

**THE STATE OF NEW HAMPSHIRE**

**ROCKINGHAM, SS**

**SUPERIOR COURT**

**\*\*\*Expedited Processing Required\*\*\***

JOHN M. FORMELLA, ATTORNEY GENERAL

v.

LEO ANTHONY CULLINAN

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**ATTORNEY GENERAL JOHN M. FORMELLA'S COMPLAINT  
UNDER THE NEW HAMPSHIRE CIVIL RIGHTS ACT**

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NOW COMES John M. Formella, Attorney General, ("State") with a complaint against the defendant, Leo Anthony Cullinan, for engaging in a conspiracy to violate the New Hampshire Civil Rights Act. The State asks that this Court find that the defendant conspired to violate the New Hampshire Civil Rights Act when he aided a group of 10 other individuals to trespass on an overpass in Portsmouth by hanging banners without a permit that read "Keep New England White." The defendant's aid was driving the participants to and from the scene of the trespass, which enabled them to engage in their Civil Rights Act violation.

Attorney General Formella initiates this action to uphold the civil rights of members of the public, including visitors to New Hampshire, and Portsmouth, NH residents, whose rights were violated by the defendant and his co-conspirators when they trespassed on the Stark Street overpass by displaying race-motivated banners. Attorney General Formella also initiates this action to uphold the civil rights of the taxpayers that support the City of Portsmouth whose taxes have been expended to respond to and ensure the end of the race-motivated trespass.

As detailed in this complaint, the State asks that this Court impose civil penalties upon the defendant, to permanently enjoin the defendant from committing and conspiring to commit future Civil Rights Act violations, and other remedies. **As required by RSA 354-B:4, IV, this Court must prioritize this matter in its schedule.**

In support of this complaint, the State submits the following:

### INTRODUCTION

1. The New Hampshire Civil Rights Act, RSA 354-B:1, provides that all persons have the right to engage in lawful activities and to exercise and enjoy the rights secured by the United States and New Hampshire Constitutions and the laws of the United States and New Hampshire without being subject to actual or threatened physical force or violence against them or any other person or by actual or threatened damage to or trespass on property when such actual or threatened conduct is motivated by race, color, religion, national origin, ancestry, sexual orientation, sex, gender identity, or disability.

2. Moreover, the common law prohibits conspiracies to commit civil wrongs or other unlawful acts, including violations of statute. *Jay Edwards, Inc. v. Baker*, 130 N.H. 41, 47 (1987) (“A civil conspiracy is a combination of two or more persons by concerted action to accomplish an unlawful purpose, or to accomplish some purpose not in itself unlawful by unlawful means.”). This includes conspiracies to violate the New Hampshire Civil Rights Act.

3. Here, the defendant conspired with others to violate the Civil Rights Act by trespassing upon public property and hanging banners that read “Keep New England White”<sup>1</sup> over the United States Route 1 (“Route 1”) overpass without authorization from the City of Portsmouth or the State of New Hampshire. He coordinated with at least 10 other individuals to

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<sup>1</sup> As detailed later, the initial calls to police described the banner as reading “Keep America White.” Photos of the banner created by NSC-131 show that the banner read “Keep New England White.”

travel to the Portsmouth overpass in three vehicles and enabled them to display the banners by hanging the banners from the overpass. This incident was not mere coincidence or happenstance. It required planning and coordination to execute.

4. The display of these banners constituted a trespass upon property belonging to the City of Portsmouth, the State of New Hampshire, and the taxpayers of those communities. The trespass violated city ordinance(s) and state law(s) governing posting materials on public property without permits and displaying signs and other materials on or over roadways. The defendant was aware of this trespass as he was present and witnessed the trespass as it was ongoing.

5. This trespass violated the Civil Rights Act because it was motivated by race and interfered with the lawful activities of others. The slogan on the banners, “Keep New England White,” was plainly motivated by race. The only reasonable interpretation is that the slogan and group’s intention was to discourage people of color from residing in or visiting and making them feel unwelcome and unsafe in the New England region, New Hampshire, and Portsmouth. Thus, this trespass, intended to interfere with the lawful activities of those traveling along Route 1 by discouraging them from exercising their right to travel freely through the Granite State.

6. The trespass also disrupted the lawful activities of motorists on Route 1 in Portsmouth because the banner disrupted the safe operation upon the highways and subjected motorists to trespass motivated by race. *See* RSA 236:27 (addressing the display of signs and other materials on public roadways). This trespass interfered with the rights of motorists to travel safely, free from race-motivated trespasses.

7. The defendant supported these efforts by coordinating with the participants to transport them to and from the overpass and was present in the area while the trespass occurred.

The defendant and his co-conspirators' efforts form the basis of a civil conspiracy: multiple individuals were involved, they sought to achieve an unlawful goal, they entered into an express or implied agreement to achieve that goal, they took overt unlawful acts in furtherance of that goal, and caused harm in the form of the cost to taxpayers to remedy their unlawful acts. *In re Appeal of Armaganian*, 147 N.H. 158, 163 (2001); *see also* Restatement (Third) of Torts: Liability for Economic Harm § 27 (articulating civil conspiracy elements).

8. The defendant was also aware that the participants planned to or had engaged in trespass and persisted in supporting their efforts and furthering the conspiracy. He had the opportunity to observe their behavior as he confronted law enforcement and still aided the conspirators by transporting them away from the scene.

9. In response to this violation, the Attorney General asks this Court to find that the defendant conspired to violate the Civil Rights Act, impose civil penalties against the defendant, and enjoin him from, among other things, further violating the Civil Rights Act.

### **PARTIES**

10. John M. Formella is the Attorney General of New Hampshire. The Attorney General's Office is located at 33 Capitol Street, Concord, NH.

11. Pursuant to RSA 354-B:2, whenever the Attorney General has probable cause to believe that any person has violated any provision of RSA chapter 354-B, the Attorney General may bring a civil action for injunctive or other appropriate equitable relief in the Superior Court in the county where the alleged violator resides or where the alleged conduct occurred.

12. The defendant, Leo Anthony Cullinan, resides at 14 Country Club Drive, Manchester, NH 03102.

13. The alleged conduct occurred on July 30, 2022, on the Stark Street overpass in Portsmouth, NH.

### **JURISDICTION AND VENUE**

14. This Court has jurisdiction over this action pursuant to RSA 354-B:2, II.

15. Rockingham County is the proper venue for this action because the unlawful conduct occurred in Portsmouth, New Hampshire, a city located within Rockingham County.

### **FACTS**

16. On July 30, 2022, the Portsmouth Police Department received 911 calls informing police that men were hanging signs that stated “Keep America White” from the Stark Street overpass, which overlooks Route 1 in Portsmouth.

17. Four officers from the Portsmouth Police Department responded: Sgt. Brian Houde, Officer Matthew Loureiro, Officer James Caldwell, and Officer Michael Nicoli. Upon arriving they observed approximately 10 men gathered on the overpass wearing hats, sunglasses, and face coverings emblazoned with “NSC-131” or “131.” One man was not wearing a face covering, and he was later identified as Christopher Hood.

18. None of the men wearing masks identified themselves or would speak with the police officers. Hood, however, stepped forward and spoke with the officers.

19. Officer Loureiro and Officer Caldwell informed Hood that the group cannot hang banners from the overpass without a permit because it violates a city ordinance, City of Portsmouth, NH Ordinances §§ 9.503, *et seq.*

20. Following the discussion, Hood gave instructions to the group members who removed the zip ties and removed the banners from the overpass fence.

21. Some of the group's members stood on the overpass and continued to display the banners by hand before returning to their vehicles and departing with the banners.

22. Officers were present on the overpass and interacted with Hood, the defendant, and others for approximately 20-25 minutes before the group departed.

23. While Officer Loureiro and others were addressing Hood, the defendant approached Sgt. Houde in a silver pickup truck and angrily told Sgt. Houde, "You're not interfering with my friends and interfering with our rights." The defendant was not wearing a mask or other face covering when he spoke to Sgt. Houde and was later identified based upon a known photo of the defendant. The defendant was also identified because the silver pickup truck was registered in his name.

24. While officers were addressing Hood, the defendant, and interacting with bystanders, Officer Caldwell left the scene to find where the participants had parked. He saw two vehicles parked along Woodbury Avenue.

25. As the group dispersed, they walked toward the two vehicles and most entered one of the two vehicles parked there. Officer Caldwell witnessed Hood and another unidentified individual enter the silver pickup truck driven by the defendant. The group then departed the scene.

## **COUNT I**

### **Violation of the New Hampshire Civil Rights Act (Conspiracy)**

26. The Attorney General incorporates by reference all the previous paragraphs of this complaint as if stated herein in full.

27. The defendant conspired with other individuals to violate the Civil Rights Act.

28. For a civil conspiracy to exist there must be five elements: (1) the involvement of two or more persons; (2) an object to be accomplished, which includes either an unlawful object

or a lawful object accomplished by unlawful means; (3) an agreement on the object or course of action; (4) one or more overt, unlawful acts; and (5) harm that was the proximate result thereof.

29. In support of this conspiracy, is the evidence that: (1) members—including the defendant and approximately 10 men—traveled together in three vehicles to this particular overpass, (2) came prepared to violate the Civil Rights Act by trespassing upon public property with banners that read: “Keep New England White,” (3) came prepared with material to conceal their identities, (4) came prepared with material emblazoned with “NSC-131” or “131” to identify them all as a coordinated group, (5) submitted to the direction of their leader, and (6) engaged in conduct that caused expense to the taxpayers of Portsmouth including the response of four police officers to the scene to intervene and demand removal of the banners.

30. The defendant participated in the conspiracy by transporting participants to and from the scene. The defendant was aware of their unlawful actions. He confronted officers attempting to peacefully disperse the group and identified the participants as his “friends.” The defendant then met the group’s leader and another unidentified individual to transport them away from the scene. Given the number of participants and the size of the remaining two vehicles, it is highly probable that the defendant also had to transport participants to the scene of the Civil Rights Act violation.

31. The defendant’s actions constitute a conspiracy to violate the Civil Rights Act, RSA 354-B:1.

### **REQUEST FOR RELIEF**

WHEREFORE, the Attorney General respectfully requests that this Honorable Court:

A. Prioritize—as required by RSA 354-B:4, IV, consolidate, and advance the hearing on the merits with the request for preliminary injunction consistent with Superior Court Rule 48(b)(2) and RSA 354-B:4, IV, which provides that all actions brought under this statute

shall have priority in the court scheduling;

B. Find that the defendant conspired to violate the New Hampshire Civil Rights Act, RSA 354-B:1;

C. Order the defendant to pay a civil penalty of \$5,000, for the conspiracy to violate the New Hampshire Civil Rights Act;

D. Enter a temporary restraining order and a preliminary/permanent injunction to remain in place for three years, which prohibits the defendant from:

1. engaging in or threatening physical force or violence, damage to property, or trespass on property against any person motivated by race, color, religion, national origin, ancestry, sexual orientation, sex, gender identity, or disability;
2. participating in any unlawful<sup>2</sup> activities motivated by race, color, religion, national origin, ancestry, sexual orientation, sex, gender identity, or disability;
3. participating in any unlawful activities on behalf of or in conjunction with NSC-131;
4. participating in any unlawful activities in conjunction with Christopher Hood; and
5. encouraging or causing any other persons to engage in conduct prohibited in paragraphs D.1-D.4 above, conspiring with any other persons to engage in such conduct, or assisting any person in engaging in such conduct;

D. Order that any violations of the Court's order could result in criminal and/or civil sanctions and additional fines as provided for in RSA chapter 354-B;

E. Grant such other and further relief as it deems just and equitable.

Respectfully submitted,

JOHN M. FORMELLA,

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<sup>2</sup> Unlawful in this context means: any act that could subject a person or legal entity to civil or criminal liability.



ATTORNEY GENERAL

January 17, 2023

/s/ Sean R. Locke

Sean R. Locke, Bar #265290

Assistant Attorney General

Director, Civil Rights Unit

New Hampshire Department of Justice

Office of the Attorney General

33 Capitol Street, Concord, NH 03301-6397

(603) 271-3650