THE STATE OF NEW HAMPSHIRE
4th CIRCUIT COURT – DISTRICT DIVISION

BELKNAP, SS. APRIL TERM, 2015

STATE OF NEW HAMPSHIRE 15-CR-414
V.
JEFFREY CLAY

MOTION TO DISMISS

NOW COMES the Defendant, Jeffrey Clay, by and through counsel, and moves this Honorable Court to dismiss the pending complaint in this matter. In support thereof, the Defendant offers the following:

1. Mr. Clay stands charged with one count of misdemeanor disorderly conduct. A trial is scheduled for May 8, 2015.

2. The charged conduct in this matter was video recorded, and a DVD containing a copy the video has been provided to this Court with this motion. The relevant portion of the video starts at 10:38.

FACTS

3. The Board of Selectmen opened up its February 3, 2015 meeting for "Public Input I" following the Town Administrator's Report and Update. Under a January 14, 2015 Board policy, these public input sessions are designed "to provide the Board with an opportunity to receive directly from citizens any concerns, desires, or hopes they may have for the community." See Agenda for Alton Board of Selectmen Meeting, Feb. 3, 2015 (attached). The public input session is not limited to specified topics.

4. Mr. Clay was the first to speak, and he was allotted 5 minutes per the January 14 policy. He brought a timer to the table to ensure full compliance with the Town's 5-minute limit. In his speech, he called upon all of the Board members to resign for their "poor actions as selectmen," "poor decisions," and "continued violations of the citizens' rights here in Alton." His remarks referenced, in part, his belief that the

Board had violated New Hampshire's Right-to-Know law by holding "workshop" sessions at odd hours of the day and making decisions during them that were not transparent. He did not raise his voice or use any profanities.

5. Approximately 40 seconds into the remarks, Selectman David Hussey interrupted Mr. Clay, called the remarks "character assassination," and requested a "point of order." Mr. Hussey then left the room for less than 5 seconds, apparently in search of Alton Police Chief Ryan Heath. When Mr. Hussey returned—and while Mr. Clay was still speaking—Chairman R. Loring Carr recognized Mr. Hussey's request and ultimately proposed a "point of order" to "clos[e] down public input" because of the "libelous" and "defamatory statements made by Mr. Clay." Mr. Clay then stopped his timer. The 5-member Board then, with no dissenters, immediately approved the "point of order" closing down public input. Selectmen Hussey then left the room again, apparently in search of Chief Heath. All of this occurred within the first 2 minutes of Mr. Clay's allotted time.

6. After the Board vote, Mr. Clay restarted his timer and continued to peacefully express his political views, stating the following:

> Integrity is the quality of being honest and having strong moral principles—moral uprightness. It is generally a personal choice to uphold oneself consistently to moral and ethical standards. Integrity also demands knowledge and compliance with both the letter [and] spirit of the written and unwritten rules. To this end, this Board is morally corrupt. It is bankrupt. It is without integrity .... We the citizens pay the price in legal fees for your representation. Two little words: [I] Resign.... Stand up and resign now.
>
> Alton deserves better. Audacity is defined as boldness and daring, especially with confident, arrogant disregard for laws and rules and policies. Continued violations cannot be tolerated by the public. Stand up, take responsibility for your willful violations of the rights of the community. Resign. Do it now. Two little words. Stand up and resign.

7. While Mr. Clay peacefully engaged in the speech above, the Board continued to attempt to silence him before his 5 minutes had expired on the purported ground that public input had been closed. Chief Heath then approached Mr. Clay and asked him

to stop speaking several times. Because Mr. Clay was not being disruptive and was merely exercising his political views peacefully within his 5 minutes of allotted time, he declined and attempted to finish the remarks above.

8. Chief Heath then informed Mr. Clay that he was under arrest. Mr. Clay immediately cooperated with the arrest, and Chief Heath removed Mr. Clay from the room by holding Mr. Clay's arm behind his back. Mr. Clay was arrested after speaking for less than 4 minutes.

9. After Mr. Clay's arrest, the Board then immediately reopened public input without a formal vote and permitted another individual to speak. This individual stated before his remarks that he was "very happy with the selectpeople and you don't have to stand up and resign on my account. I like what you're doing." The Board took no action against this individual.

ARGUMENT

10. Here, the State contends that Mr. Clay committed disorderly conduct for "[k]nowingly refus[ing] to comply with *a lawful order* given by [Alton Police] Chief [Ryan] Heath … to move from a public place, to wit the Alton Town Hall" under RSA 644:2, II(e).

11. To sustain its burden in this trial, the State will be required to prove beyond a reasonable doubt that the Chief Heath's order for Mr. Clay to leave the Alton Town Hall was "lawful." Assuming all facts in the State's Complaint as true, it plainly was not. *See e.g., State v. Vaillancourt*, 122 N.H. 1153 (1982) ("an indictment must allege some criminal activity"; indictment is insufficient where "even if the facts alleged in it were true, they would not have satisfied the elements necessary").

12. The relevant portion of RSA 644:2, V(a) defines a "lawful order" as:

> (1) A command issued to any person for the purpose of preventing said person from committing any offense set forth in this section, or in any section of Title LXII or Title XXI, when the officer has reasonable grounds to believe that said person is about to commit any such offense, or when said person is engaged in a course of conduct which makes his commission of such an offense imminent; [or]

> (2) A command issued to any person to stop him from continuing to commit any offense set forth in this section, or in any section of Title LXII or Title XXI, when the officer has reasonable grounds to believe that said person is presently engaged in conduct which constitutes any such offense....

13. Here, Chief Heath's order instructing Mr. Clay to leave before his five minutes of allotted time had expired was undoubtedly unlawful because it was made pursuant to the Town's unconstitutional decision to shut down public comment and silence Mr. Clay in violation of the First Amendment. Indeed Chief Heath's incident report confirms that "[Chairman] Carr ... asked me to remove Clay." See Report of Chief Heath (attached). In short, in deciding to arrest Mr. Clay, Chief Heath relied on no other facts or incidents other than the Town's unconstitutional decision to silence and ultimately remove Mr. Clay. Thus the State must not only prove that the command was "issued to [Mr. Clay] to stop him from committing" an offense—which runs contrary to Chief Heath's own police report—but also that the Town's effort to silence Mr. Clay was lawful at the outset. *See Wright v. Georgia*, 373 U.S. 284, 291–92 (1963) ("[O]ne cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution."). For the reasons that follow, the State will not be able to meet this burden. Accordingly, this Court should dismiss the pending charge.

THE CHIEFS ORDER WAS UNLAWFUL BECAUSE IT WAS BASED ON THE TOWN'S UNCONSTITUTIONAL REMOVAL DECISION THAT VIOLATED MR. CLAY'S RIGHT TO FREE SPEECH GUARANTEED BY THE STATE AND FEDERAL CONSTITUTIONS

14. As created by the Town, the public input session at the February 3 Board meeting where speakers are allotted 5 minutes to voice any concerns, regardless of content, was clearly a designated public forum. *See, e.g., City of Madison Joint Sch. Dist. No. 8 v. Wis. Pub. Emp't Relations Comm'n*, 429 U.S. 167, 176 (1976) ("[W]hen the board sits in public meetings to conduct public business and hear the views of citizens, it may not be required to discriminate between speakers on the basis of . . . their speech."); *Surita v. Hyde*, 665 F.3d 860 (7th Cir. 2011); *Norse v. City of Santa Cruz*, 629 F.3d 966, 975 (9th Cir. 2010) ("council meetings, once to public

participation, are limited public forums"); *Mesa v. White*, 197 F.3d 1041, 1044 (10th Cir. 1999) ("although the commission need not have created this forum in the first place, once it did so, the commission became bound by the same standards that apply in the case of a traditional public forum"); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990) ("City Council meetings like Norwalk's, where the public is afforded the opportunity to address the Council, are the focus of highly important individual and governmental interests .... [S]uch meetings, once opened, have been regarded as public forums, albeit limited ones.").

15. Accordingly, content-neutral time, place, and manner restrictions with respect to this designated public forum are permissible if they are narrowly drawn to achieve a significant governmental interest and if they allow communication through other channels. Content-based exclusions must be narrowly tailored to effectuate a compelling governmental interest. *Mesa*, 197 F.3d at 1044. Moreover, viewpoint discrimination is almost universally condemned and rarely passes constitutional scrutiny. "The government bears a particularly heavy burden in justifying viewpoint-based restrictions in designated public forums. Viewpoint discrimination is an egregious form of content discrimination. Content-based restrictions are subject to strict scrutiny. Viewpoint-based restrictions receive even more critical judicial treatment." *Id.* at 1047 (quoting *Church on the Rock v. City of Albuquerque*, 84 F.3d 1273, 1279 (10th Cir. 1996)). In short, in such a fora, municipal officials should know "that the government may never suppress viewpoints it doesn't like." *Norse*, 629 F.3d at 979 (Kozinski, J., concurring). And, to eject a speaker from a public meeting, the speech must "disrupt[,] disturb[] or otherwise impede[] the orderly conduct of the Council meeting." *White*, 900 F.2d at 142–25.

16. Here, the Town's removal order violated Mr. Clay's free speech rights embedded within the First Amendment and Part I, Article 22 of the New Hampshire Constitution because (i) the Town's actions in suppressing Mr. Clay's speech were, without proper justification, both content based and viewpoint discriminatory, (ii) Mr. Clay's speech

was not disruptive of the Board proceedings, and (iii) Mr. Clay's speech was not "libelous" or "defamatory."[1]

a. The removal order was the product of viewpoint discrimination

17. Given the facts that are illuminated in the video, it is apparent that the Town, including by formal vote, suppressed Mr. Clay's speech because of its specific content and in a viewpoint discriminatory fashion—namely, because of the speech's content and viewpoint that the Board had engaged in "poor actions as selectmen," "poor decisions," and "continued violations of the citizens' rights here in Alton." These comments, though undoubtedly critical, were peaceful, made within the 5 minutes allotted, and well within the Board's agenda of allowing public input on "any concerns, desires, or hopes they may have for the community." Because Mr. Clay was complying with all Board policies, *see infra* Section (c), it is clear that the Town's actions were motivated by a desire to suppress Mr. Clay's viewpoint. Put another way, the only interest that the Town can demonstrate is an illegitimate interest—the suppression of Mr. Clay's speech.

18. This discrimination is proven by the remarks of Selectmen Hussey himself, who wanted Mr. Clay's speech stopped after approximately 40 seconds because he believed it was "character assassination." It is obvious that, if Mr. Clay had expressed the viewpoint that the Board has engaged in "good actions as selectmen," "good decisions," and "continued upholding of the citizens' rights here in Alton," he would have been permitted to speak for the full 5 minutes allotted. And, if there is any further doubt that the Town engaged in unconstitutional viewpoint discrimination, it is dispelled by the fact that the Board immediately reopened the public input period for other viewpoints after Mr. Clay was arrested. When public input was reopened, the next speaker praised the Board. Tellingly, the Board took no action against this speaker who expressed a viewpoint precisely the opposite of Mr. Clay's.

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[1] Consistent with the New Hampshire Supreme Court's treatment of the complaint in *State v. Dominic*, 177 N.H. 573, 575 (1977), Mr. Clay analyzes the lawfulness of the removal order based on the actions of the Board. In *Dominic*, the Supreme Court treated a nearly identical order as coming from the chairman of the board because the officer "was acting under the direction of [the chairman] at the time…." It therefore analyzed "whether [the chairman] could lawfully order defendant's removal from the selectmen's meeting." The facts of this case present no justification for departing from that analytic framework.

19. In a free society, governmental officials are required to tolerate harsh criticism and even a demeaning attitude towards them—including viewpoints that can feel like "character assassination"—and cannot discriminate based on these critical viewpoints. *Norse*, 629 F.3d at 979 ("But, unlike der Fuhrer, government officials in America occasionally must tolerate offensive or irritating speech.") (Kozinski, J., concurring); *see also Boos v. Barry*, 485 U.S. 312, 322, (1988) ("As a general matter, we have indicated that in public debate, our own citizens must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment."). Thus, speech directed to and about the government is singled out for First Amendment protection because speech—including about how well or badly officials carry out their duties—lies at the very heart of the First Amendment. Just as concerning, the Town's actions in suppressing Mr. Clay's speech will chill others from engaging in future speech that is critical of the Board.

20. The Town's content-based and viewpoint discriminatory actions are further confirmed by the fact that Mr. Clay's speech plainly did not constitute a true threat, "fighting words," or an incitement to imminent lawless action—which are very narrow exceptions to free speech protections. First, Mr. Clay never threatened to commit an act of violence against the Board or any other individual, and therefore this speech is not a threat. Second, to characterize speech as actionable "fighting words," the State must prove that there existed "a likelihood that the person addressed would make an immediate violent response." *Gooding v. Wilson*, 405 U.S. 518, 528 (1972); *see also Texas v. Johnson*, 491 U.S. 397, 409 (1989) ("invitation to exchange fisticuffs" constitutes fighting words); *State v. Oliveira*, 115 N.H. 559, 562 (1975) (construing New Hampshire's disorderly conduct statute as excluding from its reach offensive words that do not rise to the level of 'fighting words,' and holding that the defendant's use of the words 'f—kin pigs' and 'F—k the political pigs' in a speech were not actionable under the statute because they were not fighting words). Nothing in Mr. Clay's speech reaches this level, especially where there is no contention (because it would not be credible) that this speech is reasonably likely to provoke a violent reaction on the part of the Board or any meeting attendee. *See Sandul v.*

Larion, 119 F.3d 1250, 1254 (6th Cir. 1997), *cert. denied*, 522 U.S. 979 (1997) (yelling "fuck you" out a car window at abortion protesters did "not rise to the level of fighting words. The actions were not likely to inflict injury or to incite an immediate breach of the peace"). Third, Mr. Clay's statements were neither intended to nor likely to incite members of the public to break the law. *See Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969). Here, Mr. Clay's speech was, at most, sternly critical. This is far from the rigorous standard justifying governmental censorship of political speech: "Speech is often provocative and challenging .... [B]ut it is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." *Terminielo v. Chicago*, 337 US. 1, 4 (1974).

21. In short, there is little doubt that (i) the Town's attempt to suppress Mr. Clay's speech by closing the public input session was unlawful and constituted impermissible content-based and viewpoint discrimination, (ii) Mr. Clay's had a constitutional right to peacefully speak for his full allotted 5 minutes on matters of public concern, and (iii) therefore the orders by the Town and Chief Heath designed to prevent Mr. Clay from peacefully speaking for his full allotted 5 minutes were not "lawful orders." One cannot be criminally punished for failing to comply with an order that would violate the First Amendment by suppressing a constitutionally-protected liberty interest. *See State v. Biondolillo*, 164 N.H. 370, 376 (2012) (noting that RSA 644:2, II(e) cannot be applied where the defendant was "engaged in constitutionally-protected conduct"); *State v. Hudson*, 111 N.H. 25 (1971) (loitering, of itself, is not a crime, even after a police officer has requested the loiterer to move on); *see also Cox v. Louisiana*, 379 U.S. 536, 551–52 (1965) (invalidating breach-of-peace statute construed to forbid causing agitation or disquiet coupled with refusing to move on when ordered to do so on the ground that it permitted conviction where the mere expression of unpopular views prompted the order that is disobeyed).

b. Mr. Clay did not disrupt the proceedings

22. In *State v. Dominic*, 117 N.H. 573 (1977), the New Hampshire Supreme Court explained that a speaker can be lawfully removed from a public meeting without violating free speech principles if his or her conduct "prevent[s] the selectmen from continuing their meeting" and impacts "the rights of others to speak in an orderly manner." *Id.* at 576; *see also Norse*, 629 F.3d at 979 (Kozinski, J., concurring) ("The Supreme Court long ago explained that 'in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.' Even in a limited public forum like a city council meeting, the First Amendment tightly constrains the government's power; speakers may be removed only if they are actually disruptive.") (quoting *Tinker v. Des Moines Ind. Cmty. Sch. Dist.*, 393 U.S. 503, 508 (1969)); *Monteiro v. City of Elizabeth*, 436 F.3d 397, 405 (3d Cir. 2006) ("Perkins-Auguste's argument that she could have conceivably (and constitutionally) ejected Monteiro on the basis of his disruptions is unavailing in the face of a jury verdict concluding that she acted with a motive to suppress Monteiro's speech on the basis of viewpoint.").

23. Mr. Clay's speech during the February 3 meeting was neither disruptive, disorderly, nor a "breach of the peace," as Mr. Clay was merely speaking within his 5 minutes allotted. Tellingly, the State has dismissed the initial complaint for disorderly conduct for "purposely caus[ing] a breach of the peace by disrupting an Alton Board of Selectmen meeting … by continuing to speak after being informed repetitively by the board that public input was closed" under RSA 644:2, III(c). Indeed, Mr. Clay never attempted to speak beyond his five minutes allotted, as that arguably would have prevented the Board from accomplishing its business in a reasonably efficient manner. Mr. Clay's speech was also squarely within the Board's broad policy of allowing comment on "any concerns, desires, or hopes they may have for the community" during public input sessions. *See State v. Baer*, No. 450-2014-cr-01152 (4th Cir. Ct. Dec. 17, 2014) ("The Court does not find the actions of the Defendant to be criminal in nature which is necessary in the ordering of restrictions on a citizen's liberties in First Amendment considerations. The Court finds that the Defendant

citizen's action never created a breach of peace sustaining a criminal complaint.") (Carroll, J.). Mr. Clay spoke when he was recognized. His gestures were reasonable and non-aggressive. He did not yell. He was calm. He did not use profanities. He did not engage in any physical theatrics. He did not physically approach any of the Board members. He simply spoke out against what he believes are unlawful Town practices, and he attempted to do so peacefully for the full 5 minutes allotted. For that, his speech was suppressed and he was arrested. His remarks were legitimate and protected. His remarks cannot be deemed "disruptive" merely because they are critical or have an emotive impact on Board members. Even despite the Board's unnecessary interference with Mr. Clay's allotted time, not one agenda item was skipped and no member of the public prevented from speaking. Therefore, Mr. Clay's arrest and removal were both unconstitutional and Mr. Clay's expressive activity could not form the basis of any "lawful order" for his removal.

c. The Board violated its own policy by incorrectly deeming Mr. Clay's comments "defamatory"

24. Finally, it is worth noting that the Town's decision to suppress Mr. Clay's speech even violated the Town's January 14, 2015 policy for public participation at Board meetings. This is true for at least three reasons. First, Mr. Clay's speech was suppressed within the 5 minutes he was allotted under the policy. Second, the policy broadly makes clear that its purpose "is to provide the Board with an opportunity to receive directly from citizens concerns, desires, or hopes they may have for the community." Nothing in the policy allows the Board to engage in viewpoint discrimination and suppress speech that is critical. And if it did, it would be facially unconstitutional. Mr. Clay indisputably complied with this policy in communicating his "concerns, desires and hope" that Board members resign their position. Simply put, his remarks were within the Board's agenda.

25. Third, nothing about Mr. Clay's speech was "libelous" or "defamatory" under the January 14 policy because the speech constituted protected opinion. *See Thomas v. Tel. Publ'g Co.*, 155 N.H. 314, 321 (2007) ("plaintiff proves defamation by showing that the defendant failed to exercise reasonable care in publishing a false and

defamatory statement of fact about the plaintiff to a third party, assuming no valid privilege applies to the communication.") (quoting *Pierson v. Hubbard*, 147 N.H. 760, 763 (2002)) (emphasis added). Mr. Clay's speech was "meant to be persuasive," was "a call to action," and "meant to cause outrage" in the listener. As the New Hampshire Supreme Court and other courts have repeatedly held, such statements cannot be considered defamatory or libelous.[2] *See id.* at 339–40; *see also Witcherman v. Community Action Council*, No. C0-94-1241, C8-94-1360, 1995 Minn. App. LEXIS 183, at *5 (Minn. Ct. App. Feb. 7, 1995) ("At worst, Ajax's statements conveyed that Ajax wished Witcherman to resign, and that she was angry with her. These statements are true, and are not actionable [defamation].").[3]

26. In addition, Mr. Clay's statements cannot be viewed as defamatory because his speech was privileged. As the New Hampshire Supreme Court has explained, under Part I, Article 32 of the New Hampshire Constitution, speech directed to a local governing body calling for the removal of a public officer is qualifiedly privileged. *See Pickering v. Frink*, 123 N.H. 326, 331 (1983) (holding "the desirability of allowing unfettered exercise of the constitutional right to petition for the removal of a public official is a factor that weighs so significantly in the public interest as to require greater protection to the exercise of that right than the common-law qualified or conditional privilege generally provides" and "unless the defendants had knowledge of the falsity of the statements of facts, their petition in this case was privileged, and they are not subject to liability for any defamatory statements contained in the petition."); *see also* N.H. CONST. PT. I, ART. 8 ("All power residing

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[2] In *Thomas c. Tel. Publ'g Co.*, the New Hampshire Supreme Court cited favorably to *Jorg v. Cincinnati Black United Front*, 792 N.E.2d 781, 784 (Ohio App. Ct. 2003), in which a civil rights organization accused a police department and some of its officers of having committed crimes of "murder, rape and planting evidence." While such accusations at times might be based on undisclosed facts, the Court stated that they must be interpreted in context, and that, "… given the unique nature and tenor of the letter," it was "hyperbole," "meant to be persuasive," "a call to action," and "meant to cause outrage in the reader." *Id.* at 786. The Court further deemed the letter at issue "a persuasive piece of advocacy and not a news article purporting to be objective reporting." *Id.* As such, the letter and its statements were clearly protected opinion.

[3] Moreover, because a Board member is a public official, speech concerning a Board member can only be defamatory if the statements of fact are false and made with "actual malice." This high standard "flows, in part, from a recognition that public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehoods, given their assumption of 'an influential role in ordering society.'" *Lassonde v. Stanton*, 157 N.H. 582, 589 (2008) (quoting *Thomas*, 155 N.H. at 341).

originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive."). Simply put, opinions conveyed in public meetings are both non-defamatory and privileged. The Town's incorrect and overbroad interpretation of "defamation" and "libel" has suppressed (and, unless corrected will continue to suppress) speech that is constitutionally-protected.

CONCLUSION

27. Dismissal is appropriate when "no rational trier of fact, viewing all of the evidence and all reasonable inferences from it in the light most favorable to the State, [can find] guilt beyond a reasonable doubt." *State v. Fischer*, 165 N.H. 706, 712 (2013). Here, the complaint alleges that Mr. Clay failed to leave when ordered by Chief Heath. The State cannot dispute that Chief Heath was acting at the behest of Chairman Carr at that time. At a minimum, Chairman Carr's order, and by extention the order of the Board, was a clear violation of (1) Mr. Clay's rights to speak freely, as guaranteed by Part I, Article 22 and the First and Fourteenth Amendments; (2) his right to attend public meetings, as guaranteed by Part I, Article 8; and (3) his right to freely criticize his representatives, as guaranteed by Part I, Article 32. Therefore, failing to comply with the Town's order to leave cannot form the substance of a criminal complaint.

28. Indeed, in December 2014 this court had the occasion to order the same relief in an arguably closer case (constitutionally speaking). Using the language from its order in *State v. Baer*, 14-CR-1152, this Court could find in the present case that "if the level of offensiveness of the [Mr. Clay's] actions were to sustain [this] criminal allegation[], the State would be authorized to limit a citizen's free speech exercise such that it would be purely discretionary." Indeed, as in *Baer*, the Court here should be sensitive to "the chilling, if not silencing of a citizen by the State, for actions which do not warrant a criminal arrest nor conviction."

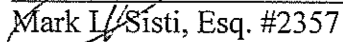
29. Simply put, the government gave Jeffrey Clay five minutes to speak and arrested him after speaking for four. It is abundantly clear that the next speaker faced no such

threat because, unlike Mr. Clay, he chose not to criticize the government. Mr. Clay was arrested for the content of his speech and nothing else, and now he faces the prospect of wearing the label of "criminal" for his democratic activity. There can be no doubt that this offends both the spirit and the letter of the state and federal constitutions, which have throughout history been interpreted to protect citizens like Mr. Clay from a government that abuses the arrest and prosecution powers in order to silence an outspoken and opinionated public. Failure to dismiss the pending charge would compel Mr. Clay to incur the burdens and expense of defending himself at trial against the Town's impermissible actions—a burden that will chill the speech of others and could gravely impact the richness of political discourse that lies at the heart of our democratic society. *See Feiner v. New York*, 340 U.S. 315, 328 (1951) (noting that if "the policeman's club can take heavy toll of a current administration's public critics … [c]riticism of public officials will be too dangerous for all but the most courageous.") (Black, J., dissenting).

WHEREFORE the Defendant prays this Honorable Court will dismiss the pending complaint or hold a hearing on this motion and grant any further relief it deems just and reasonable.

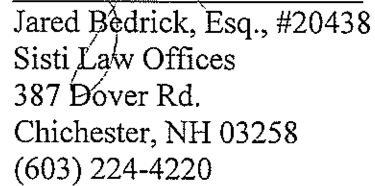
Respectfully submitted,

JEFFREY CLAY
By his attorneys,



Dated: 4/20/2015

Mark L. Sisti, Esq. #2357



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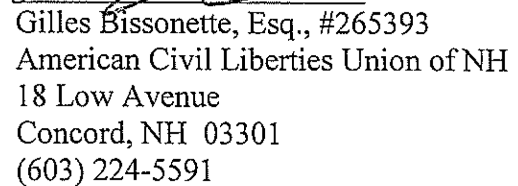
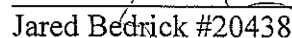


Gilles Bissonette, Esq., #265393
American Civil Liberties Union of NH
18 Low Avenue
Concord, NH 03301
(603) 224-5591

CERTIFICATION

I, Jared Bedrick, hereby certify that a copy of the foregoing Motion was forwarded to Attorney Anthony Estee, Alton Police Prosecutor on this date.



Jared Bedrick #20438

'ebruary 3, 2015 @
816 hours

was attending the Board of Selectmen meeting at the Alton Town Hall. The meeting began as normal, by ollowing the posted agenda. Once the Chairman of the Board, Loring Carr got to the point in the agenda for ublic input, he first pointed out to the people in attendance that the Board would observe their adopted policy or public participation printed on the back of the agenda. Once public input began, a man known to me as effrey Clay stepped up to the table to speak.

'lay began by announcing that he was starting the timer on his phone so the Board did not short him out of his llotted five minutes. Clay immediately began by stating that each time he attends a meeting he hopes to see that very Board Member has stepped down from their position. He continued on this course as he demanded that ach Board Member now stand up and resign. He repeated this over and over, stating the public needs to see hem do it. Clay stated that the Board Members needed to resign because of their poor actions, decisions, and ontinued violations of the citizens, however Clay never referenced one specific action or incident to base his rgument on.

. few minutes into his rant, Carr entertained a motion that Clay's conduct violated their established rules for ublic participation. The motion was moved and then a vote was taken. The Board voted unanimously to close ublic input. Carr declared public input closed and told Clay to take his seat in the audience. Clay refused to eave the table and continued to talk over the Board Members. He was issued three warnings by Carr, before he sked me to remove Clay.

approached Clay and placed my hand on his shoulder and told him it was time to leave. Clay turned to me and emanded that I take my hand off him. I told Clay that I was giving him a direct order to leave and that he would e arrested if he did not comply. Clay disregarded my order and continued to address the Board in the same tone nd manner as before. I repeated my order again, telling Clay it was time to leave. Clay looked at me and asked f he was under arrest, I told him no, but he will be arrested if he refuses to leave. Clay then turned back toward ne Board and continued in the same course of behavior. At this point I contacted the police station using my ell phone to request the assistance of a duty officer. During this time Clay was still demanding the resignation f all of the Board Members and refusing to leave despite the Board's repeated orders to do so.

then gave Clay one last order to leave, but he still refused to comply. I informed Clay he was now under arrest nd escorted him out of the building using an escort technique. We waited at the front door until I had onfirmed that Cpl Tolios was responding to take custody of Clay. I walked Clay out of the building and turned im over to Cpl Tolios for formal processing. After transferring custody I returned to the meeting to complete ny scheduled presentation.

Recommendation: Proceed with Prosecution

ALTON BOARD OF SELECTMEN
Agenda
February 3, 2015
6:00 PM
1 Monument Square
Alton, NH 03809

Convene - Pledge of Allegiance to the Flag and a Moment of Silence

Approval of the Agenda

Appointments: Bob Longabaugh

Announcements: The Deliberative Session is scheduled for Wednesday, February 4th at 7:00 PM at PMHS Auditorium; if necessary a snow date is scheduled for Thursday, February 5th. Winter Carnival is scheduled for Sunday, February 15th from 8:00 AM to 4:00 PM down the Bay.

Selectmen's Committee Report

Town Administrator's Report and Updates

Public Input I

Approval of Selectmen's Minutes

January 7, 2015
- Joint Meeting & Workshop Session I
- Non Public Workshop Session
- Public Workshop Session II

January 14, 2015
- Public Session I
- Non Public Session
- Public Session II

January 20, 2015
- Road Reconstruction Public Hearing
- Public Workshop

Old Business:
1. Review 2015 Warrant/Budget
2. Proclamation Barbershoppers
3. Review and Approval Grant DWI/DUI Patrols

New Business:
1. Land Use Items as recommended by the Town Assessor
2. Senior Center; Tent Purchase
3. Annual Agreement Landfill Compliance
4. Pole Petition, NH Electric Coop
5. MetroCast Letter; Lakes Region Public Access Television
6. Special Events Application; Winter Carnival

Public Input II

Non-Public Session:
Vote to enter into non-public session pursuant to RSA91-A:3,II (a) personnel (c) character/reputation and (e) claims/litigation.

TOWN OF ALTON

PUBLIC PARTICIPATION AT BOARD MEETINGS

The primary purpose of the Board of Selectmen's meetings is to conduct the business of the Town. The Board encourages residents to attend Board meetings so that they may become acquainted with the operation and programs of the Town. All official meetings of the Board shall be open to the press and the public. However, the Board reserves the right to meet and to adjourn or recess a meeting at any time. The Board also reserves the right to enter non-public session at any time, in accordance with the provisions of RSA 91-A:3.

Public participation in the Board's regular meetings is a privilege that the Board has adopted in order to assure that persons who wish to appear before the Board and bring matters to its attention may be heard. At the same time, in order to assure that it may conduct its meetings properly and efficiently, the Board adopts as policy the following procedures and rules pertaining to public participation at Board meetings:

1. At regularly scheduled Board meetings, the agenda will reflect two (2) times during the meeting that allows for public input. Speakers will be allotted five (5) minutes per person unless extended by approval of the Board.
2. Complaints regarding individual employees, other individuals and/or any matter that may, in the opinion of the Board infringe on another persons rights of privacy will not be allowed, such matters must be directed to the Town Administrator during normal business hours at Town Hall.
3. When addressing the Board, all speakers are to conduct themselves in a civil manner. Obscene, libelous, defamatory or violent statements will be considered out of order and will not be tolerated. The Board Chair may terminate the speaker's privilege to address the Board if the speaker does not follow these rules of order.
4. If a speaker does not follow these rules after being warned to do so by the Board Chair they may be removed from the meeting. Persistent violations of these rules may result in loss of the privilege to address the Board.

<u>Purpose:</u>

The purpose of this policy is to provide the Board with an opportunity to receive directly from citizens any concerns, desires, or hopes they may have for the community.

<u>Procedure:</u>

A. Persons wishing to be heard must state their name(s), and address and state the issue(s) they wish to be heard on.
B. Persons should try to speak directly to the issue, as briefly—and fully—as possible.
C. Persons should try to be specific about what they want acted upon --if that is the case—by the Board.

<u>Ground Rules:</u>

A. The Chairman of the Board conducts public input.
B. The Chairman indicates how much time will be allowed for public input.
C. The Chairman will call on those wishing to be heard.
D. No discussion on individual personalities (good or bad) is permissible in public session.
E. The Board will make no decisions during <u>Public Input</u>.
F. Any person whose conduct is disruptive or disorderly will be ordered to cease and desist from such behavior. Should their behavior continue after due warning, they will be removed from the meeting room.

Adopted this 14th day of January, 2015, by the Alton Board of Selectmen