming station is available.

C. The Scope of the Eviction is Broader Than the Ordinance’s Restrictions.

46. The scope of the eviction is also broader than the ordinance’s restrictions, even assuming space exists at a local, overnight homeless shelter (and it does not).

47. The City’s January 8, 2023 email states that “[a]ll residents in the encampment must vacate themselves and their belongings.” See Exhibit A (Jan. 8, 2023 Email). “Camping” is only banned “between sunset and sunrise,” and thus camping is not barred between sunrise and sunset under the ordinance. For example, on January 17, 2023, camping would still not be barred under the ordinance from 7:13 a.m. (sunrise) to approximately 4:39 p.m. (sunset). However, the City’s January 8, 2023 email, in overbroad fashion, appears to seek to prevent camping in this area at all times of day. But the ordinance does not impose a prohibition on camping for a 24-hour period.

D. The Remaining Authorities Cited by the City Do Not Justify a Sweeping Eviction.

48. The remaining authorities cited by the City in the Notice to Vacate at Exhibit B do not authorize a sweeping eviction.

49. The City cites RSA 47:5, but that only states that “[t]he city councils shall have the care and superintendence of the city buildings, all city property and all public squares and streets; and the power to sell or let what may be legally so disposed of, and to purchase property, real or personal, for the use of the city, whenever the interests or convenience of the city shall require it.” It does not state that individuals can be evicted from public places.

50. RSA 147:13 entitled “offensive matter” further states that: “If a person shall place, leave, or cause to be placed or left, in or near a highway, street, alley, public place, or wharf ... any ... other substance liable to become *putrid or offensive, or injurious to the public health* or deposits garbage or refuse on premises not designated for waste disposal in accordance with RSA 149-M or other provisions of law, such person shall be guilty of a violation, and the health officer shall remove or cause to have removed the same.” RSA 147:21 also states that “[n]o person shall deposit any rubbish within the limits of any highway, park or common, or throw upon the sidewalk or into any street in the compact part of any city or village, any waste from any fruit or any paper, or other offensive or unsightly substance.” A violation of RSA 147:21 is a violation-level offense. *See* RSA 147:22. But it cannot be said that the *entire* encampment is “putrid or offensive” or “injurious to the public” or constitute “rubbish” in a way that would justify a sweep of the entire area and without any individualized assessment. To the contrary, this is where people live because they have nowhere else to go. Indeed, RSA 147:4 states that “[t]he health officers may notify the owner or occupant of any building, vessel, premises, or property to remove or destroy any nuisance or other thing therein deemed by them, on examination, to be injurious to the public health, within a time limited; and in case the owner or occupant, after such notice in writing, given to the owner or occupant or left at the owner’s or occupant’s abode, shall neglect to comply with the order, the health officers may forcibly enter and cause the nuisance or other thing to be removed or

destroyed.” But this process has not been followed here. Instead, the City has only issued a blanket notice, and has not issued individual notices to individual residents based on their individualized conditions and circumstances.

51. The City also references RSA 154:7 and RSA 154:14 in its Notice to Vacate. In particular, RSA 154:14 states that “[e]very fireward, engineer, fire chief or designated officer shall cause any fire deemed by such individual to be dangerous, in any street or elsewhere, to be extinguished or removed.” Whatever “dangerous” means, it cannot be said that the *entire* encampment involving every person’s possession is “dangerous” in a way that would justify a sweep of the entire area. No notice under this statute has been provided to individual residents based on the specifics of their individualized living situation. Instead, the City has only issued a blanket notice.

52. RSA 318-B:16, entitled “common nuisances” has the same problem. Under this statute, “any place whatever which is resorted to by drug-dependent persons for the purpose of using controlled drugs or which is used for the illegal keeping or selling of the same shall be deemed a common nuisance. No person shall knowingly keep or maintain such a common nuisance.” This is a criminal statute. No one has been charged here, including on an individualized basis, that would justify a sweep of *the entire encampment*.

53. Similarly, the City cites RSA 644:2, IV(a)—the disorderly conduct statute—which states, in part, that “[w]henver a peace officer has probable cause to believe that a serious threat to the public health or safety is created by a flood, storm, fire, earthquake, explosion, riot, ongoing criminal activity that poses a risk of bodily injury, or other disaster, the officer may close the area where the threat exists and the adjacent area necessary to control the threat or to prevent its spread, for the duration of the threat, until related law enforcement, fire, and emergency medical service

operations are complete, by means of ropes, markers, uniformed emergency service personnel, or any other reasonable means, to any persons not authorized by a peace officer or emergency services personnel to enter or remain within the closed area.” Setting aside the overbreadth of this statute in justifying eviction of the *entire* encampment, this statute says nothing about authorizing the eviction of people and their property where they live. To the contrary, this statute does not apply because RSA 644:2, V(a)(3) states that—while a “lawful order” includes a “command not to enter or a command to leave an area closed pursuant to paragraph IV”—a person “may not lawfully be ordered to leave his or her own home or business.” Here, this property is these peoples’ homes.

54. The remaining City ordinances cited are inapt. Ordinance Section 91:65 entitled “prohibited deposits” states in Section (A) that “No materials resulting from the construction or alteration of any structure shall be placed for collection. All such materials shall be properly disposed of by the property owner or contractor responsible for the construction or alteration.” Section 91:75 entitled “posting notices” states that “[n]o one shall post or affix any notice, poster, or other paper or device calculated to attract the attention of the public on any structure, lamppost, public utility pole, or tree except as permitted or required by law.” Neither provide authority for a sweep of the encampment.

55. The same is true of Sections 97.34 (entitled “encumbrance prohibited”), as it does not justify a sweep where there is no encumbrance. Section (A) of this ordinance states, in part, that “[n]o person shall encumber the street or sidewalk before his place of business, or elsewhere in the city, with any boxes, shelves, stands, merchandise, or other things, excepting that the Board of Mayor and Aldermen may grant a license to any person or persons to use and occupy a portion of the street or sidewalk for the purpose of conducting thereon street fairs or other community events.” Here, no action is authorized absent an encumbrance and, even then, it does not justify a

full sweep of the area. Similarly, Section 130.15 cited is limited to any person who will “start, ignite, kindle, cook with any fire, cooking fire, or deep-pit barbecue on any property owned or operated by the city without express written permission of the Board of the Mayor and Aldermen or its designee.”

56. Finally, the City references RSA 236:58, which is entitled “camping restricted” and states that “[n]o person shall pitch a tent or place or erect any other camping device or sleep on the ground within the public right-of-way or on public property unless permission is received from the governing board of the governmental authority having jurisdiction over such public right-of-way or property.” The City also references Section 97.35 of the City ordinances entitled “erection of obstructions prohibited.” It states that: “No person shall make, erect, or maintain any door-step, portico, porch entrance, or passageway to any cellar, basement, or other structure, upon any sidewalk in the city, except that handicapped accessible entrances may be erected under the supervision of the Director of Public Works and Director of Planning and Community Development; and by a 2/3 vote of the Board of Mayor and Aldermen installation of stairs within the public right-of-way and marquees or porte cocheres or canopies may be erected under the supervision of the Director of Planning and Community Development.” Setting aside the fact that Manchester could provide permission for camping under RSA 236:58 to this vulnerable population (but apparently is not), this statute and ordinance are subject to constitutional principles set forth below.

II. The Eviction Violates Part I, Article 33 of the New Hampshire Constitution and the Eighth Amendment.

57. Independent of any statutory authority cited by the City, this proposed eviction violates the constitutional rule set forth in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019).

58. There, the Ninth Circuit held that two city ordinances—a disorderly conduct ordinance and a camping ordinance, which criminalized sleeping outside on public property, whether bare or with a blanket or other basic bedding—violated the Eighth Amendment insofar as it imposed criminal sanctions against homeless individuals for sleeping outdoors on public property, when no alternative shelter was available. The City has appropriately and commendably relied on *Martin* in the past in declining to evict people from this encampment.²⁸ As noted in *Martin*, under the Eighth Amendment, “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” *Id.* at 617.

59. Indeed, the Court was clear that municipal action “violates the Eighth Amendment insofar as it imposes criminal sanctions against homeless individuals for sleeping outdoors, on public property, when no *alternative shelter* is available to them.” *Id.* at 604 (emphasis added). In other words, the Court required the practical accessibility of *shelter* beds as a precondition for enforcing any laws criminalizing life-sustaining outdoor activities. *Id.* at 615 (“Does the Cruel and Unusual Punishments Clause of the Eighth Amendment preclude the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to *alternative shelter*? We hold that it does” (emphasis added); *see id.* at 616 (“the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot *obtain shelter*”) (emphasis added); *id.* at 618 (“We conclude that

²⁸ See Andrew Sylvia, “Aldermen discuss safety outside homeless shelter,” Manchesterinklink.com (Dec. 21, 2022), <https://manchesterinklink.com/aldermen-discuss-safety-outside-homeless-shelter/> (during discussion of case, “Manchester Mayor Joyce Craig reminded the board that there is no available shelter space in the entire state, let alone Manchester”); Paul Feely, “City Hall: Plan to use Cashin Center as shelter unveiled, safety concerns aired,” *Union Leader* (Jan. 7, 2022), https://www.unionleader.com/news/politics/city_hall/city-hall-plan-to-use-cashin-center-as-shelter-unveiled-safety-concerns-aiared/article_a9090fd7-e6a9-537c-99b1-d9b6f32a67f6.html (“Manchester Police Chief Allen Aldenberg said his officers “legally cannot go over there and kick people off the sidewalk without a lawful violation to do so,” citing a U.S. Ninth District Court of Appeals’ ruling in *Martin v. Boise*.”).

a municipality cannot criminalize such behavior consistently with the Eighth Amendment when no sleeping space is practically available in any shelter.") (emphasis added).

60. Such shelter beds for life-sustaining activities are not provided here. This is especially the case where the Center has limited hours for sleeping, offers only cots (without mattresses), offers no shower facilities, offers no meals, and does not meet the criteria set forth in He-M 314.02(d) or He-M 314.05(g) for an “emergency shelter. The “shelter” terminology in Section 130.13 of Manchester’s City Ordinances likely was designed to codify the *Martin* standard and, as explained above, the Center is not a “shelter” because it does not provide the essential resources that typical shelters provide. To be sure, many congregate shelter facilities are also only open at night, but the Center’s “warming station” here only operates when temperatures become dangerous—a feature that distinguishes it from a typical congregate shelter that, while potentially only open for “sleeping,” is open every night like FIT.

III. The Eviction Violates Procedural Due Process

61. The sweeping eviction order—which is essentially a no-trespass order barring individuals from a public place—violates procedural due process under the Fourteenth Amendment and Part I, Article 15 of the New Hampshire Constitution. Part I, Article 15 of the New Hampshire Constitution provides, in relevant part, that “[n]o subject shall be ... deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land” N.H. const. pt. I, art. 15; *see also* U.S. const. amend XIV, § 1 (“nor shall any state deprive any person of life, liberty, or property, without due process of law”). There are two inquiries under this analysis: (1) whether the subject receiving the eviction order has a legally-protected interest entitling them to due process protection; and (2) if such an interest does exist, whether a constitutionally-adequate

process is provided. *State v. Veale*, 158 N.H. 632, 637-39 (2009); *see also Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The eviction fails under both these inquiries.

62. At the outset, as explained in more detail in Section III below, it cannot seriously be disputed that a person subject to this eviction order has a constitutionally-protected liberty interest in being on a sidewalk or other City-owned places that are open to the public. *City of Chicago v. Morales*, 527 U.S. 41, 54 (1999) (plurality opinion). Moreover, the eviction order implicates the potential confiscation of the property held by houseless individuals in this area. Given that the eviction order deprives a person of a constitutionally-protected interest, the next question is whether the order provides a constitutionally-adequate process. It does not.

63. Here, there is no hearing process for individuals to challenge the eviction, let alone a post-deprivation one. *See Mathews*, 424 U.S. at 333 (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.”). And, here, only a global notice was provided. No individualized notice was provided stating the specific reasons each individual is being evicted and whether there is legal authority for the eviction in each instance. *See Catron v. City of St. Petersburg*, 658 F.3d 1260, 1264 (11th Cir. 2011) (holding that the trespass ordinance at issue caused a substantial risk of erroneous deprivation of liberty because it was seemingly easy for the City – through a variety of agents – to issue a trespass warning and because no procedure was provided for the recipient of a trespass warning to challenge the warning or for the warning to be rescinded).

IV. The City’s January 8, 2023 Eviction Order Also Sweeps Individuals Off the Street in Violation of Part I, Article 22 to the New Hampshire Constitution and the First Amendment.

64. The City’s January 8, 2023 eviction order also appears to sweep individuals off this public property even if they are not camping, including if First Amendment expressive activity is conducted.

65. The posted “Notice to Vacate” states that “[a]ll persons” must leave this space—apparently even if they are sitting, sleeping, or simply existing without any indicia of “camping.” See *Exhibit B* (Notice to Vacate). The City’s January 8, 2023 email similarly states that these residents must “vacate the area” “and must vacate themselves and their belongings.” See *Exhibit A* (Jan. 8, 2023 Email).

66. Of course, people have a First Amendment right to occupy and engage in expressive activity in public spaces, including sidewalks, so long as they are not preventing others from also accessing the sidewalk. As the United States Supreme Court has explained:

Quintessential examples of a “public forum” are those open spaces—streets, parks, and sidewalks—to which the public generally has unconditional access and which “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.” *Hague v. Committee for Industrial Organizations*, 307 U.S. 496, 515 (1939) (opinion of Roberts, J.). Public parks, streets, and sidewalks are public forums because open access by all members of the public is integral to their function as central gathering places and arteries of transportation. Public access is not a matter of grace by government officials but rather is inherent in the open nature of the locations.

United States v. Kokinda, 497 U.S. 720, 743, 110 S. Ct. 3115, 3128 (1990); see also *City of Chicago v. Morales*, 527 U.S. 41, 54 (1999) (plurality opinion) (“[A]n individual’s decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers that is ‘a part of our heritage,’ or the right to move ‘to whatsoever place one’s own inclination may direct.’”) (citations omitted)

67. Thus, people should not and cannot be “moved along” for using this public space. *See Morales*, 527 U.S. 41 (on vagueness grounds, striking down ordinance that prohibited criminal street gang members from loitering in a public place and that allowed a police officer to order persons to disperse if the officer observed any person loitering that the officer reasonably believed to be a gang member).

COUNT I
[VIOLATION OF MANCHESTER CITY ORDINANCE SECTION 130.13; BREACH OF STATUTORY DUTY]

68. Petitioners adopt the allegations contained in the preceding paragraphs.

69. Manchester’s planned eviction violates Manchester City Ordinance 130.13.

70. Petitioner Dennis Higgins is in a class—namely, people who are unhoused and who are camping without space available at “a local homeless shelter”—that Section 130.13 is designed to protect. The injury that will be created by the City’s planned eviction—namely, the eviction of campers without the availability of space at “a local homeless shelter”—is of the type that this ordinance is specifically intended to prevent.

71. Pursuant to RSA 491:22, Petitioners seek a judgment declaring that the City of Manchester’s planned eviction violates Section 130.13.

72. Section 130.13 provides no authority for the planned eviction.

73. Because the City has not agreed to put on hold its planned eviction, Petitioners seek an immediate preliminary injunction, as well as final injunctive relief. Without such an injunction, Petitioners will be irreparably harmed by the City’s actions in violation of Section 130.13.

74. Petitioners have no alternative adequate remedy at law if they are denied the requested relief, especially where the City has not committed to ceasing the eviction.

75. Given the clarity of Section 130.13 and the City’s imminent violation of its terms, there is a substantial likelihood of success on the merits.

COUNT II
[VIOLATION OF PART I, ARTICLE 33, AND THE EIGHTH AMENDMENT TO THE
UNITED STATES CONSTITUTION]

76. Petitioners adopt the allegations contained in the preceding paragraphs.

77. Part I, Article 33 of the New Hampshire Constitution states that “No Magistrate, or Court of Law, shall ... inflict cruel or unusual punishments.”

78. The Eighth Amendment to the United States Constitution states that “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

79. The City’s proposed eviction violates these provisions given the inadequate local homeless shelter space available under *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019).

80. Pursuant to RSA 491:22, Petitioners seek a judgment declaring that the City of Manchester’s planned eviction violates both Part I, Article 33 of the New Hampshire Constitution and the Eighth Amendment.

81. Because the City has not agreed to put on hold its planned eviction, Petitioners seek an immediate preliminary injunction, as well as final injunctive relief. Without such an injunction, Petitioners will be irreparably harmed by the City’s actions in violation of these constitutional prohibitions.

82. Petitioners have no alternative adequate remedy at law if they are denied the requested relief, especially where the City has not committed to ceasing the eviction.

83. Given the City’s imminent violation of its terms, there is a substantial likelihood of success on the merits.

COUNT III
[VIOLATION OF PART I, ARTICLE 15, AND THE FOURTEENTH AMENDMENTS
TO THE UNITED STATES CONSTITUTION]

84. Petitioners adopt the allegations contained in the preceding paragraphs.

85. Part I, Article 15 of the New Hampshire Constitution provides, in relevant part, that “[n]o subject shall be ... deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land” N.H. const. pt. I, art. 15.

86. The Fourteenth Amendment to the United States Constitution states that no 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.”

87. The City’s proposed eviction violates these provisions because it effectively acts as a “no-trespass” order and purports to evict all unhoused individuals from this public space— apparently even if they are sitting, sleeping, or simply existing, and without any indicia of “camping,” including even if they are engaging in expressive activity. This eviction, which also contemplates the possible confiscation and destruction of property, is being done without any individualized notice or opportunity to be heard. *See Catron v. City of St. Petersburg*, 658 F.3d 1260, 1264 (11th Cir. 2011) (holding that the trespass ordinance at issue caused a substantial risk of erroneous deprivation of liberty because it was seemingly easy for the City – through a variety of agents – to issue a trespass warning and because no procedure was provided for the recipient of a trespass warning to challenge the warning or for the warning to be rescinded).

88. Pursuant to RSA 491:22, Petitioners seek a judgment declaring that the City of Manchester’s planned eviction violates both Part I, Article 15 of the New Hampshire Constitution and the Fourteenth Amendment.

89. Because the City has not agreed to put on hold its planned eviction, Petitioners seek an immediate preliminary injunction, as well as final injunctive relief. Without such an injunction, Petitioners will be irreparably harmed by the City's actions in violation of these constitutional prohibitions.

90. Petitioners have no alternative adequate remedy at law if they are denied the requested relief, especially where the City has not committed to ceasing the eviction.

91. Given the City's imminent violation of its terms, there is a substantial likelihood of success on the merits.

**COUNT IV
[VIOLATION OF PART I, ARTICLE 22, AND THE FIRST/FOURTEENTH
AMENDMENTS TO THE UNITED STATES CONSTITUTION]**

92. Petitioners adopt the allegations contained in the preceding paragraphs.

93. Part I, Article 22 of the New Hampshire Constitution states that "Free speech and Liberty of the press are essential to the security of Freedom in a State: They ought, therefore, to be inviolably preserved."

94. The First Amendment to the United States Constitution states that "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." These protections apply to the states and local government actors and are incorporated under the Fourteenth Amendment's due process clause.

95. The City's proposed eviction violates these provisions because it purports to evict all unhoused individuals from this public space—apparently even if they are sitting, sleeping, or

simply existing, and without any indicia of “camping”—including even if they are engaging in expressive activity.

96. Pursuant to RSA 491:22, Petitioners seek a judgment declaring that the City of Manchester’s planned eviction violates both Part I, Article 22 of the New Hampshire Constitution and the First Amendment.

97. Because the City has not agreed to put on hold its planned eviction, Petitioners seek an immediate preliminary injunction, as well as final injunctive relief. Without such an injunction, Petitioners will be irreparably harmed by the City’s actions in violation of these constitutional prohibitions.

98. Petitioners have no alternative adequate remedy at law if they are denied the requested relief, especially where the City has not committed to ceasing the eviction.

99. Given the City’s imminent violation of its terms, there is a substantial likelihood of success on the merits.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that:

- A. The Court schedule an immediate hearing on this Verified Petition;
- B. The Court, pursuant to RSA 491:22, issue a judgment declaring as unlawful the City of Manchester’s planned eviction of the encampment of unhoused individuals located at Pine and Manchester Streets—which is scheduled to occur as early as 12:00 a.m. (midnight) on the early morning of Tuesday, January 17, 2023;
- C. In light of the irreparable harm to Petitioners caused by the City’s eviction plan, and the substantial likelihood that Petitioners will succeed on the merits of their case, the Court issue a preliminary and permanent injunction barring the City of Manchester from evicting the encampment of unhoused individuals at Pine and Manchester Streets—which is scheduled to occur as early as 12:00 a.m. (midnight) on the early morning of Tuesday, January 17, 2023;
- D. Order that Respondent pay Petitioners’ reasonable attorneys’ fees and costs; and
- E. And for such other relief as may be just and proper.

Respectfully submitted,

Petitioners Dennis Higgins and Freeman Toth,

/s/ Gilles Bissonnette

Gilles R. Bissonnette (N.H. Bar No. 265393)

Henry Klementowicz (N.H. Bar No. 21177)

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New Hampshire Legal Assistance

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Manchester, NH 03104

Tel.: (603) 261-2818

stower@nhla.org

January 13, 2023

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Verified Petition for Declaratory Judgment, Preliminary Relief, and Final Injunctive Relief has been delivered to the City of Manchester on this date, January 13, 2023.

/s/ Gilles Bissonnette
Gilles Bissonnette

VERIFICATION

I hereby certify that the facts asserted in this Petition are true and correct to the best of my knowledge and belief.

Dennis Higgins

January ____, 2023

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS

Personally appeared the above, being authorized so to do, and made oath that the facts contained in the foregoing are true to the best of his knowledge and belief.

Before me,

Notary Public/Justice of the Peace

VERIFICATION

I hereby certify that the facts asserted in this Petition are true and correct to the best of my knowledge and belief.

Freeman Toth

January ____, 2023

THE STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS

Personally appeared the above, being authorized so to do, and made oath that the facts contained in the foregoing are true to the best of his knowledge and belief.

Before me,

Notary Public/Justice of the Peace

EXHIBIT A

From: "Beloin,Adrienne" <abeloin@manchesternh.gov>

Date: January 8, 2023 at 1:43:09 PM EST

To: Mary Chevalier <cmchevalier@msn.com>, Rossana Goding <rossana.goding@cmc-nh.org>, mbeauregard@eastersealsnh.org, kristie@lightoflifefemin.org, k.tovar@harborcarenh.org, Donnalee Lozeau <dlozeau@snhs.org>, Maria Devlin <mdevlin@fitnh.org>, Meghan Shea <mshea@fitnh.org>, Peter Janelle <janellep@mhcgcm.org>, cartyapat@mhcgcm.org, bouchiem@mhcgcm.org, Ellie Huot <huote@waypointnh.org>, Annette Escalante <aescalante@farnumcenter.org>, davidtillenh@gmail.com, ssilsby@eastersealsnh.org, "Thomas, Anna" <ATHOMAS@manchesternh.gov>, Keith Howard <keith.howard@recoverynh.org>, dd.travers@cmc-nh.org, routhiej@mhcgcm.org, "Flurey,Dave" <DFlurey@manchesternh.gov>, "Cashin,Ryan" <RCashin@manchesternh.gov>, "Geoffrion,Meghan" <mgeoffrion@manchesternh.gov>, "Michaud,Charleen" <cmichaud@manchesternh.gov>, cachevalier@cpin.biz, "Barter,Matthew" <mbarter@manchesternh.gov>, Andrew Warner <andrew.warner@betterlifepartners.com>, Angela Prince <angela.l.prince@dhhs.nh.gov>, "Thomas, Anna" <ATHOMAS@manchesternh.gov>, "Saidybah,Biram" <bsaidybah@manchesternh.gov>, Brian Mooney <brm@mih4u.org>, "Hickey,Christopher" <chickey@manchesternh.gov>, Chris Stawasz <cstawasz@gmr.net>, "Cleary,Emily" <ecleary@manchesternh.gov>, Dan <Daniel.French@dhhs.nh.gov>, Danielle Provencal <dprovenc@cmc-nh.org>, "Flurey,Dave" <DFlurey@manchesternh.gov>, Deborah Welch <Deborah.welch@cmc-nh.org>, Heather Gagnon <gagnonhe@mhcgcm.org>, Jennifer Gillis <jgillis@mansd.org>, Jessica Surgento <Jessica.V.Surgento@dhhs.nh.gov>, JoAnne MilesHolmes <JoAnne.E.MilesHolmes@dhhs.nh.gov>, John Leary <jleary@elliott-hs.org>, "Janus,Kayleen" <kjanus@manchesternh.gov>, Keith Howard <keith.howard@recoverynh.org>, Ken Bradley <kbradley@nehidta.org>, Kevin Drew <kevin.drew@cmc-nh.org>, Lara Quiroga <lquiroga@amoskeaghealth.org>, Mary Forsythe-Taber <mft@mih4u.org>, "McDonald,Matthew" <mmcdonal@manchesternh.gov>, Meg Shea <mshea@fitnh.org>, Melinda Tupaj <Melinda.Tupaj@dhhs.nh.gov>, "Michaud,Elaine" <emichaud@manchesternh.gov>, "O'connor,Matthew" <moconner@manchesternh.gov>, Patricia Carty <cartyapat@mhcgcm.org>, "Cashin,Ryan" <RCashin@manchesternh.gov>, sawyerka <sawyerka@mhcgcm.org>, "MacLeod,Shannon" <smacleod@manchesternh.gov>, Sheryl Brodeur <Sheryl.A.Brodeur@dhhs.nh.gov>, "Thomas,Candice" <cthomas@manchesternh.gov>, Timothy Soucy <timothy.soucy@cmc-nh.org>, Xiaohui Geng <xiaohui.geng@dhhs.nh.gov>, Melissa Therrien <therriem@mhcgcm.org>, Brian Mooney <brm@mih4u.org>, "Michaud,Charleen" <cmichaud@manchesternh.gov>, Danielle Provencal <danielle.provencal@cmc-nh.org>, Erin George-Kelly <KellyE@waypointnh.org>, Maria Devlin <mdevlin@fitnh.org>, Mary Forsythe-Taber <mft@mih4u.org>, Meghan Shea <mshea@fitnh.org>, Patricia Carty <cartyapat@mhcgcm.org>, Peter Janelle <janellep@mhcgcm.org>, Rossana Goding <rossana.goding@cmc-nh.org>, "Cashin,Ryan" <RCashin@manchesternh.gov>, Sarah Jones <Joness@waypointnh.org>, "Huot, Ellie" <HuotE@waypointnh.org>, "George-Kelly, Erin" <KellyE@waypointnh.org>, glendal@ywcanh.org, Peter Janelle <janellep@mhcgcm.org>, Jennifer Bryden <karmacroft@gmail.com>, k.tovar@nhpartnership.org, Kristine Hall <khall@manchesterhousing.org>, Lauren Berman-Lefebvre <lberman-lefebvre@fitnh.org>, Lindsey Lussier <llussier@thewayhomenh.org>, Matthew Bouchie <bouchiem@mhcgcm.org>, "Rafferty, Kelli" <KRafferty@elliott-hs.org>, ssavard@fitnh.org, "St.Hilaire, Nicole" <nsthilaire@amerihealthcaritasnh.com>, "Fleming, Todd" <TFLEMING@manchesternh.gov>, MFDO6@comcast.net, "Macken,Emmett" <emacken@manchesternh.gov>, Larry Nice <larry@helpinghandoutreach.net>

Subject: Update: Homelessness Initiatives

Hello Community Partners!

Good Evening. We wanted to get something to you asap so that you can manage planning with your teams on the ground.

Due to the growing safety concerns for the encampment at Pine and Manchester Street, it's been decided to ask these residents to vacate the area. **This vacate posting will begin tomorrow morning at 9AM; Monday, January 9th** and provide notice for folks to relocate over 7 days. All residents in the encampment must vacate themselves and their belongings by **12 AM on Tuesday January 17th** or they will be subject to citation. The police have increased their presence to 24/7 at this area and that will continue. Outreach from the police and fire squad 1 will continue daily and outreach teams servicing this area are encouraged, when you think best to flood the area with support and intervention so that residents can find a safe alternative.

Please let me know if your outreach teams need support from us or if you have increased or decreased your outreach activities at all.

We started the operation of the overnight warming station at the Cashin Senior center this weekend and we had a handful of grateful folks using the service. The center offered cots, charging stations, waters, and off site storage. Couples can be accommodated as there is plenty of room in the large open space. We are going to add snacks, juice, and the availability of having their stored items on site for ease of access. Transportation was provided from 1269 area as needed to the Cashin center and back in the AM with a city bus. The Cashin Center is meant to be a temporary relief due the emergency of safety and cold weather. We adjusted to having people wake up and be out of the Cashin by 6AM.

The emergency operations team at the City is working on immediate emergency shelter solutions and will be in touch soon with updates.

Thank you,
Please let me know if you have questions, feedback, or concerns.
-Adrienne

Adrienne Beloin, MSW
Director of Homelessness Initiatives

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EXHIBIT B

NOTICE TO VACATE

This Property is owned by the City of Manchester, a municipal corporation.

Due to health, safety and public safety concerns and violations of the City of Manchester Code of Ordinances and the laws of the State of New Hampshire, including but not limited to fire hazards, in this area, which includes the city-owned sidewalks running adjacent to Pine Street between Merrimack Street and Hanover Street, and the city-owned sidewalks running adjacent to Manchester Street between Chestnut Street and Union Street (hereinafter, "the Property"), the City of Manchester hereby issues the following order to vacate.

All persons, along with all of their property and personal belongings, occupying the Property in violation of any provision of the laws of the State of New Hampshire, or City of Manchester Code of Ordinances are hereby ordered to vacate the Property by no later than 12:01 A.M. on Tuesday, January 17, 2023.

Any person who continues to occupy the Property after the above-stated deadline in violation of any provision of the laws of the State of New Hampshire or in violation of City of Manchester Code of Ordinances may be subject to fine and/or arrest.

N.H. R.S.A. 47:5; N.H. R.S.A. 147:13 and :21; N.H. R.S.A. 154:7 and :14; N.H. R.S.A. 236:58; N.H. R.S.A. 318-B:16; N.H. R.S.A. 644:2, IV (a); MCO §§ 91.65, 91.75, 97.34, 97.35; MCO § 130:13 and MCO §130.15

Both a warming station with sleeping cots, and storage space, are available for all persons leaving this location.

Shelter can also be secured by calling FIT—Families in Transition at 603-641-9441, or by calling 2-1-1.

By Order of the City of Manchester

January 9, 2023

EXHIBIT C

Fire Chief & EMD

Ryan J. Cashin

Deputy Fire Chief & EMD

David P. Flurey

Emergency Management Coordinator

Meghan M. Geoffrion

Public Works Director

Tim Clougherty

**Mayor**

Joyce Craig

City Solicitor

Emily Rice

Chief of Police

Allen D. Aldenberg

Public Health Director

Anna J. Thomas, MPH

City of Manchester

Emergency Operations Center

For Immediate Release**January 8, 2023****Contact: Ryan J. Cashin****Fire Chief & Emergency Management Director****RCashin@manchesternh.gov****(603) 669-2256**

Statement from the Emergency Operations Center on Notice to Vacate Pine & Manchester Street Encampment

The City of Manchester's Emergency Operations Center has made the determination to post a notice to vacate the encampment on the corner of Manchester and Pine Streets due to increased public safety and health concerns, for both residents of the encampment and the community at-large. The notice will be posted at 9:00 am on Monday, January 9th, 2023, and individuals must vacate themselves and their belongings by 12:00 am on Tuesday, January 17th.

The City of Manchester's community response teams, as well as nonprofit partners, including 211, will be on site to continue daily outreach to connect individuals with available services, including treatment for both Mental Health and Substance Use Disorders.

In addition to the Warming Station at 1269 Cafe at 456 Union Street, the City of Manchester opened an additional warming center with cots for individuals experiencing unsheltered homelessness at the William B. Cashin Senior Activity Center, open from 7:00 pm to 6:00 am daily. The City of Manchester provides storage of belongings and transportation to and from the Cashin Center.

In addition to these two existing sheltering options, the Emergency Operations Center continues to seek suitable space for a 24/7 emergency shelter, due to the lack of capacity at state-funded shelters across New Hampshire. An update on an additional sheltering location is expected soon.

EXHIBIT D

Additional Winter Warming Station Opening this Evening

Published: 01/06/2023 5:12 PM

Additional Winter Warming Station Opening this Evening

Action taken due to a lack of capacity at state-funded emergency shelters

MANCHESTER, NH - Due to the increase in unsheltered homelessness and lack of emergency shelter beds across the state of New Hampshire, the City of Manchester has opened the William B. Cashin Senior Activity Center as an additional temporary warming station for individuals in Manchester experiencing homelessness.

The Cashin Center will open this evening, January 6th, at 7:00pm and close at 6:00am daily. The temporary shelter will be staffed by the Fire & Police Departments, and transportation will be provided to and from 1269 Cafe (456 Union Street) beginning at 7:00pm. Temporary storage of items will be provided.

Hours of operations for the temporary warming station will not interfere with regular business or senior activities. Aramark will be performing deep cleaning and sanitization every morning, including electrostatic sprayers and disinfecting of surfaces. In response to COVID-19, the City of Manchester improved ventilation and filtration in the building through federal funding provided by the American Rescue Plan.

The William B. Cashin Senior Activity Center has been part of the City of Manchester's Emergency Operations Plan for decades, and was last used as a temporary shelter when the State of New Hampshire cleared an encampment off the County Courthouse property in November of 2020.

“The Cashin Center is a valued space in the Manchester community that has a particular significance for me and my family,” said **Fire Chief and Director of Emergency Management Ryan Cashin**. “The decision to use this space as a temporary emergency warming station was made to address the urgent need to save lives this winter.”

The Manchester Emergency Operations Center (EOC) was activated this afternoon to serve as a consolidation point for the first responders and departments to facilitate decision making during emergency situations.

Through the EOC, The City of Manchester continues to pursue a more suitable space for a 24/7 emergency winter shelter, due to a lack of capacity at state-funded emergency shelters across the state, including the Families in Transition Adult Emergency Shelter located in Manchester, as well as other solutions to address homelessness.

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EXHIBIT E

From: [Gilles Bissonnette](#)
To: [Gilles Bissonnette](#)
Subject: FW: Shelter Funding
Date: Friday, January 13, 2023 8:32:50 AM

----- Forwarded message -----

From: **Santaniello, Christine** <Christine.L.Santaniello@dhhs.nh.gov>
Date: Thu, May 27, 2021 at 3:02 PM
Subject: Shelter Funding
To: Rosenwald, Cindy <Cindy.Rosenwald@leg.state.nh.us>, Kevin Ripple <Kevin.Ripple@leg.state.nh.us>
Cc: Rounds, Kerrin <Kerrin.A.Rounds@dhhs.nh.gov>

Dear Senator Rosenwald, Kevin asked me to summarize for you why we are short \$800,000 with shelter funding for the next biennium. I will do my best!

- In SFY 20/21, we entered into contracts with shelter providers with a shared price limitation for all shelters for the biennium of approximately \$6.8M.
- Early in SFY 20, we saw this would not work as some shelters were overbilling, billing on people not beds.
- We amended the contracts for SFY 21, using the remaining funds for the biennium. In preparation for this, the Department met with each shelter to determine capacity, based on actual beds.
- The result is the FY 21 contracts were approximately \$2.9M in total.
- Based on budget instructions at the time, the Department budgeted for SFY 22/23 based on the SFY 21 budget.
- This did not take into account that SFY 21 was lower due to the overspending in SFY 20.

The unfortunate result is that the funding is a decrease from SFY 20/21 of \$800,000 and not level funded as was the intent.

I hope this makes sense. Let me know if you have questions. Thank you, Chris

Christine L. Santaniello
Director
Division of Economic & Housing Stability
603.271.5023- direct line
603.931.0344- cell