

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

FRANK SOBOL
VINCENT COPPOLA
ANDREW THOMPSON

V.

LINDA HODGDON, COMMISSIONER, DEPARTMENT OF ADMINISTRATIVE
SERVICES AND
CHRISTOPHER D. CLEMENT, SR., DEPARTMENT OF TRANSPORTATION

REQUEST FOR PRELIMINARY INJUNCTION

NOW COME the plaintiffs, Frank Sobol, Vincent Coppola and Andrew Thompson, on behalf of themselves and others similarly situated and requests that this Honorable Court enjoin the Defendants from penalizing them for camping on public land when plaintiffs are homeless, and there is no other place that accommodates homeless people in Concord.

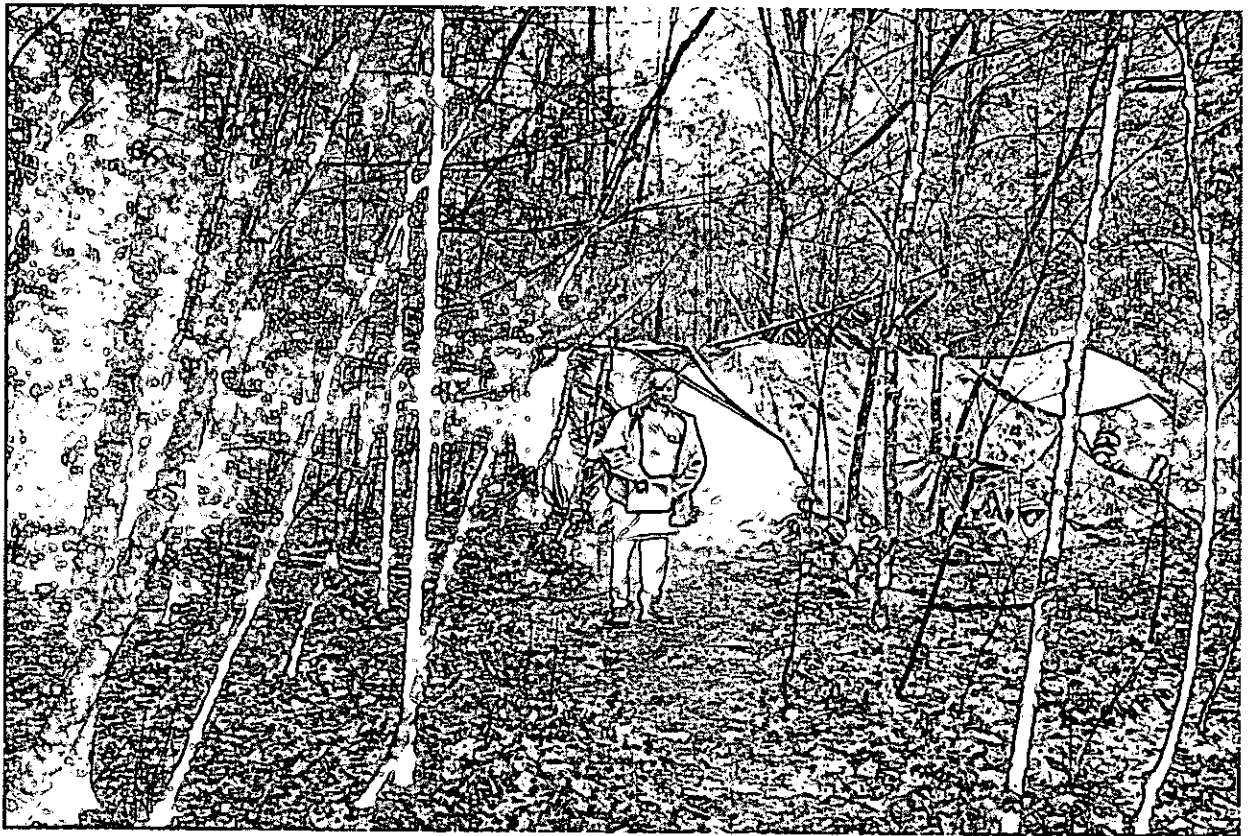
In support of this request, the plaintiffs state as follows:

Parties

1. Frank Sobol, Vincent Coppola and Andrew Thompson are homeless individuals who currently reside on property which the State designates as "State owned land on south side of Hazen Drive".
2. Linda Hodgdon is the Commissioner of the Department of Administrative Services. She is being sued in her official capacity. Her address is 25 Capitol Street, Concord, NH 03301.
3. Christopher Clement, Sr. is the Commissioner of the Department of Transportation. He is being sued in his official capacity. His address 7 Hazen Drive, P.O. Box 483, Concord, NH 03302

Facts

4. Plaintiff Andrew Thompson has lived on the land on south side of Hazen Drive since last fall. Prior to that he resided at a camping area which the State designates as "behind the Everett Arena along the Merrimack River". Last fall the police evicted all the residents of the Everett Arena campsite.
5. This is a photograph of Plaintiff Andrew Thompson and his campsite.



6. Until recently Plaintiffs Vincent Coppola and Frank Sobol resided in an area behind the Concord Center near the railroad tracks colloquially referred to as "the tubes".
7. According to John Duval, Chief of the Concord Police Department, "the tubes" where plaintiffs resided is private property.

8. In the weeks leading up to the date of this filing, members of the Concord Police Department had been notifying homeless residents that the private owners were insisting that campers be evicted from “the tubes” and that those that remained would be subject to prosecution for trespass.
9. Plaintiffs Sobol and Coppola were forced to evacuate the railroad tracks and move.
10. This is a photograph of Plaintiff Frank Sobol in the campsite that he shares with Plaintiff Victor Coppola and one other individual.



11. The Concord Police have issued summons for criminal trespass to 18 individuals who remained in “the tubes” and declined to leave.
12. On April 9, 2013 undersigned counsel wrote a letter to Commissioner Hodgdon on behalf of six individuals who were being forcibly evicted from “the tubes” and hoped to relocate

on public land situated behind the Everett Arena requesting a due process hearing. A copy of letter attached as Exhibit "A".

13. To date Commissioner Hodgdon has not responded.
14. Recently Public Notices have been placed on state owned property where individuals including the plaintiffs have been forced to camp. A copy of the Public Notice is attached as Exhibit "B".
15. The notice states that individuals found camping on posted state land will be subject "to the penalties as detailed in RSA 236:59" and that "any personal property that remains on the State owned property ...will be removed and disposed of"
16. The notice also states: "Individuals are encouraged to call 2-1-1 to be connected with an outreach worker to request assistance accessing emergency shelter and other resources.
17. On May 8, 2013 undersigned counsel called 2-1-1 and spoke with Heather Aicholtz. She has been director of the 2-1-1 NH Call Center for the last five years.
18. Ms. Aicholtz stated that the only emergency shelter in Concord is McKenna House.
19. McKenna House offers 26 shelter beds, 19 for men and 7 for women.
20. Ms. Aicholtz stated that McKenna House is generally full. In the last five years she has only been able to place 5 individuals at McKenna House.
21. Ms. Aicholtz stated that failing placement in McKenna House she advises people who call the center to seek shelter at the next nearest shelters which are located in Manchester, Laconia, Nashua, Dover or Portsmouth.

The Law

22. RSA 236:58 is included in Title 20. Transportation, Chapter 236. Highway Regulation, Protection and Control Regulations. It reads "No 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*". (emphasis added). RSA 236:59 states that any person who violates RSA 236:58 shall be guilty of a violation and liable for "the cost of restoration for any damage caused to a highway easement or right-of-way.

23. RSA 236:58 does not apply to the property that the plaintiffs are camping on. RSA 236:1. defines the regulatory authority of the commissioner of transportation under this chapter.

It states:

- I. The commissioner may regulate the use of class I, class II, and class III highways in towns or cities without compact sections and in other towns and cities outside the compact portion thereof as determined by him, including the use of rights-of-way.
- II. The commissioner may establish stop intersections, erect stop signs, yield right-of-way signs, or other traffic devices or signals thereon or upon any way entering thereon.

24. The land on which plaintiffs are now camping does not fall into any of those categories.

Standard

25. The issuance of injunctions, either temporary or permanent, has long been considered an extraordinary remedy. *Murphy v. McQuade Realty, Inc.*, 122 N.H. 314, 316, 444 A.2d 530 (1982). A preliminary injunction is a provisional remedy that preserves the status quo pending a final determination of the case on the merits. *Kukene v. Genuardo*, 145 N.H. 1, 4, 749 A.2d 309 (2000). An injunction should not issue unless there is an immediate danger of irreparable harm to the party seeking injunctive relief, and there is no adequate remedy at law. *Murphy*, 122 N.H. at 316. Also, a party seeking an injunction must show

that it would likely succeed on the merits. N.H. Dep't of Env'tl. Servs. v. Mottolo, 155 N.H. 57, 63 (N.H. 2007)

Argument

26. The plaintiffs are entitled to a preliminary injunction because there is an immediate danger of irreparable harm if the defendants are allowed to evict them from their encampment. The private property on which Plaintiffs Sobol and Coppola had camped is no longer available to them. Plaintiff Thompson was evicted from the State owned property where he used to live. These plaintiffs need to live somewhere. Public land is their only option.
27. There is no adequate remedy at law.
28. The plaintiffs are likely to succeed on the merits because, in addition to proving that the statute under which the State threatens prosecution is not applicable to their situation, they can also demonstrate that the lack of procedure violates their constitutional rights under the Fourteenth Amendment to the United States Constitution and Part 1, Article 15 of the New Hampshire Constitution.
29. At a minimum due process requires that notice and an opportunity to be heard be granted at a meaningful time and in a meaningful manner before an individual may be deprived of a property or liberty interest.
30. The specific process due in a particular situation is found by balancing three factors: (1) the private interest that will be affected by the official action, (2) the risk of erroneous deprivation of that private interest and the probable value that additional procedural protections would provide, and (3) the interest the government seeks to achieve.

31. With respect to the first prong, the private interest that will be affected, “[c]ourts have held that individuals have a liberty interest in being in a public place of their choice. See *City of Chicago v. Morales*, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67 (1999) (plurality opinion) (“[I]t is apparent that an 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” (citations and internal quotation marks omitted)); *Kennedy v. City of Cincinnati*, 595 F.3d 327, 336 (6th Cir. 2010) (holding that the plaintiff had a liberty interest “to remain in a public place of his choice”); *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1266 (11th Cir. 2011) (holding that the plaintiffs “have a constitutionally protected liberty interest to be in parks or on other city lands of their choosing that are open to the public generally”).” *Cuellar v. Bernard*, 2013 U.S. Dist. LEXIS 43145, 12-13 (W.D. Tex. Mar. 27, 2013)
32. Additionally, RSA 236:58 contemplates that individuals can seek permission to camp on the public land at issue. However, there does not appear to be a procedure in place for an individual to apply for permission.
33. With respect to the second prong, the risk of erroneous deprivation of that right is extremely high. If the defendants are allowed to evict the plaintiffs they will once again be out on the street with no place to go.
34. Finally, with respect to the third prong, the interest that the government seeks to achieve in RSA 238 is regulating the highways, an interest that is not served by evicting the plaintiffs from their present encampment or citing them for a violation.

Notice

35. A copy of this pleading has been sent via email to the Chief of the Civil Bureau of the Attorney General's Office, Mary Ann Dempsey.

Relief Sought

WHEREFORE the Plaintiffs request that this Honorable Court order the following relief:

- A. That the Defendants be enjoined from enforcing the threatened eviction of plaintiffs and others who are camping on state-owned property pending the outcome of this case;
- B. That the Defendants be enjoined from confiscating the personal property of the plaintiffs and others who are camping on state-owned property pending the outcome of this case.
- C. That a hearing be scheduled at the Court's earliest convenience.
- D. That the Court order any additional relief that is necessary and just.

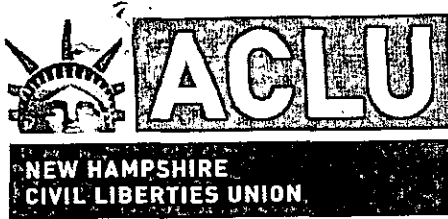
Respectfully submitted,
FRANK SOBOL
VINCENT COPPOLA
ANDREW THOMPSON

By and through their attorney,

NH CIVIL LIBERTIES UNION



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DEVON CHAFFEE
EXECUTIVE DIRECTOR

"A"

April 9, 2013

Linda Hodgdon
Commissioner, Dept. Administrative Services
State House Annex
25 Capitol Street
Concord, NH 03301-6312

Re: Request for Due Process Hearing

Dear Commissioner Hodgdon:

NH Civil Liberties Union has been contacted by several homeless individuals who desire to set up tents on the state property behind the Everett Arena in Concord. This area, which runs parallel to the Merrimack River, has for years served as a camping area for homeless individuals. Recently the Department of Administrative Services has posted "no trespassing" signs on this area.

According to outreach workers, there are approximately 150 homeless people living in Concord. A large number of them currently reside in an area abutting the railroad tracks off of Commercial Street. This area is privately owned and the Concord police have been down to this area at least twice in the last 10 days notifying individuals that the landowner wants them off of this private property. The individuals who are being evicted from this private property have no place to go since Concord's two cold weather shelters have shut down for the season.

This letter is being written on behalf of the following individuals:

- Frank Sobol. Frank is 52 years old. He has been homeless for most of the last twenty years. He stayed in the cold weather shelter over the winter and is now living on the Commercial Street property.
- Wendell Ford. Wendell is 58 years old. He has been homeless since September 2011. He stayed in the cold weather shelter over the winter and is now living on the Commercial Street property.
- Steven Mann. Steven is 51 years old. He has been homeless for over one year. He lived with his wife in their car over the winter and is now living on the Commercial Street property.
- William Arnold. William is 56 years old and has been homeless for nine months. He stayed in the cold weather shelter over the winter and is now living in the Commercial Street property.
- Ben Berry. Ben is 18 years old. He has been homeless for nine months. Ben stayed in the cold weather shelter over the winter and is now living on the Commercial Street property.
- Dennis Laramee. Dennis is 42 years old. He became homeless in March. He stayed at the cold weather shelter until it closed and is now sleeping in parking garages.

The individuals referenced above are involuntarily homeless. They do not have private homes or private property on which they can erect living quarters. They are required by circumstance to perform all of life's activities such as eating and sleeping on public land. Each of them would camp at the Everett Arena site if it were available.

The "no trespass" notice singularly impacts the homeless population in a way that is excessive and intrudes upon their protected liberty interest. This notice is not designed to discourage the casual hiker from using the property; it is specifically intended to restrict individuals who had once called the property their "home" from resettling on it and to punish those who do resettle.

Homeless individuals have a protected liberty interest in being able to use public land. Homeless people are members of the public at large and they have a constitutionally protected liberty interest to be in parks or on other city or state lands of their choosing that are open to the public generally. *City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct. 1849, 1858, 144 L. Ed. 2d 67 (1999) (plurality opinion) (citations omitted) ("[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.'"). The Department infringed upon this liberty interest by posting the "no trespass" notice.

The sealing off of this property without due process may also implicate other rights, such as the right to intrastate travel, the right to be free from cruel and unusual punishment, the right not to be placed in danger by the state, and the right to equal protection of the law.

However, the government may deprive persons of life, liberty, and property so long as the deprivation is accompanied by due process. Due process is valued for three reasons: it requires the implementation of some procedure that slows government down; it allows individuals to participate in the deprivation process; and it requires government to justify its actions.

At a minimum due process requires notice and an opportunity to be heard. This is what the homeless people named above are requesting – an opportunity to be heard to challenge this restriction. Due process requires that they receive it. *Duffley v. New Hampshire Interscholastic Athletic Ass'n*, 122 N.H. 484, 490 (N.H. 1982). See, *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1268 (11th Cir. Fla. 2011) (striking down a no trespass ordinance in part because there was no procedural means for a warning-recipient to challenge the warning).

On behalf of the named individuals above and others who may be similarly situated, NHCLU requests the following relief:

1. That the Department of Administrative Services hold a hearing consisted with due process and
2. That the Department refrain from issuing any trespass warnings pending the outcome of that hearing.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Barbara Keshen".

Barbara Keshen
Staff Attorney

Cc: Ann Rice, Deputy Attorney General

PUBLIC NOTICE

On May 14, 2013, the Department of Administrative Services and Department of Transportation will post "No Camping" signs on State property in the following locations: behind the Everett Arena along the Merrimack River, across the street behind the Shell Station also known as Gully Hill, on State owned land on south side of Hazen Drive and on State owned property located on or adjacent to Stickney Avenue.

On May 15, 2013, and thereafter, any individuals found in violation of the No Camping provision shall be subject to the penalties as detailed in RSA 236:59.

Any individuals that have personal property on the above listed sites are encouraged to remove their personal property before May 15, 2013.

Beginning on May 15, 2013, any personal property that remains on the State owned property listed above will be removed and disposed of.

Individuals are encouraged to call 2-1-1 to be connected with an outreach worker to request assistance accessing emergency shelter and other resources.