

STATE OF NEW HAMPSHIRE
HILLSBOROUGH COUNTY SUPERIOR COURT, NORTHERN DIVISION
Docket No. _____

NEAL KURK
RR 1, Weare, NH 03281

and

CARLA GERICKE
63 Durette Court
Manchester, NH 03102

and

JOHN "BRINCK" SLATTERY
77 Durette Court
Manchester, NH 03102

and

HOLLY BEENE SEAL
557 S. Commercial Street, #510
Manchester NH 03101

v.

CITY OF MANCHESTER
One City Hall Plaza
Manchester, NH 03101

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

[REQUEST FOR AN IMMEDIATE HEARING]

NOW COME Neal Kurk, Carla Gericke, John "Brinck" Slattery, and Holly Beene Seal (collectively, the "Petitioners") and respectfully petition this Court, pursuant to RSA 491:22, to issue a judgment declaring that the City of Manchester's planned use of surveillance cameras on Elm Street violates RSA 236:130 because the cameras can and will capture motorists' identifying

information. Petitioners also seek preliminary and final injunctive relief pursuant to Superior Court Rule 48.

INTRODUCTION

This summer, the Manchester Police Department, with the approval of Mayor and Board of Aldermen, plans on setting up three permanent surveillance cameras in the area of City Hall. The surveillance cameras will look north and south on Elm Street, with a live feed transmitted to the Manchester Police Department's dispatch office. Due to their functionality and location, the surveillance cameras can and will capture identifying information concerning motorists on Elm Street—namely, motorists' faces and license plate information. When collected, these recorded images likely would be subject to Chapter 91-A and therefore could be made available to the public.

However, RSA 236:130 prohibits the use of surveillance cameras that will capture motorists' identifying information. Under RSA 236:130, a government entity in New Hampshire, with some exceptions not applicable here, cannot “engage in surveillance on any public ways of the state or its political subdivisions.” RSA 236:130, II. “Surveillance” is defined, in part, as “the act of determining the ownership of a motor vehicle or the identity of a motor vehicle's occupants on the public ways of the state or its political subdivisions through the use of a camera ... that by itself or in conjunction with other devices or information can be used to determine the ownership of a motor vehicle or the identity of a motor vehicle's occupants.” RSA 236:130, I (emphasis added).

As the statute makes plain, it bans the use of surveillance cameras that will capture motorist identifying information that “can be used to determine the ownership of a motor vehicle or the identity of a motor vehicle's occupants” regardless of whether the government entity actually uses

the information to determine the identities of motorists. This interpretation is confirmed by RSA 236:130's 2006 legislative history, where testimony from the Assistant Commissioner of the Department of Safety made clear that the law would ban a police department from setting "up cameras to monitor, for example, the downtown business district to detect or deter burglaries, vandalism, drug dealing." In short, in setting up these surveillance cameras, the City of Manchester is doing the very type of surveillance that RSA 236:130 was designed to prevent.

In light of this dispute as to whether the City's planned use of surveillance cameras is permissible under RSA 236:130, the filing of this action seeking a declaratory judgment is necessary. In addition, because the City has not agreed to put on hold its planned use of these surveillance cameras until final resolution of this court matter, Petitioners seek an immediate preliminary injunction, as well as final injunctive relief. Without such an injunction barring the use of these surveillance cameras, Petitioners and the public travelling on Elm Street will be irreparably harmed by the City's capturing of motorist information in violation of RSA 236:130.

PARTIES

1. Petitioner Neal Kurk lives in Weare, New Hampshire. He is a former member of the New Hampshire House of Representatives, where he represented Weare's district in Hillsborough County for 16 terms, including as Chairman of the House Finance Committee for six terms. He retired from this position after the 2017-2018 term. In both his personal and professional capacity as an elected official, Representative Kurk has been a staunch privacy advocate. He was the chief sponsor and drafter of RSA 236:130 in 2006. In addition, Representative Kurk will be directly injured by the City's use of these surveillance cameras. He regularly travels on Elm Street in Manchester. He travels to Manchester approximately once every two weeks to shop and eat at Manchester restaurants (including one located on Lake Avenue), at

which time he frequently travels past City Hall on Elm Street. As a result, Representative Kurk is likely to have identifying information concerning him and his vehicle captured by the Elm Street surveillance cameras planned by the City. Indeed, Representative Kurk is deeply concerned about these surveillance cameras. He believes that these surveillance cameras violate the text and intent of the 2006 law he drafted and sponsored in 2006 that is at issue in this case—namely, RSA 236:130.

2. Petitioner Carla Gericke lives in Manchester, New Hampshire. She was a candidate for New Hampshire Senate in District 20 during the 2016 and 2018 general elections. As a candidate and private citizen activist, Ms. Gericke has been an advocate for privacy rights. When the City of Manchester announced its plans to install surveillance cameras on Elm Street, Ms. Gericke organized a protest against this plan that was held on April 9, 2019 at City Hall Plaza. Ms. Gericke explained: “As a Manchester resident, I am concerned about the escalating Orwellian police actions that are taking place without any oversight or input from the community.” *See* Mark Hayward, “‘1984 Is Not an Instruction Manual’ - Activists Rally Against Police Video Surveillance in Downtown Manchester,” *Union Leader*, Apr. 9, 2019, attached as *Exhibit A*. As Ms. Gericke’s Facebook page for the event states: “Concerned about the increased Orwellian policing happening in Manchester? Worried about deadly shootouts, chemical weapon deployments, school lockdowns, and now cameras downtown WITHOUT ANY PUBLIC DISCUSSION? Join me at a rally on Tuesday 4/9 at 5PM. I’ll bring the soapbox, you bring your passion! We can, and should, do better!” *See* Protest Event Page, attached as *Exhibit B*. This event drew approximately 40 protesters. Ms. Gericke owns her home on Durette Court in Manchester and, accordingly, she pays property taxes that go directly to the City and the surveillance cameras it plans on placing on Elm Street. Accordingly, Ms. Gericke has standing to

challenge the use of these surveillance cameras as a taxpayer. *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”). Moreover, Ms. Gericke will be directly injured by the City’s use of these surveillance cameras. As a Manchester resident, she travels regularly on Elm Street. Accordingly, Ms. Gericke is likely to have identifying information concerning her and her vehicle captured by the Elm Street surveillance cameras planned by the City.

3. Petitioner John “Brinck” Slattery lives in Manchester, New Hampshire. He is a communications director for a technology startup company in the City. Mr. Slattery owns his home on Durette Court in Manchester and, accordingly, he pays property taxes that go directly to the City and the surveillance cameras it plans on placing on Elm Street. Accordingly, Mr. Slattery has standing to challenge the use of these surveillance cameras as a taxpayer. *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”). Moreover, Mr. Slattery will be directly injured by the City’s use of these surveillance cameras. As a Manchester resident, he

travels regularly on Elm Street. Mr. Slattery's office is on Hanover Street and, thus, he drives every day of the week on Elm Street to get to and from work. Accordingly, Mr. Slattery is likely to have identifying information concerning him and his vehicle captured by the Elm Street surveillance cameras planned by the City. Finally, Mr. Slattery is very concerned about the City's proposed use of these surveillance cameras, as he values personal liberty and believes that the police should not treat residents and visitors as criminal suspects. He strongly believes that law enforcement agencies have accumulated too much surveillance technology and leeway to use it indiscriminately against people who are not suspected of having committed a crime.

4. Petitioner Holly Beene Seal lives in Manchester, New Hampshire. She was a candidate for New Hampshire House of Representatives in Hillsborough County District 10 during the 2018 general election. During the 2017 municipal election, Ms. Seal was elected clerk for Manchester Ward 4. Ms. Seal will be directly injured by the City's use of these surveillance cameras. As a Manchester resident, she travels regularly on Elm Street, as she lives very close to Elm Street. She drives on Elm Street a couple times a week to eat at restaurants and run errands. Accordingly, Ms. Seal is likely to have identifying information concerning her and her vehicle captured by the Elm Street surveillance cameras planned by the City. Finally, Ms. Seal is very concerned about the City's proposed use of these surveillance cameras, as she feels that these cameras constitute "Big Brother" and give the government immense power to monitor and track our movements.

5. Respondent City of Manchester is a municipal entity created under the laws of the State of New Hampshire. It is authorized by law to maintain a police department, which acts as the City's agent in the area of law enforcement and for which it is ultimately responsible.

JURISDICTION

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

7. Petitioners request a judicial declaration stating that the City of Manchester's planned use of surveillance cameras on Elm Street violates RSA 236:130 because the cameras can and will capture motorists' identifying information. 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.

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

9. 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.

STATEMENT OF FACTS

10. This summer, the Manchester Police Department, with the approval of the Mayor and Board of Aldermen, plans to set up three permanent surveillance cameras in the area of City Hall. The surveillance cameras will look north and south on Elm Street, with a live feed transmitted to the Manchester Police Department's dispatch office.

11. As part of this plan, the City apparently plans to contract with PELMAC Industries, Inc. to purchase three surveillance cameras at a total cost of approximately \$14,424 (including accessories and installation). These three surveillance cameras consist of two Axis Q6125-LE

PTZ network cameras and one Axis Q6000-E Mk II PTZ network camera. *See* Apr. 22, 2019 Email and attachments, attached as Exhibit C. The images captured by these surveillance cameras would apparently be regularly monitored and observed by the Manchester Police Department through a live feed transmitted to the Department's dispatch office, and the recordings will be stored for fourteen days. *See* Paul Feely, "Paul Feely's City Hall: Aldermen, Craig, Police Commission All Back Downtown Cameras," *Union Leader*, Apr. 28, 2019, attached as Exhibit D.

12. Though the City has stated that its intent is not to monitor traffic, these surveillance cameras will nonetheless inevitably capture motorists' faces and license plates. As Chief Capano informed the Mayor and Board of Aldermen on April 16, 2019, the surveillance cameras "can basically see far and go close up to keep an eye on what is going on Elm Street." *See id.* Chief Capano also stated to the *Union Leader* that, with the surveillance cameras, "we can monitor the north and south ends of Elm Street in both ways." *Id.* He added: "[T]he cameras will have the ability to zoom in, zoom out, and pan around for better views These particular cameras we are looking (at) are very high quality." *Id.*

13. The surveillance cameras being purchased by the City are specifically designed for surveillance, and they are incredibly sophisticated with significant zooming functionality. The two Axis Q6125-LE PTZ network surveillance cameras have the following specifications:

[It] offer[] discreet and unobtrusive surveillance. Its clever dome design effectively conceals the direction of the lens, and its integrated, automatically adaptable IR LED illumination enable surveillance in total darkness (up to 200 m (656 ft) or more depending on the scene). The camera provides full scene fidelity and sharp images both above and below the horizon thanks to Sharpdome technology

See Apr. 22, 2019 Email and attachments (emphasis added), attached as Exhibit C. Axis Communication's promotional video of this surveillance camera shows its ability to zoom in on people's faces from far away, as well as its ability to view images clearly in the dark. *See*

<https://www.youtube.com/watch?v=eIGoQbkHIb0> (promotional video of Axis Q6125-LE PTZ network camera functionality entitled, in part, “Discrete surveillance 24/7”). The one Axis Q6000-E Mk II PTZ network camera being purchased by the City has the following specifications:

[It] offers a full 360° overview and high detail in one click together with high pan/tilt/zoom precision when integrated with any outdoor-ready camera in the AXIS Q60 Series or AXIS Q61 Series Its four 2-megapixel sensors provide a panoramic field of view over large areas. The standard lens can be replaced with either a 6 mm or a 16 mm lens, reaching HDTV 1080p resolution to focus[] on an area of specific interest. The four camera heads offer flexible positioning with tilt functionality for maximum adjustment, according to the desired scene.

See Apr. 22, 2019 Email and attachments (emphasis added), attached as *Exhibit C*; see also <https://www.youtube.com/watch?v=txAJjSm7jOU> (promotional video of Axis Q6000-E Mk II PTZ network camera functionality).

14. When collected, these recorded images likely would be subject to Chapter 91-A and therefore could be made available to the public.

ARGUMENT

15. As explained below, the City’s use of these surveillance cameras will violate RSA 236:130 because the cameras can and will collect motorists’ identifying information. This Petition presents two separate and distinct arguments. *First*, given the sophisticated nature of the surveillance cameras to be purchased by the City, these surveillance cameras will inevitably capture identifiable information concerning motorists on Elm Street—in particular, their faces and license plate information—that “can be used to determine the ownership of a motor vehicle or the identity of a motor vehicle’s occupants” under RSA 236:130, I. See RSA 236:130, I (emphasis added). Under RSA 236:130, it is irrelevant whether the City actually intends to use the images to determine the identities of motorists. *Second, and alternatively*, even if the City is correct in viewing RSA 236:130 as only prohibiting the act of determining the ownership of a motor vehicle

or the identity of a motorist, the City’s use of these surveillance cameras would still violate the statute. This is because the City’s scheme—which will capture motorists’ vehicles, faces, and license plate information—will inevitably and inherently cause officers reviewing the live feed to immediately identify some motorists where the officer is familiar with the motorist, a reality that is not uncommon in a mid-sized City.

I. Manchester’s Proposed Use of the Surveillance Cameras Will Violate RSA 236:130 Because the Cameras Can Identify Motorists and Vehicles.

A. The Statute’s Plain Text

16. Consistent with New Hampshire’s unique “live free or die” history of protecting the privacy of its citizens against government intrusion, the General Court enacted a law in 2006 sponsored by Petitioner Representative Neal Kurk—RSA 236:130—that specifically rejects this type of surveillance in order to help ensure that the government does not use its power to create a “surveillance state.” Under RSA 236:130, with some exceptions not applicable here, a government entity in New Hampshire cannot “engage in surveillance on any public ways of the state or its political subdivisions.” RSA 236:130, II. “Surveillance” is defined, in part, as “the act of determining the ownership of a motor vehicle or the identity of a motor vehicle’s occupants on the public ways of the state or its political subdivisions through the use of a camera ... that by itself or in conjunction with other devices or information can be used to determine the ownership of a motor vehicle or the identity of a motor vehicle’s occupants.” RSA 236:130, I (emphasis added).¹

¹ In *State v. Njogu*, 156 N.H. 551 (2007), the New Hampshire Supreme Court concluded that the terms “transponder, cellular telephone, global positioning satellite, or radio frequency identification device” in RSA 236:130 modified the phrase “any other device.” Thus, according to the Court, to satisfy the definition of “any other device” under RSA 236:130, the device must—like a “transponder, cellular telephone, global positioning satellite, or radio frequency identification device”—have the ability to track or monitor the movement of a motor vehicle via a signal transmitted through or from the device. Because the issue here concerns “cameras” specifically enumerated in RSA 236:130—not the phrase “any other device” in RSA 236:130—the limitation imposed on the definition of “any other device” in *Njogu* is inapplicable here.

Under RSA 236:130, V, “[a]ny person violating the provisions of this section shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person.”

17. Moreover, RSA 236:130 must further be read in conjunction with Part I, Article 2-b of the New Hampshire Constitution, which was enacted by the voters during the 2018 general election. This provision states: “An individual’s right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.” *See* N.H. Const. Pt. I, art. 2-b. With this statement, New Hampshire voters (approximately 81%) made a strong and unambiguous policy statement that courts must give privacy interests even more protection than that which previously existed under the law. Article 2-b must act as an interpretive guide for this Court, as Article 2-b strongly suggests that the courts must analyze privacy cases with an even greater emphasis on privacy protection.

18. Here, given the sophisticated nature of the surveillance cameras to be purchased by the City, these surveillance cameras will inevitably capture identifiable information concerning motorists on Elm Street—in particular, their faces and license plate information—that “can be used to determine the ownership of a motor vehicle or the identity of a motor vehicle’s occupants” under RSA 236:130, I. Therefore, the City’s plan runs contrary to RSA 236:130’s plain text. *See State v. Brouillette*, 166 N.H. 487, 490 (2014) (“We first examine the language of the statute and ascribe the plain and ordinary meanings to the words used.”) (quoting *State v. Addison*, 165 N.H. 381, 418 (2013)). Indeed, these cameras—as their product descriptions make clear—are designed to conduct the very “discrete and unobtrusive surveillance” expressly prohibited by the statute.

19. This interpretation is also required when considering RSA 236:130 in the context of its overall statutory scheme. *See Brouillette*, 166 N.H. at 490 (“Our goal is to apply statutes in light of the policy sought to be advanced by the entire statutory scheme. Accordingly, we interpret

a statute in the context of the overall statutory scheme and not in isolation.”) (quoting *Addison*, 165 N.H. at 418). For example, RSA 236:130, III(c) allows for “surveillance” where it is “undertaken to produce images or data that: (1) [a]re viewed only at the transportation management center of the department of transportation in connection with a particular incident occurring on a public way; and (2) [a]re not recorded.” RSA 236:130, III(c) (emphasis added). RSA 236:130, III(g) also allows for “surveillance” where it is “undertaken for security and to facilitate law enforcement in the investigation of criminal activity at the state-owned park and ride facilities that provide regularly scheduled public transit service listed below.” See RSA 236:130, III(g) (emphasis added). Similarly, RSA 236:130, III(f) allows for “surveillance” where it is “undertaken for the security of the following bridges and approach structures: I-95 Piscataqua River Bridge, Sarah Mildred Long Bridge, and the Memorial Bridge, all in Portsmouth.” See RSA 236:130, III(f) (emphasis added). These three exemptions expressly allow for “surveillance” where the purpose is not specifically to identify motorists, but rather to assist with specific law enforcement investigations with respect to an incident on a public way or to ensure general security related to park-and-ride facilities and certain bridges. If the definition of “surveillance” was limited to the act of determining the ownership of a motor vehicle or the identity of a motor vehicle occupants, as the City suggests, then these provisions in RSA 236:130, III(c, f-g) untethered to motorist identity would have been unnecessary, as such “surveillance” would already have been allowed in these specific contexts. See *Wolfeboro (Planning Bd.) v. Smith*, 131 N.H. 449, 453 (1989) (“We assume that all words in a statute were meant to be given meaning in the interpretation of a statute.”). In sum, the legislature’s decision to add these provisions confirms that, in the context of the statute’s overall scheme, the statute bans cameras that could be used to determine motorists, as opposed to banning cameras that more narrowly will determine the identities of motorists.

B. RSA 236:130's Legislative History Confirms that the Surveillance Cameras Will Violate the Statute

20. To the extent this Court believes that RSA 236:130, I is ambiguous (which it is not), this conclusion is further supported by the 2006 legislative history of RSA 236:130. *See Brouillette*, 166 N.H. at 490 (“Absent an ambiguity we will not look beyond the language of the statute to discern legislative intent.”) (quoting *Addison*, 165 N.H. at 418).

21. As former Department of Safety Assistant Commissioner Earl Sweeney told the Senate Committee on Transportation and Interstate Cooperation on April 5, 2006 when this law was being considered:

There is one aspect of the bill that will probably not effect law enforcement but could affect local police I should mention. Some states, some police departments set up cameras to monitor, for example, the downtown business district to detect or deter burglaries, vandalism, drug dealing. Since this is general use rather than case specific directed at a particular individual or a particular crime at a specific time and place, if this bill passes we do not believe that this usage would be allowed in New Hampshire without specific legislation at a future time legalizing it.

So I think for example, if the police in Lebanon decided they want to put those cameras in they would have to come to the legislature to get a bill that would authorize this

See Legislative History, at LEG060, 066, attached as Exhibit E (emphasis added). Assistant Commissioner Sweeney further described the scope of RSA 236:130 to the *Union Leader* in 2013:

“[The police] can put (surveillance cameras) up in London. They can have a camera on every street corner, but that is illegal in New Hampshire,” Sweeney said, if the license plate and vehicle occupants are identifiable

Police can't set up video surveillance “just because there was a lot of misbehaving” on a certain street, Sweeney said, adding the highway surveillance law is not widely known.

Nancy West, “NH Laws on Public Surveillance Read in Different Ways,” *Union Leader*, June 22, 2013 (emphasis added), attached as Exhibit F (“In 2013, Manchester Police Chief David Mara said his department does use surveillance cameras on public ways without a warrant, but only

rarely. ‘If that’s the law, nobody’s ever heard of it,’ Mara said of RSA 236:130, which is known as Highway Surveillance Prohibited.”).

22. In setting up these surveillance cameras, the City of Manchester is doing the very type of surveillance that RSA 236:130 was designed to prevent. As Petitioner Representative Kurk stated before the Senate Transportation and Interstate Cooperation Committee:

[This] is a bill that basically says that the state shall not take general surveillance pictures of the citizens traveling on the state highways. The purpose is to avoid becoming like London and perhaps New York City where there are surveillance cameras [There are over] 300 of them throughout the city [of London] taking pictures of people, not because of anything that has happened. Not to investigate a crime but just to have a record. I think that is not the way New Hampshire should go and the House agreed as did the [House] Transportation Committee All [this bill] does is that it says that there can be no generalized surveillance

See Legislative History, at LEG053-54 attached as Exhibit E (emphasis added). In short, if the City wants to set up these surveillance cameras, it needs to go to the legislature and ask for (and obtain) a special exemption under RSA 236:130.

23. Moreover, to the extent that RSA 236:130 is ambiguous (which it is not), it needs to be construed as barring camera surveillance that “can be used to determine the ownership of a motor vehicle or the identity of a motor vehicle’s occupants,” see RSA 236:130, I (emphasis added), in order to avoid a potential conflict with Part I, Article 2-b of the New Hampshire Constitution. See, e.g., *Buckner v. Buckner*, 120 N.H. 402, 403 (1980) (“Statutes should be judicially construed so as to avoid unconstitutionality.”).

C. Manchester’s Interpretation of RSA 236:130 is Incorrect

24. The City has publicly argued that its plan does not violate RSA 236:130 because, though the surveillance cameras will inevitably capture motorists’ identifying information, “[w]e’re not looking to monitor vehicles, not looking to identify vehicles, people in vehicles, or plates on vehicles.” See Paul Feely, “Paul Feely’s City Hall: Aldermen, Craig, Police Commission

All Back Downtown Cameras,” *Union Leader*, Apr. 28, 2019, attached as Exhibit D. He added: “There are no license plate readers going on these, no facial recognition software, which has also come up.” *Id.* In so arguing, the City appears to be contending that RSA 236:130, I only prohibits a government entity from using the images to determine the ownership of a motor vehicle or the identity of a motor vehicle’s occupants through the use of a camera. Put another way, the City believes that its plan does not violate RSA 236:130, I because it states that it has no intentional plan to use the images it captures to identify motorists.

25. The City’s legal analysis is incorrect for at least two reasons. *First*, this interpretation ignores the plain language at the end of RSA 236:130, I, which makes clear that the question is not whether the government entity uses the images to identify a motorist, but rather whether the information “can be used to determine the ownership of a motor vehicle or the identity of a motor vehicle’s occupants.” See RSA 236:130, I (emphasis added). This added language must be viewed as an additional limitation on the government’s ability to engage in surveillance. To hold otherwise would render this “can” provision meaningless. See *Wolfeboro (Planning Bd.) v. Smith*, 131 N.H. 449, 453 (1989) (“We assume that all words in a statute were meant to be given meaning in the interpretation of a statute.”). All that is required for the surveillance to run afoul of the statute is the fact that the surveillance “can” be used to identify motorists.

26. *Second*, the surveillance cameras violate RSA 236:130 even if they lack “license plate readers” or “facial recognition software.” Again, to be prohibited under RSA 236:130, I, the cameras need not simultaneously have functionality that can identify drivers; rather, to be prohibited, the cameras—like the ones planned here—need only capture information, like a driver’s face or license plate, that can be used “by itself or in conjunction with other devices or information” to identify the motorist. (emphasis added). It is irrelevant whether the cameras

include “license plate readers” or “facial recognition software” where the images nonetheless *could* be used, by themselves or in conjunction with other information that is less sophisticated, to identify motorists. For example, if a police officer is reviewing the feed from the camera, sees a car drive down Elm Street, and recognizes the driver from past experience or because the driver is a neighbor, the police department would have—even under the City’s (incorrect) interpretation of the statute—committed unlawful “surveillance” within the meaning of the statute, in that the officer will have “determin[ed]” the identity of the motor vehicle’s occupant through the use of the camera “in conjunction with other ... information,” *i.e.*, the officer’s prior training and experience.

II. Alternatively, Manchester’s Proposed Use of the Surveillance Cameras Will Violate RSA 236:130 Because the City Will Be Identifying Motorists and Vehicles.

27. Even if the City is correct in viewing RSA 236:130 as only prohibiting the act of determining the ownership of a motor vehicle or the identity of a motor vehicle’s occupants through cameras (which it is not), the City’s use of cameras would still violate the statute.

28. The City has acknowledged that it will be reviewing a live feed from these cameras and retaining the recordings for two weeks. As a result, this scheme where motorists’ faces and vehicles are captured and observed will inevitably and inherently cause officers reviewing the live feed to immediately identify some motorists where the officer is familiar with the motorist, a reality that is not uncommon in a mid-sized City. For example, when a reviewing officer sees his neighbor driving by in the regularly-viewed live feed, that officer will have—whether deliberately or not—identified the motorist in violation of RSA 236:130 even under the City’s own interpretation of the law. This identification need not be intentional to be barred under the statute.

29. This conclusion is further confirmed when examining RSA 236:130, IV, which states that the statute allows “the creation, transmission, or recording of any images or data which

cannot, by enhancement, manipulation, or otherwise, be used for surveillance.” For example, under this provision, the City may be allowed to view and collect—if technologically feasible—images where motorist faces and license plates are automatically blurred out or pixelated. Assuming that this can even be technologically achieved, this is not what Manchester will be doing. Instead, they will be collecting images of motorists that inevitably will cause some to be identified.

30. Indeed, it is likely because police officers viewing such recordings have the ability to instantly identify a motorist that—as the legislative history makes clear—all participants in the legislative process believed that RSA 236:130 acted as a total bar on surveillance cameras capturing motorist information. *See supra* Part I.B.

31. In light of this dispute as to whether the City’s planned use of surveillance cameras is permissible under RSA 236:130, the filing of this action seeking a declaratory judgment is necessary. In addition, because the City has not agreed to put on hold its planned use of these surveillance cameras until final resolution of this court matter, Petitioners seek an immediate preliminary injunction, as well as final injunctive relief. Without such an injunction barring the use of these surveillance cameras, the Petitioners and the public travelling on Elm Street will be irreparably harmed by the City’s capturing of motorists’ information in violation of RSA 236:130.

COUNT I
[VIOLATION OF RSA 236:130; BREACH OF STATUTORY DUTY]

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

33. Under RSA 236:130, the City of Manchester, with some exceptions not applicable here, cannot “engage in surveillance on any public ways of the state or its political subdivisions.” RSA 236:130, II. “Surveillance” is defined, in part, as “the act of determining the ownership of a motor vehicle or the identity of a motor vehicle’s occupants on the public ways of the state or its

political subdivisions through the use of a camera ... that by itself or in conjunction with other devices or information can be used to determine the ownership of a motor vehicle or the identity of a motor vehicle's occupants." RSA 236:130, I (emphasis added).

34. Because Manchester's planned use of surveillance cameras on Elm Street can and will capture motorists' identifying information, this use will violate RSA 236:130.

35. Petitioners are in a class—namely, people traveling on roadways—that RSA 236:130 is designed to protect. The injury that will be created by the City's planned use of surveillance cameras—namely, violation of privacy—is of the type that this statute is specifically intended to prevent.

36. Pursuant to RSA 491:22, Petitioners seek a judgment declaring that the City of Manchester's planned use of surveillance cameras on Elm Street violates RSA 236:130 because the cameras can and will capture motorists' identifying information.

37. Because the City has not agreed to put on hold its planned use of these surveillance cameras until final resolution of this court matter, Petitioners seek an immediate preliminary injunction, as well as final injunctive relief. Without such an injunction barring the use of these surveillance cameras, Petitioners and the public travelling on Elm Street will be irreparably harmed by the City's capturing of motorist information in violation of RSA 236:130.

38. Petitioners have no alternative adequate remedy at law if they are denied the requested relief, especially where the City has refused to enforce RSA 236:130 and will install these surveillance cameras before final resolution of this case.

39. Given the clarity of RSA 236:130 and 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 that the City of Manchester's planned use of surveillance cameras on Elm Street violates RSA 236:130 because the cameras can and will capture identifying information of motorists;
- C. In light of the irreparable harm to Petitioners caused by the City's plan to install surveillance cameras on Elm Street that can and will capture identifying information of motorists, and the substantial likelihood that Petitioners will succeed on the merits of their case, the Court issue a preliminary and permanent injunction barring the use of these surveillance cameras;
- 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 Neal Kurk, Carla Gericke, John "Brinck"
Slattery, and Holly Beene Seal,

By and through their attorneys with the American Civil
Liberties Union of New Hampshire Foundation,

/s/ Gilles Bissonnette

Gilles R. Bissonnette (N.H. Bar No. 265393)
Henry Klementowicz (N.H. Bar No. 21177)
American Civil Liberties Union of New Hampshire
18 Low Avenue
Concord, NH 03301
Tel.: 603.224.5591
gilles@aclu-nh.org
henry@aclu-nh.org

June 11, 2019

VERIFICATION

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



Neal Kurk

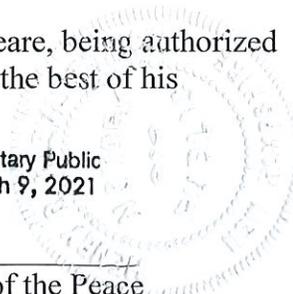
June 11, 2019

THE STATE OF NEW HAMPSHIRE
MERRIMACK, SS

Personally appeared the above named Neal Kurk of the Town of Weare, 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.

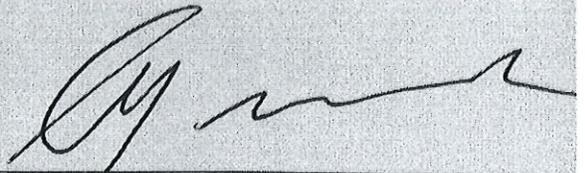
Before me,

HENRY R. KLEMENTOWICZ, Notary Public
My Commission Expires March 9, 2021


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.



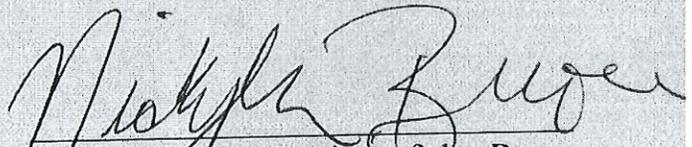
Carla Gericke

June 11, 2019

THE STATE OF NEW HAMPSHIRE
_____, SS

Personally appeared the above named Carla Gericke of the City of Manchester, being authorized so to do, and made oath that the facts contained in the foregoing are true to the best of her knowledge and belief.

Before me,

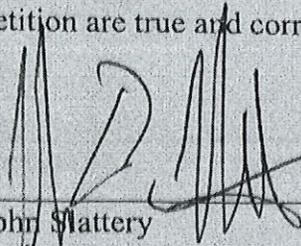


Notary Public/Justice of the Peace



VERIFICATION

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



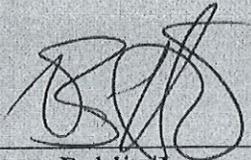
John Slattery

June 11, 2019

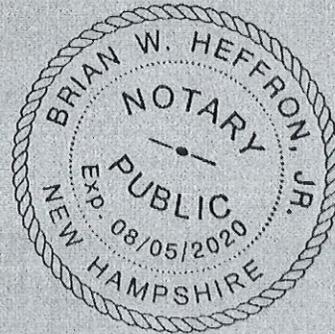
THE STATE OF NEW HAMPSHIRE
Hillsborough, SS

Personally appeared the above named John Slattery of the City of Manchester, 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, Brian Heffron Jr

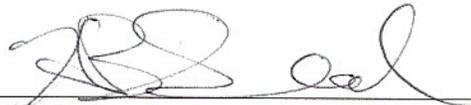


Notary Public/Justice of the Peace



VERIFICATION

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


Holly Beene Seal

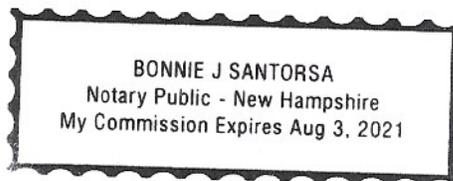
June 10, 2019

THE STATE OF NEW HAMPSHIRE
Hillsborough, SS

Personally appeared the above named Holly Beene Seal of the City of Manchester, being authorized so to do, and made oath that the facts contained in the foregoing are true to the best of her knowledge and belief.

Before me,


Notary Public/Justice of the Peace



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 hand-delivered to the City of Manchester on this date, June 11, 2019.

/s/ Gilles Bissonnette
Gilles Bissonnette