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THE STATE OFNEW HAMPSHIRE

MERRIMACK, SS **SUPERIOR COURT**

217-2023-CV-00465

Miriam Kovacs

v.

City of Franklin
Frankin Police Department David Goldstein
Daniel Ball
Jo Brown
Judie Milner
Jay Chandler
Valerie Blake
Vince Ribas
April Bunker

COMPLAINT

(Jury Trial Demanded)

NOW COMES the Plaintiff, Miriam Kovacs, and hereby submits the following Complaint and Demand for Jury Trial.

INTRODUCTION

Across the United States, there has been a significant increase in hate crimes and white nationalist propaganda.[1] New Hampshire has seen its own significant increase, with 183 such incidents recorded in 2022, up 383 percent from 2021, according to one report.[2] This rapid increase in hate crimes comes as white nationalist and neo-Nazi groups are growing, becoming

[1] Danny McDonald and Steven Porter, *White Supremacist Propaganda Activity Surged in New England in 2022*, BOSTON GLOBE (Mar. 9, 2023), https://www.bostonglobe.com/2023/03/09/metro/white-supremacist-propaganda-activity-surged-new-england-2022/.
[2] *Id.*

more publicly emboldened, and are increasingly militarized.[3] These groups put individuals in fear for their safety and wellbeing through participation in intimidation tactics that include mob gatherings outside of people's homes and small businesses designed to terrorize individuals and create a culture of fear.[4] In the face of such hate, it is the government's responsibility to protect its citizens from threats to their fundamental rights, including the right to safely engage in protected speech, to petition the government for legal relief and protection, and to pursue life, liberty, and happiness through the marketplace.

Miriam is a Jewish citizen of Franklin. She is also a successful businesswoman. She is deeply concerned about the rise in racism and antisemitism among hate groups in New Hampshire and beyond. She spoke out against this hate and sought the protection of her local government from it. When she petitioned her government for protection and relief in this way, however, her government did not provide protection. Instead, it adopted a policy of retaliatory viewpoint discrimination against her. It characterized Miriam's perspective as anti-police. It then took a series of actions against her, consistent with this discriminatory policy. These actions even sought to block her from accessing other forms of legal protection from other arms of government and exposed her to greater threats from hate groups.

In pursuing this course, her government violated her federal and state legal rights in numerous ways. These violations continue to harm Miriam through the filing of this complaint. Miriam now seeks the protection of the laws through this Court.

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[3] Hanna Krueger, *This New England Neo-Nazi Group is Getting Bigger and Scarier, Experts Say. Most Troubling: Military Vets Fill Its Ranks*, BOSTON GLOBE (Aug. 3, 2023), https://www.bostonglobe.com/2023/08/03/metro/military-vets-fill-ranks-of-growing-neo-nazi-group-nc-131/?et_rid=1900360165&s_campaign=todaysheadlines:newsletter.

[4]Krueger, *supra* note 3; NHPR Staff, NH Officials Say They're Looking Into Neo-Nazi Incident Outside Drag Story Hour In Concord, NHPR (Jun. 19. 2022), https://www.nhpr.org/nh-news/2023-06-19/nsc131-neo-nazi-teatotaller-drag-story-hour-concord; Jamie L. Costa, *Supporters Stand Up To Proud Boys Protesters At 'Drag Queen Story Hour' At Teatotaller Café*, CONCORD MONITOR (Nov. 14, 2022), https://www.concordmonitor.com/Proud-Boys-Protest-2022-48808729.

PARTIES

1. Plaintiff, Miriam Kovacs ("Miriam") is an individual who resides at [redacted]

2. The City of Franklin (the "City") is a municipality with an address of 316 Central Street, Franklin NH, 03235.

3. The Franklin Police Department is a municipal agency with an address of 5 Hancock Terrace, Franklin, NH 03235.

4. At least one member of the Franklin Police Department is associated with the Proud Boys[5] or has attended comedy shows organized by the group's founder Gavin McInnes.

5. David Goldstein ("Chief Goldstein") is the Chief of the Franklin Police Department. In this capacity, Chief Goldstein resides at 5 Hancock Terrace, Franklin, NH 03235. Chief Goldstein has been chief of the Franklin Police Department since 2009.

6. In February 2023, the Franklin Patrolman's Association voted no confidence in Chief Goldstein.[6]

7. Sergeant Ball is a Sergeant with the Franklin Police Department. In this capacity, Sergeant Ball resides at 5 Hancock Terrace, Franklin, NH 03235.

8. Jo Brown ("Mayor Brown") is the mayor of Franklin, New Hampshire. In this capacity, Mayor Brown resides at 316 Central Street, Franklin, NH 03235.

[5] "The Proud Boys are a right-wing extremist group with a violent agenda. They are primarily misogynistic, Islamophobic, transphobic and anti-immigration. Some members espouse white supremacist and antisemitic ideologies and/or engage with white supremacist groups." Center on Extremism, *Proud Boys*, ANTI-DEFAMATION LEAGUE (Nov. 2, 2022), https://www.adl.org/resources/backgrounder/proud-boys-0.

[6] Todd Bookman, *Franklin's Rank and File Police Officers Vote 'No Confidence' in Chief, Lieutenants*, NHPR (Feb. 22, 2023), https://www.nhpr.org/nh-news/2023-02-22/franklins-rank-and-file-police-officers-vote-no-confidence-in-chief-lieutenants.

9. Judie Milner ("City Manager Milner") is the city manager of Franklin, New Hampshire. In this capacity, City Manager Milner resides at 316 Central Street, Franklin, NH 03235.

10. Jay Chandler ("Councilman Chandler") is a City Councilor of Franklin, New Hampshire. In this capacity, Councilman Chandler resides at 316 Central Street, Franklin, NH 03235.

11. Valerie Blake ("Councilwoman Blake") is a City Councilor of Franklin, New Hampshire. In this capacity, Councilwoman Blake resides at 316 Central Street, Franklin, NH 03235.

12. Vince Ribas ("Councilman Ribas") is a City Councilor of Franklin, New Hampshire. In this capacity, Councilman Ribas resides at 316 Central Street, Franklin, NH 03235.

13. April Bunker ("Former Councilwoman Bunker") was a City Councilor of Franklin, New Hampshire. In this capacity, Former Councilwoman Bunker resided at 316 Central Street, Franklin, NH 03235.

JURISDICTION AND VENUE

14. The Merrimack Superior Court has jurisdiction over this matter pursuant to RSA 91-A:7 and RSA 491:7.

15. Venue is appropriate in the Merrimack Superior Court because all of the parties reside in Franklin, which is located in Merrimack County.

FACTS COMMON TO ALL COUNTS

16. Jewish people constitute less than 1% of New Hampshire's population and are a minority group in New Hampshire.[7] Sri Lankan people constitute less than 1% of New Hampshire's population and are a minority group in New Hampshire.[8]

17. According to the Federal Bureau of Investigation, there has been a "jump" in hate crimes in New Hampshire in recent years,[9] and an increase in antisemitic incidents across New England.[10]

18. Across the country, neo-Nazi groups have created a culture of fear, intimidation, and violence.[11]

19. Jewish people have been the targets of violence and discrimination of the most extreme sort in almost every society in which they have resided, including in the United States, and in New Hampshire.[12]

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[7] *Jewish Population in the United States by State (1899-Present)*, JEWISH VIRTUAL LIBRARY: A PROJECT OF AICE, https://www.jewishvirtuallibrary.org/jewish-population-in-the-united-states-by-state (citing Ira M. Sheskin & Arnold Dashefsky, "United States Jewish Population, 2022," in Arnold Dashefsky & Ira M. Sheskin, Eds., *American Jewish Year Book*, 2023, (Cham, SUI: Forthcoming Springer, 2023).

[8] *Number of Sri Lankan People in the United States*, NAMECENSUS.COM, from https://namecensus.com/ancestry/sri-lankan/.

[9] Todd Bookman, *New Hampshire Reported an Uptick in Hate Crimes in 2021, According to FBI Data*, NEW HAMPSHIRE PUBLIC RADIO (Dec. 19, 2022), https://www.nhpr.org/nh-news/2022-12-19/new-hampshire-reported-an-uptick-in-hate-crimes-in-2021-according-to-fbi-data.

[10] *Antisemitic Incidents in the New England Region Increase 42% in 2021 According to New ADL Report*, ANTI-DEFAMATION LEAGUE NEW ENGLAND (Apr. 26, 2022), https://newengland.adl.org/news/antisemitic-incidents-in-the-new-england-region-increase-42-in-2021-according-to-new-adl-report/; Damien Fisher, *Anti-Semitism Growing Problem in NH*, EAGLE TRIBUNE (JAN. 8, 2021), https://www.eagletribune.com/news/new_hampshire/anti-semitism-growing-problem-in-nh/article_b13edbce-5be8-5aea-97cf-f47f920787de.html.

[11] *Murder and Extremism in the United States in 2021*, ANTI-DEFAMATION LEAGUE (Feb. 10, 2022), https://www.adl.org/resources/report/murder-and-extremism-united-states-2021; Steve Gorman, *Gunman who Killed 8 at Texas Shopping Mall had 'Neo-Nazi Ideation,' Officials Say*, REUTERS (May 10, 2023), https://www.reuters.com/world/us/texas-gunman-had-neo-nazi-ideation-officials-say-2023-05-09; *Press Release: Leader of Neo-Nazi Group Sentenced for Plot to Target Journalists and Advocates*, OFFICE OF PUBLIC AFFAIRS, U.S. DEPARTMENT OF JUSTICE (Jan. 11, 2022), https://www.justice.gov/opa/pr/leader-neo-nazi-group-sentenced-plot-target-journalists-and-advocates; Madalin Necsutu, *Romania Extradited Neo-Nazi to U Sto Face Violene Charges*, BALKAN INSIGHT (Aug. 3, 2023), https://balkaninsight.com/2023/08/03/romania-extradites-neo-nazi-to-us-to-face-violence-charges/; Greg Myre, *Deadly Connection: Neo-Nazi Group Linked to 3 Accused Killers*, NATIONAL PUBLIC RADIO (Mar. 6, 2018), https://www.npr.org/2018/03/06/590292705/5-killings-3-states-and-1-common-neo-nazi-link.

[12] Tracy Hahn-Burkett, *Commentary: Anti-Semitism is Here Again Because it Never Left*, NEW HAMPSHIRE BULLETIN (JUN. 1, 2021), https://newhampshirebulletin.com/2021/06/01/commentary-anti-semitism-is-here-again-

20. In 2023, an extremist vandalized a Jewish place of worship with threatening messages and symbols in one major New Hampshire city, causing the New Hampshire Department of Justice to initiate a civil rights investigation.[13]

21. Antisemitism in New Hampshire, including as embodied through public statements from at least one political party, has received international attention.[14]

22. Miriam owns the Broken Spoon Restaurant, a Jewish-Asian fusion takeout restaurant in Franklin, New Hampshire.

23. The Broken Spoon celebrates Miriam's Jewish, Hungarian, and Sri Lankan roots while promoting acceptance and love, and the value of standing up against hate.

24. On or around July 18, 2022, Miriam made an Instagram post on behalf of the Broken Spoon denouncing a gathering of white nationalists in Kittery, Maine and organizing a counter-protest.

25. After Miriam made this post, a user named 'Oceania Times' made a post on Gab, a social networking site popular with far-right extremists, asking his followers to leave negative reviews for the Broken Spoon and other New Hampshire restaurants.[15]

26. Within days, the Broken Spoon received hundreds of fake one-star online reviews disparaging the restaurant.

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because-it-never-left/; Paul Feely, *Police Investigate After Anti-Semitic Flyers Found in Manchester*, NEW HAMPSHIRE UNION LEADER (Jul. 11, 2022), https://www.unionleader.com/news/crime/police-investigate-after-anti-semitic-flyers-found-in-manchester/article_5149dc70-b865-5a3e-9fce-e6d806326f9d.html; Christina Phillips, *Alerted by CIA, N.H. Authorities Investigating Threats Against Jewish Community*, NEW HAMPSHIRE PUBLIC RADIO (Dec. 3, 2018), https://www.nhpr.org/nh-news/2018-12-03/alerted-by-cia-n-h-authorities-investigating-threats-against-jewish-community.

[13] *Antisemitic Instances*, *supra* note 11; Marc Fortier, *Authorities Investigating Series of 'Hateful' Vandalism, Incidents in Portsmouth, NH*, NBC BOSTON (Feb. 21 2023), https://www.nbcboston.com/news/local/authorities-investigating-series-of-hateful-vandalism-incidents-overnight-in-portsmouth-nh/2979312/.

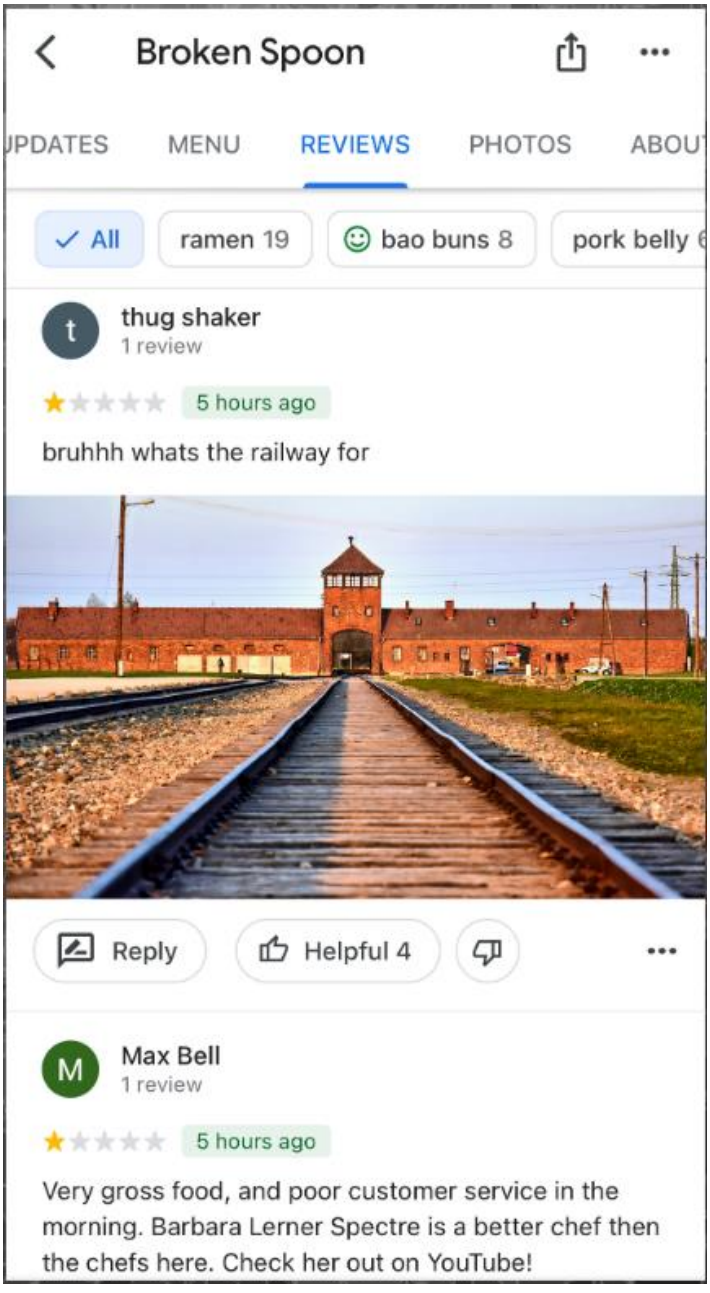
[14] Jerusalem Post Staff, *New Hampshire Libertarian Party Mocks Holocaust in now-Deleted Antisemitic Tweet*, JERUSALEM POST (Aug. 28, 2022), https://www.jpost.com/diaspora/antisemitism/article-715795.

[15] Jazmin Goodwin, *Gab: Everything You Need to Know About the Fast-Growing, Controversial Social Network*, CNN (Jan. 17, 2021), https://www.cnn.com/2021/01/17/tech/what-is-gab-explainer/index.html.

27. The reviews targeted Miriam on the basis of her Jewish heritage and included references to Nazi Germany, Auschwitz, and the Holocaust.

28. These references are implicitly threatening. In the context of communication with a Jewish woman, they elicit the most extreme and systematic violence perpetrated against a people in the documented history of mankind.

29. The following image is a depiction of one such review:



30. In addition to threatening reviews, the Broken Spoon also received a series of phone calls from blocked numbers.

31. On July 21, 2023, Miriam reported these reviews, their messages as well as phone calls, to Officer Brandon Merchant at the Franklin Police Department.

32. Miriam informed Officer Merchant that she was being targeted by white supremacist groups and that she felt her safety was threatened.

33. The Franklin Police Department refused to investigate the messages and phone calls, or to otherwise follow up on Miriam's complaint, beyond looking at the reviews that she sent.

34. Despite direct invocations of the Holocaust in the threats that Miriam reported, Officer Merchant's report on the incident concluded that these threats did not constitute "direct harassment [and were] just reviews of people giving their opinions of the business."

35. Sergeant Ball also reviewed the messages and concluded that "everything is opinion and covered by freedom of speech."

36. Another private citizen reported these events to the Civil Rights Unit of the New Hampshire Department of Justice because she was concerned for Miriam and the safety of the community.

37. The Civil Rights Unit opened an investigation of the matter.

38. The Civil Rights Unit scheduled a meeting with Miriam to discuss the threats against her and the City's response for August 31, 2022.

39. The Franklin Police Department learned of this meeting and sought to interfere with Miriam's efforts to respond to the investigation and seek the protection of other departments of government.

40. The Franklin Police Department fabricated claims against Miriam that targeted her transportation in order to prevent her from meeting with the Civil Rights Unit.

41. On August 30, 2022, Sergeant Daniel Ball called Miriam and informed her that her car registration had expired and warned her not to drive her car that day.

42. Miriam's car registration had not expired.

43. The Franklin Police Department had no basis for making this claim and it took no steps to follow up regarding this claim.

44. The atmosphere in Franklin worsened over the ensuing months.

45. On November 11, 2022, the Broken Spoon was vandalized. Three menus were torn down from the Broken Spoon's window and a decorative sticker promoting acceptance was peeled from the door.

46. Miriam reported this vandalism to the Franklin Police Department and requested that the Department file criminal mischief complaints.

47. The Franklin Police Department refused to conduct any meaningful investigation of this vandalism.

48. Instead, the Franklin Police Department's report on the vandalism criticized Miriam's social media post about the incident and blamed Miriam for the vandalism.

49. On November 22, 2022, Chief Goldstein, Lieutenant Daniel Poirier, Officer Kristin Tracy, and Officer Christopher Hart disrupted Miriam's business operations through threatening and disruptive conduct performed in the entryway of the Broken Spoon.

50. These officers shouted and laughed at Miriam when she requested that they move out of the entryway.

51. The Broken Spoon lost customers as a result of the police blocking the door.

52. On or around December 10, 2022, Miriam filed a complaint about this incident with Mayor Brown, but Mayor Brown failed to act or otherwise present it to the Franklin Police Department.

53. At a December 15, 2022 Police Committee Meeting, City officials publicly rebuked Miriam for her efforts to address hate in the City. .[16]

54. Councilman Chandler publicly criticized Miriam's behavior, demeanor, and speech.

55. Councilwoman Blake publicly criticized Miriam's speech.

56. Mayor Brown and City Manager Milner publicly made comments about Miriam's mental health and stated that she was "bipolar" and "psychotic."

57. Mayor Brown publicly stated that Miriam "looked like a thug."

58. On or around December 17, 2022, Miriam reported an incident where a man was trying to make his dog urinate or defecate in front of the Broken Spoon.

59. Miriam reported this incident to Mayor Brown and City Manager Milner because she did not trust the Franklin Police Department to investigate.

60. Miriam provided Mayor Brown and City Manager Milner with security footage of this incident.

61. Mayor Brown and City Manager Milner refused to follow up or investigate the matter or refer it to the Franklin Police Department.

62. Instead, the Defendants began to retaliate against Miriam through more discriminatory and illegal conduct.

[16] A recording of this meeting is available at: https://on.soundcloud.com/ZEm2EQ9c3Tbju1Up7.

63. On December 27, 2022, Chief Goldstein sent a warning letter to Officer Mark Faro, Miriam's partner, then a Franklin Police Officer, stating that "[Miriam] promotes anti-Franklin Police Department and anti-law enforcement attitudes and behaviors" and his relationship with Miriam "undermines" the Franklin Police Department, violating "both the letter and spirit of the . . . Rule of Conduct."

64. The report that accompanied this letter expressly cited Miriam's social media activity, in which she criticized the City, the Department, and Mayor Brown as the reason for this retaliation.

65. By contrast, the Franklin Police Department has adopted a de facto policy that takes no stance on the participation of its own members with hate groups.

66. While it rebuked Miriam's speech through its disciplinary communications with Mark Faro, it did not discipline another Franklin Police Officer after he was publicly depicted attending a comedy show hosted by Proud Boys' founder Gavin McInnes.

67. On or around January 9, 2023, Miriam followed up with City Manager Milner regarding her concerns about the November 22 incident where the Franklin Police Department disrupted her business.

68. City Manager Milner failed to meaningfully address Miriam's concerns.

69. Miriam then sought to hold her government accountable by accessing public records regarding its responses to her, as is her right.

70. In February 2023, Miriam requested copies of documents and videos related to the investigation of the November 22 incident pursuant to RSA 91-A.

71. Miriam has never received the documents she requested.

72. On February 9, 2023, Miriam participated in a Hate Crimes Forum hosted by the United States Attorney's Office and the New Hampshire Attorney General's Office.[17]

73. The Forum was open to the public and featured a panel of federal, state, and local law enforcement personnel and community leaders such as Miriam.

74. In an NHPR article later published in the Laconia Sun about the Forum, Miriam is quoted as saying "Community leaders know the right things to say, but the action isn't always followed up."[18]

75. On February 16, 2023, Chief Goldstein, with the assent of Mayor Brown and City Manager Milner, posted a 379-word statement identifying and rebuking Miriam's criticism of the Franklin Police Department on the Department's Facebook page.

76. Upon seeing this post, Miriam immediately contacted Mayor Brown and City Manager Milner to express her concern that the Facebook post was retaliatory and that she would receive threats from hate groups and their representatives as a result of it, but the City officials refused to remove the post.

[17] Hate Crimes Forum, Program Overview, available at https://www.doj.nh.gov/news/2023/documents/20230111-hate-crimes-forum.pdf.
[18] Todd Bookman, *At Hate Crime Forum, Leaders Stress Importance of Reporting While Victims Ask for More Action*, NEW HAMPSHIRE PUBLIC RADIO (Feb. 9, 2023), https://www.nhpr.org/nh-news/2023-02-09/at-forum-on-hate-crimes-leaders-stress-importance-of-reporting-while-victims-ask-for-more-action.

77. On February 17, 2023, Ryan Murdough,[19] a New Hampshire-based white nationalist who is the president and founder of the New England White Network ("NEWN"), sent Miriam the following threatening email:

> Ms. Kovacs, be thankful that White Nationalists aren't in power right now. If we were, you wouldn't own a business and you wouldn't be a citizen of the US.
> We are tired of jewish, anti-White degeneracy and we are tired of the power and control that Jews have in every aspect of our society. You put your ugly menorah up in front of the NH State House, your organizations fund and facilitate third world refugees into our neighborhoods, and we are tired of your Jewish organizations that target and attack people who are sick of people who are sick of being attacked physically and politically, for being White. We're sick of it all.
> if you don't like White people standing up for themselves, leave. Your anti-White, Jewish degeneracy is not welcome in New Hampshire and the United States.
> https://gab.com/ryanmurdough/posts/109881824294144069

78. Murdough also posted threats on Gab asking his followers to target Miriam and sharing the Broken Spoon's phone number and address.

79. Murdough's Gab post expressly referenced Chief Goldstein's Facebook post, as depicted here:

[19] *Ryan Murdough*, ANTI-DEFAMATION LEAGUE, https://www.adl.org/glossary/ryan-j-murdough.



80. Miriam became afraid that the government's response and the resulting hate group reliance upon it would result in even greater harm to her, given the documented pattern of neo-Nazi groups such as NEWN, the Proud Boys, and NSC-131 organizing large gatherings to threaten and terrorize individuals at their homes and small businesses.[20]

[20] *Supra* note 4.

81. Miriam sent the hate-group messages that the government's response provoked to Mayor Brown, Chief Goldstein, and City Manager Milner, who refused to meaningfully address the complaints or delete the Facebook post.

82. Instead of addressing Miriam's concerns, they explicitly blamed Miriam for exercising her free speech rights at the NH DOJ's Hate Speech forum.

83. City Manager Milner and Chief Goldstein opined that Miriam deserved to receive threats because she exercised her right to free speech.

84. Mayor Brown doubled down on Chief Goldstein's post and told a Franklin resident, that Miriam "put her name out there" and that she is "still not understanding why the PD should let incorrect information stand."

85. In other words, the City, Franklin Police Department, Chief Goldstein, Mayor Brown, and City Manager Milner, refused to act to protect Miriam despite the clear and imminent danger to Miriam and the Broken Spoon, and utilized their public positions to engage in public attacks on Miriam and her character.

86. These efforts were part of a coordinated effort among and between Franklin officials.

87. On February 17, 2023, Chief Goldstein reported to Mayor Brown and City Manager Milner that Miriam was "gaslighting" them concerning the nature of the post.

88. In an email to Chief Goldstein and City Manager Milner on or around April 7, 2023, Mayor Brown stated that she was monitoring Miriam's social media accounts as a result.

89. Mayor Brown also assigned Councilman Ribas and Councilwoman Bunker to monitor Miriam and her speech through pretextual appointments to committees.

90. On or around March 5, 2023, Chief Goldstein emailed himself a document titled "KOVACS_FARO_notes.2023" with the following note: "I could import a few dozen 'brown shirts'[21] to walk the streets of Franklin and engage in a 21st century version of Krystallnacht."[22]

91. The notes appear to be authored by Chief Goldstein.

92. They include notations demonstrating 1) his political bias against groups that criticize the government, including the ACLU, and 2) a toxic City government rife with bias as expressed by officials to which Chief Goldstein is professionally answerable.

93. On or around April 3, 2023, Miriam sent a further 91-A request to the City, the Police Department, Mayor Brown, City Manager Milner, and Chief Goldstein requesting all email communications, documents, records, and written correspondence written, sent, created, or received by the Police Department, City Manager, and Mayor concerning Miriam, Mark Faro, or the Broken Spoon.

94. Miriam also requested the Franklin Police Department's policy concerning membership in groups outside the Department.

95. On or around May 5, 2023, the City provided Miriam with over one thousand pages of documents, emails, and messages, as well as two Ring camera videos.

96. The 91-A production did not include records of Miriam's phone call with Sergeant Ball on or around August 30, 2022.

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[21] The term "brown shirts" refers to uniforms worn by the Sturmabteilung or SA. The SA was a paramilitary wing of the Nazi party which helped facilitate Hitler's rise to power. Brendan Cole, *Jewish Groups Blast Marjorie Taylor Greene's 'Medical Brown Shirts' COVID Jab Comparison*, NEWSWEEK (Jul. 7, 2021), https://www.newsweek.com/marjorie-taylor-greene-nazi-germany-ajcongress-brown-shirts-1607540.

[22] Kristallnacht, or the "Night of the Broken Glass" was a wave of antisemitic violence that occurred on the night of November 9th and 10th, 1938 when the Nazi party attacked Jewish communities. At the direction of Joseph Goebbels, Nazis vandalized Jewish businesses, burned synagogues to the ground, and attacked and killed Jewish people. *The "Night of Broken Glass*," HOLOCAUST ENCYCLOPEDIA (Feb. 10. 2023), https://encyclopedia.ushmm.org/content/en/article/the-night-of-broken-glass.

97. The 91-A production did not include public meetings, records, and recordings where Miriam was mentioned by name, including the December 15, 2022 Police Committee Meeting and February 16, 2022 Facebook post.

98. The 91-A production did not include correspondence or documents relating to Miriam's February 2023 91-A request.

99. The 91-A production did not include numerous emails and texts between Miriam and the City, Mayor Brown, City Manager Milner, and/or Chief Goldstein, including messages related to antisemitic graffiti found around Franklin.

100. The 91-A production did not include a copy of the Franklin Police Department's policies related to membership in groups outside the Department.

101. The government directed more attacks on Miriam's business, sense of safety, and wellbeing after she filed her records request.

102. On or around May 2023, Miriam learned from Mark Faro that Sergeant Ball had circulated a rumor that the Broken Spoon was being evicted.

103. Sergeant Ball and the Franklin Police Department had no basis for making the claims they were making regarding Miriam's business.

104. Miriam subsequently contacted her landlord who stated that Sergeant Ball's claims were false and that Miriam was not being evicted.

105. Miriam continues to face threats and harassment within Franklin from government employees.

106. On or around May 2023, a City employee destroyed a plant that was in front of the Broken Spoon, interfering with Miriam's business operations.

107. On or around June 2, 2023, a City employee destroyed another plant in front of the Broken Spoon, interfering with Miriam's business operations.

108. Miriam remains deeply concerned for her life and safety, as well as for her ability to do business and reside in Franklin.

COUNT I
42 U.S.C. § 1983 – First Amendment Freedom of Speech
(Against All Defendants)

109. Miriam hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

110. The right to free speech is an essential liberty safeguarded by the First Amendment. *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2311 (2023) ("[T]he freedom to speak is among our inalienable human rights . . . '[t]he freedom of thought and speech is indispensable to the discovery and spread of political truth.'" (citing *Whitney v. California*, 274 U.S. 357, 375 (Brandeis, J., concurring))).

111. "It is axiomatic that government may not regulate speech based on its substantive content or the message it conveys." *Rosenberger v. Rector and Visitors of UVA*, 515 U.S. 819, 828 (1995) (citation omitted). "Discrimination against speech because of its message is presumed to be unconstitutional." *Id.* (citation omitted). "Viewpoint discrimination is … an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Id.* (citation omitted); *see also Shurtleff v. City of Boston*, 142 S. Ct. 1583, 1589 (2022) (city's refusal to allow a private group to raise a flag in front of city hall because the flag expressed a religious message is impermissible viewpoint discrimination). As a feature of this principle, the First Amendment bars government and government officials from

censuring speech through the use of government enforcement authority. *See Backpage.com, LLC v. Dart*, 807 F.3d 229, 230 (7th Cir. 2015); *see also Missouri v. Biden*, -- F. Supp. 3d ---, 2023 WL 2578260, *31 (W.D. La. Mar. 20, 2023) (executive branch officials trigger First Amendment protections by pressuring private parties to censure private speech).

112. In this case, the government has discriminated against Miriam by subjecting her to harassment, by threatening her business and property, by actively harming her property, and by providing her debased and debasing services.

113. Chief Goldstein explicitly described Miriam's speech as disfavored as, when he disciplined her partner, Mark Faro, for what he deemed her anti-law enforcement statements.

114. The Defendants then carried out acts toward Miriam that constituted the government's efforts to execute on its discriminatory policy against her.

115. The Defendants violated Miriam's federal constitutional rights when they sought to prevent her from meeting with other state government officials, including NH DOJ, in retaliation for her efforts to petition her government.

116. The Defendants violated Miriam's federal constitutional rights when they spread false rumors about Miriam and her business, in retaliation for her efforts to petition her government.

117. The Defendants violated Miriam's federal constitutional rights when they punished Mark Faro for being associated with Miriam on the basis of Miriam's constitutionally protected speech.

118. The Defendants violated Miriam's federal constitutional rights when they interrupted Miriam's business operations in retaliation against her speech and the content of her speech.

119. The Defendants violated Miriam's federal constitutional rights when they publicly rebuked Miriam on Facebook in retaliation for her speech and the content of her speech.

120. The Defendants violated Miriam's federal constitutional rights when they threatened Miriam in retaliation for her speech and the content of her speech.

121. The Defendants violated Miriam's federal constitutional rights when they destroyed Miriam's property in retaliation for her speech and the content of her speech.

122. The Defendants violated Miriam's federal constitutional rights when they publicly and falsely mocked Miriam and speculated about her mental health in retaliation for her speech and the content of her violated with Miriam's federal constitutional rights in this respect when they publicly criticized Miriam's appearance in order to undermine Miriam's expression and speech and the content of her speech.

123. The Defendants violated Miriam's federal constitutional rights when they publicly criticized Miriam's demeanor in order to undermine Miriam's expression and speech and the content of her speech.

124. The Defendants violated Miriam's federal constitutional rights when they monitored Miriam's social media and participation in local organizations in order to suppress and chill her speech.

125. The Defendants violated Miriam's federal constitutional rights when they compared Miriam's speech to hate speech.

126. The government also violated Miriam's rights through retaliation. "[O]fficial reprisal for protected speech offends the Constitution [because] it threatens to inhibit exercise of the protected right, and the law is settled that as a general matter the First Amendment prohibits

government officials from subjecting an individual to retaliatory actions . . . for speaking out." *Hartman v. Moore,* 547 U.S. 250, 256 (2006) (internal quotation and citation omitted).

127. In sum, Defendants, together, have violated Miriam's federal constitutional rights, directly and indirectly, through efforts at retaliation, intimidation, by leveraging police resources in their capacity as city officials in a manner that is discriminatory, inconsistent, and irrational, and, through retaliatory conduct against Miriam for the content and viewpoints she expressed in public speech.

128. The actions by the Defendants are accordingly in violation of 42 U.S.C. § 1983 and the Fourteenth Amendment, as it incorporates the right to Free Speech of the First Amendment of the United States Constitution.

129. Miriam has suffered substantial damages as a result of the Defendants' actions.

COUNT II
42 U.S.C. § 1983 – First Amendment Freedom to Petition
(Against All Defendants)

130. Miriam hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

131. The right to petition the government for redress of grievances is an essential liberty safeguarded by the First Amendment. *BE & K Const. Co. v. N.L.R.B.*, 536 U.S. 516, 524 (2002) ("The right to petition the government is one of the most precious liberties safeguarded by the Bill of Rights" as "the right is implied by the very idea of a government in a republican form" (internal quotation and citation omitted)).

132. The government cannot prevent, penalize, or retaliate against a citizen from petitioning government without violating the First Amendment. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

133. Miriam has engaged in petitioning conduct by seeking protective services from her government, as well as records about her government's conduct and activities.

134. The Defendants violated Miriam's federal constitutional rights when they sought to prevent her from meeting with other state government officials, including NH DOJ, in retaliation for her efforts to petition her government.

135. The Defendants violated Miriam's federal constitutional rights when they spread false rumors about Miriam and her business, in retaliation for her efforts to petition her government.

136. The Defendants violated Miriam's federal constitutional rights when they punished Mark Faro for being associated with Miriam because she petitioned the government for a redress of her grievances.

137. The Defendants violated Miriam's federal constitutional rights when they interrupted Miriam's business operations because she petitioned the government for a redress of her grievances.

138. The Defendants violated Miriam's federal constitutional rights when they publicly rebuked Miriam on Facebook because she petitioned the government for a redress of her grievances.

139. The Defendants violated Miriam's federal constitutional rights when they destroyed Miriam's property because she petitioned the government for a redress of her grievances.

140. The Defendants violated Miriam's federal constitutional rights when they publicly mocked Miriam and speculated about her mental health because she petitioned the government for a redress of her grievances.

141. The Defendants violated Miriam's federal constitutional rights when they publicly criticized Miriam's appearance because she petitioned the government for a redress of her grievances.

142. The Defendants violated Miriam's federal constitutional rights when they publicly criticized Miriam's demeanor because she petitioned the government for a redress of her grievances.

143. The Defendants violated Miriam's federal constitutional rights when they monitored Miriam's social media because she petitioned the government for a redress of her grievances.

144. The Defendants violated Miriam's federal constitutional rights when they compared Miriam's speech to hate speech because it was critical of the government.

145. Defendants, together, have violated Miriam's federal constitutional rights, either directly or indirectly, through retaliation, intimidation, by leveraging police resources in their capacity as city officials in a manner that is inconsistent and irrational, and, generally, through retaliatory conduct against Miriam for her advocacy, efforts at organization, and petitioning of government on behalf of victims of hate crimes.

146. The actions by the Defendants are accordingly in violation of 42 U.S.C. § 1983 and the Fourteenth Amendment, as it incorporates the right to Petition the Government of the First Amendment of the United States Constitution.

147. Miriam has suffered substantial damages as a result of the Defendants' actions.

COUNT III
42 U.S.C. § 1985
(Against All Defendants)

148. Miriam hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

149. The Defendants are all linked together by public appointment, election, or employment, as supervisors, managers, or officers of the government of Franklin, New Hampshire.

150. The Defendants conspired to punish Mark Faro for being associated with Miriam on the basis of Miriam's constitutionally protected speech, acts, and efforts to petitioner her government, as set forth above.

151. Miriam has suffered substantial damages as a result of the Defendants' actions.

COUNT IV
NH Constitution, Part I, Article 12
(Against all Defendants)

152. Miriam hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

153. As a New Hampshire citizen, Miriam is entitled to protection under Part I, Article 12 of the New Hampshire Constitution.

154. Part I, Article 12 of the New Hampshire Constitution provides: "Every member of the community has a right to be protected by it, in the enjoyment of his life, liberty, and property . . . ."

155. The government cannot withhold benefits it extends to the community, generally, such as the protection of law enforcement, because the government disfavors the views of those seeking protection, under this provision of our state constitution.

156. The Defendants have done so in this case as set forth above.

157. This conduct toward Miriam is unconstitutional, has harmed Miriam, and requires judicial intervention and relief.

COUNT V
NH Constitution, Part I, Article 22
(Against All Defendants)

158. Miriam hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

159. As a New Hampshire citizen, Miriam is entitled to the protections of free speech, and free press under Part I, Article 22 of the New Hampshire Constitution.

160. Part 1, Article 22 of the New Hampshire Constitution provides: "Free speech and Liberty of the press are essential to the security of Freedom in a State: They ought, therefore, to be inviolably preserved."

161. Part I, Article 22 prohibits the government from discriminating or retaliating against citizens based on the viewpoint they express. *See City of Keene v. Cleaveland*, 167 N.H. 731, 739 (2015) ("[T]he content of protected speech cannot be restricted simply because it is upsetting or arouses contempt" (internal quotation and citation omitted)); *Petition of Brooks*, 140 N.H. 813, 819 (1996) ("A content-based prohibition on speech concerning matters of public interest must be subjected to the most exacting scrutiny" (quotation omitted)); *see also Montenegro v. New Hampshire Div. of Motor Vehicles*, 166 N.H. 215, 219 (2014) (denial of a vanity license plate because the government disagrees with its message is impermissible viewpoint discrimination).

162. Defendants, together, have violated Miriam's state constitutional rights, either directly or indirectly, through efforts at retaliation, intimidation, by leveraging police resources in

their capacity as city officials in a manner that is inconsistent and irrational, and, generally, through retaliatory conduct against Miriam for the content and viewpoints she expressed in public speech.

163. The actions by the Defendants violated Part I, Article 22 of the New Hampshire Constitution.

164. Miriam has suffered substantial damages as a result of the Defendants' actions.

COUNT VI
NH Constitution, Part I, Article 32
(Against All Defendants)

165. Miriam hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

166. As a New Hampshire citizen, Miriam is entitled to petition the government pursuant to Part I, Article 32 of the New Hampshire Constitution. *See Pickering v. Frink,* 123 N.H. 326, 330 (1983) (individuals are immune from tort liability arising out of petitions criticizing local officials because the right to petition the government is protected by Part I, Article 32); *State v. Chong,* 121 N.H. 860, 861 (1981) (an ordinance prohibiting individuals from distributing leaflets without a permit violates the rights to petition and to assemble under Part I, Article 32); *see also Richard v. Speaker of House of Representatives,* 175 N.H. 262, 269 (2022) (describing the history of the right to petition the government for a redress of grievances).

167. The government cannot retaliate against or punish a citizen or deprive her of any benefit on the basis of her having engaged in constitutionally protected activity. *See Perry*, 408 U.S. at 597.

168. Defendants did so in this case.

169. The actions by the Defendants are accordingly in violation of Part I, Article 32 of the New Hampshire Constitution.

170. Miriam has suffered substantial damages as a result of the Defendants' actions.

COUNT VII
Right of Access To Public Records
(Against the City and the Franklin Police Department)

171. Miriam hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

172. As a New Hampshire citizen, Miriam is entitled to an open, orderly, lawful, and accountable government under Part I, Article 8 of the New Hampshire Constitution

173. Part I, Article 8 of the New Hampshire Constitution provides: "All power residing 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. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted. The public also has a right to an orderly, lawful, and accountable government."

174. The Defendants failed to comply with Miriam's requests for public information and public documents under Part I, Article 8 of the New Hampshire Constitution.

175. They then retaliated against Miriam for making them, as set forth above.

176. As a result of Defendants' failure to ensure openness and accuracy in allowing public access to governmental records and meetings, Miriam and the general public are restricted from knowledge about and access to vitally important government activities.

177. Miriam seeks a declaration that the Defendants have violated her rights under RSA 91:A and an order requiring the Defendants to produce all records in accordance with the statute.

COUNT VIII
91-A:3
(Against All Defendants)

178. Miriam hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

179. NH RSA 91-A:3, II(c) prohibits public discussion of "[m]atters that, if discussed in public, would adversely affect the reputation of someone other than a member of the public body."

180. On December 15, 2022, in a public meeting of the police committee, Councilman Chandler publicly called out Miriam by name and derided the demeanor of her speech.

181. At this same meeting, Mayor Brown and City Manager Milner publicly discussed Miriam's mental health, describing her as "two-sided," "bipolar," and "psychotic."

182. City Manager Milner stated that Miriam "looked like a thug."

183. Mayor Brown also publicly stated that Miriam promoted hate and intolerance.

184. The Defendants' commentary on Miriam's behavior and mental health at this public meeting affected Miriam's reputation in the community, contrary to RSA 91-A:3(c).

185. On February 16, 2023, Chief Goldstein, with the assent of Mayor Brown and City Manager Milner posted a statement publicly rebuking Miriam's criticism of the Franklin Police Department on the Department's Facebook page.

186. This post received dozens of comments rebuking Miriam, thus adversely affecting her reputation.

187. Miriam has suffered substantial damages as a result of the Defendants' actions.

188. Miriam seeks a declaration that the Defendants have violated her rights under RSA 91:A-3 and an order stating that any and all statements made by the Defendants must be consistent with RSA 91-A.

COUNT IX
Intentional Infliction of Emotional Distress
(Against All Defendants)

189. Miriam hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

190. Miriam hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

191. The actions of the Defendants were extreme and outrageous.

192. The actions of the Defendants were extreme and outrageous when they punished Mark Faro for being associated with Miriam on the basis of Miriam's constitutionally protected speech.

193. The actions of the Defendants were extreme and outrageous when they interrupted Miriam's business operations.

194. The actions of the Defendants were extreme and outrageous when they publicly rebuked Miriam on Facebook.

195. The Defendants interfered with Miriam's federal constitutional rights when they threatened Miriam.

196. The Defendants federal constitutional rights when they destroyed Miriam's property.

197. The actions of the Defendants were extreme and outrageous when they publicly mocked Miriam and speculated about her mental health.

198. The actions of the Defendants were extreme and outrageous when they publicly criticized Miriam's appearance.

199. The actions of the Defendants were extreme and outrageous when they publicly criticized Miriam's demeanor.

200. The actions of the Defendants were extreme and outrageous when they monitored Miriam's social media and participation in local organizations.

201. The actions of the Defendants were extreme and outrageous when they compared Miriam's speech to hate speech.

202. The Defendants engaged in these actions intentionally or recklessly.

203. Miriam has suffered severe emotional distress as a result of the Defendants' actions.

204. Miriam has suffered substantial damages as a result of the Defendants' actions.

COUNT X
Civil Conspiracy
(Against all Defendants)

205. Miriam hereby repeats, realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs, whether legal or factual.

206. The Defendants are all linked together by public appointment, election, or employment, as supervisors, managers, or officers of the government of Franklin, New Hampshire.

207. Their conduct, as set forth in this complaint, is the product of overt agreements among and between the Defendants, acting in concert, unlawfully, and inflicted injury on Miriam, as set forth above.

RELIEF REQUESTED

WHEREFORE, the Plaintiff Miriam Kovacs respectfully request the following relief from this Court:

a. A trial by jury in this matter;

b. Judgment according to the laws of New Hampshire;

c. Any and all monetary damages under the governing laws, including consequential and enhanced damages and statutory relief, including double or treble damages;

d. Preliminary and permanent injunctive relief enjoining defendants from any continuing violations of law as set forth above and requiring that they abide by their legal duties as set forth above;

e. Declaratory relief;

f. Statutory relief including attorneys' fees and costs; and

g. Any other relief this court deems just.

Respectfully submitted by:
MIRIAM KOVACS

By and through her attorneys:
RATH YOUNG AND PIGNATELLI, PC

August 28, 2023

/s/ Cassandra Moran

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