

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

JOHN M. FORMELLA, ATTORNEY GENERAL

v.

LOREN FAULKNER

**MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY
INJUNCTION**

The State submits this memorandum in support of its motion for preliminary injunctive relief.

INTRODUCTION

1. The defendant, Loren Faulkner, violated the New Hampshire Civil Rights Act when he:
 - a. On April 20, 2022, entered onto the property of another at 353 Miller Avenue, Portsmouth, NH, without permission and attempted to cut down the resident's rainbow LGBTQ+ Pride flag, causing damage to the flag;
 - b. On April 20, 2022, entered onto the property of the North Church, 2 Congress Street, Portsmouth, NH, and removed the church's rainbow LGBTQ+ Pride flag, causing damage to the flagpole in the process;
 - c. On April 20, 2022, entered onto the property of Saint Nicholas's Greek Orthodox Church, 40 Andrew Jarvis Drive, Portsmouth, NH, removed the church's Ukrainian flag and burned that flag while recording a video denouncing Ukraine, the Ukrainian people, and LGBTQ+ people, which he then sent to the entire sophomore class at Portsmouth High School;
 - d. On February 21, 2023, spray-painted swastikas and crosses onto the walls and in the parking lot of Temple Israel, 200 State Street, Portsmouth, NH, a Jewish house of worship;
 - e. On February 21, 2023, spray-painted a Star of David on the door of St. John's Episcopalian Church, 101 Chapel Street, Portsmouth, NH, a house of worship; defaced a Black Heritage Trail sign on the St. John's Church property; and removed an LGBTQ+ Pride flag from St. John's Church property;

- f. On February 21, 2023, spray-painted a Star of David and red “X” on the walls of St. John’s Masonic Lodge, 351 Middle Street, Portsmouth, NH;
- g. On February 21, 2023, spray-painted over a rainbow-colored park bench located on the property of Portsmouth Place Apartments, 263 Rockland Street, Portsmouth, NH;
- h. On February 21, 2023, spray-painted swastikas and a red “X” on the window of Grim North Tattoo and Piercing, 167 High Street, Portsmouth, NH—notably the red “X” was painted to cover a sign in the window that read: “All are loved”;
- i. On February 21, 2023, spray-painted a red triangle shape onto the window of the Cotillion Bureau 65 Bow Street, Portsmouth, NH;
- j. On February 21, 2023, spray-painted a Star of David, a cross, and a swastika on the window of Macro Polo, 89 Market Street, Portsmouth, NH;
- k. On February 21, 2023, spray-painted a cross and a swastika on Cup of Joe Café, 31 Market Street, Portsmouth, NH;
- l. On February 21, 2023, spray-painted a swastika on the wall outside of Mojo’s West End Tavern, 95 Brewery Lane, Portsmouth, NH;
- m. On February 21, 2023, spray-painted a swastika on the window of Stroll Café, 15 Portwalk Place, Portsmouth, NH;
- n. On February 21, 2023, spray-painted a swastika and a cross on the window of Portsmouth Smoke and Vape, 93 High Street, Portsmouth, NH;
- o. On February 21, 2023, spray-painted over a sticker in the window of 3 Bridges Yoga, 185 High Street, Portsmouth, NH, that read “Hate is Unwelcome Here”;
- p. On February 21, 2023, spray-painted three red crosses on the window of Deadwick’s Ethereal Emporium, 19 Sheafe Street, Portsmouth, NH;
- q. On February 21, 2023, spray-painted a red “X” to deface a sign that read “In Our America All People Are Equal, Love Wins, Black Lives Matter, Immigrants & Refugees Are Welcome, Disabilities Are Respected, Women Are In Charge Of Their Bodies, People & Planet Are Valued Over Profit, Diversity Is Celebrated” on the property of 226 Marcy Street, a private residence;
- r. On February 21, 2023, spray-painted over a mural that read “Black Lives Matter” located on the retaining wall at 244 Marcy Street, a private residence;
- s. On February 21, 2023, spray-painted a Star of David, a red “X,” the word “Juden,” and the phrase “White Lives Matter” on the Market Street Pedestrian

Bridge;

- t. On February 21, 2023, spray-painted a swastika, a cross, and the word “Victory” on a wall in the Hanover Street Parking Garage, 2 Hanover Street, Portsmouth, NH; and
- u. On February 21, 2023, spray-painted a swastika on a wall under the Bartlett Street Railroad Bridge’s trestle.

Many of the locations targeted either actively or regularly displayed rainbow LGBTQ+ Pride flags in solidarity with the LGBTQ+ community, displayed signs or slogans denouncing hate and welcoming all regardless of their protected characteristics, or were houses of worship practicing faiths that differed from or were inconsistent with the defendant’s faith. His efforts attempted to interfere with the lawful and/or constitutionally protected activities of those businesses, residences, houses of worship, and members of the public who were victimized by or witnessed his vandalism by discouraging them from engaging in those lawful activities.

2. The Civil Rights Act authorizes superior courts to impose injunctive relief against violators to prevent continued violations and to protect the rights secured by the Act—relevant here, the right to freely and lawfully worship, associate with and advocate on behalf of people and communities regardless of their protected characteristics, and live freely and peacefully free from racist, antisemitic, homophobic, transphobic, and other bias- or hate-motivated property damage. The defendant targeted the businesses, residences, house of worship, and other locations because of his actual or perceived belief that those locations and/or the owners or staff of those locations supported the LGBTQ+ community, had religious practices different from or inconsistent with his own religious beliefs, or expressed support for people of different races, religions, or other protected characteristics.

3. To protect these victims and the public generally from similar bias- or hate-motivated unlawful conduct, it is necessary to enjoin the defendant from: (1) further engaging in

actual or threatened unlawful conduct motivated by race, color, religion, national origin, ancestry, sexual orientation, sex, gender identity, or disability; (2) entering or approaching the businesses, residences, houses or worship, and other locations that he has previously targeted; and (3) directly or indirectly contacting the businesses, residences, houses of worship, and other locations or individuals associated with those locations, be they owners, employees, congregants, or residents, he has previously targeted.

FACTS

4. The State has requested a preliminary injunction hearing in this matter.¹ At such a hearing, the State will present evidence or offers of proof regarding the following:

a. On April 20, 2022, the defendant drove his red sedan bearing Rhode Island license plates into the driveway of 353 Miller Avenue, Portsmouth, NH. The defendant exited his car and ran to her door where the owner of the home displayed a rainbow LGBTQ+ Pride flag. The defendant attempted to pull the flag down and cut at it with a knife. The owner, witnessing this, shouted at the defendant, who then stopped, laughed, and ran back to his car before driving off. The owner described the defendant as a white, male teenager and that she had witnessed another male with him, who she described as a black teenager. The incident caused damage to the owner's flag.

b. The defendant then traveled to Market Square in Portsmouth near where the North Church is located. There, he used a table to climb up and access the flagpole where the church's rainbow LGBTQ+ Pride flag was affixed. The defendant cut down, or otherwise

¹ The State has also requested a final hearing on the merits before issuing a permanent injunction. That hearing will occur at a later date to enable the defendant to prepare. Given the regular and escalating conduct—and the fact that the City of Portsmouth hosts events supportive of the LGBTQ+ community, such as the City's annual Pride festival in June, the State contends that a preliminary injunction is necessary to protect these victims and the public from future harm.

removed, the flag and in doing so caused damage to the flagpole. He then fled the scene. The incident was documented by bystanders who provided photos to law enforcement to help identify the defendant.

c. Also, on April 20, 2022, the defendant and a friend, M.E., sent an email to the entire sophomore class at Portsmouth High School—except for the defendant and M.E. The account sending the email was named “Christian Russian > Globo-Homo Ukraine.” The email contained a video in which the defendant says: “Ukrainians are fucking gay. This fucking country needs to burn in hell. Can’t wait to see all these Ukrainians dies. We love Putin. We love Russia. Fuck Ukraine. Fuck gay people. Fuck faggots.” Then the defendant puts lighter fluid on the flag. While doing that, the defendant’s hands and head comes into view. The defendant then lights the flag on fire, burning it. The defendant had previously stolen the flag from St. Nicholas’s Greek Orthodox Church, located near Portsmouth High School.

d. On February 21, 2023, at approximately 1:00 a.m. the defendant began a near two-hour spree of vandalism when he spray-painted a swastika on a wall under the Bartlett Street Railroad Bridge’s trestle. From there, he proceeded to vandalize seventeen other locations: (1) Mojo’s West End Tavern; (2) St. John’s Masonic Lodge; (3) Portsmouth Place Apartments; (4) 244 Marcy Street; (5) 226 Marcy Street; (6) Temple Israel; (7) Deadwick’s Ethereal Emporium; (8) St. John’s Episcopal Church; (9) Cotillion Bureau; (10) Macro Polo; (11) Cup of Joe Café; (12) the Hanover Street Garage; (13) Portsmouth Smoke and Vape; (14) Grim North Tattoo and Piercing; (15) 3 Bridges Yoga; (16) Stroll Café; and (17) a pedestrian bridge that crosses Market Street. The details of

the vandalism at each location are included in the complaint and paragraphs 1.d and 1.u, above.

e. While committing these acts of vandalism, surveillance cameras captured the defendant moving on foot between the locations and committing the acts of vandalism at some of the locations. Across all locations, the vandalism was consistent and involved red spray-paint of, among other words and symbols, crosses, Stars of David, swastikas, and “X”s. Many, if not all, of the businesses targeted either regularly displayed rainbow LGBTQ+ Pride flags or otherwise showed support for communities of color, the LGBTQ+ community, and other marginalized groups. The masonic lodge and houses of worship were targeted because of their actual or perceived religion views and practices. The residences were targeted because of their signs and murals expressing support for communities of color and other marginalized groups. The public locations contained phrases and symbols espousing white supremacy and Nazism.

LEGAL ARGUMENT

I. Standard of review for a preliminary injunction in a Civil Rights Act enforcement action

5. RSA 354-B authorizes superior courts upon finding a violation of RSA 354-B to impose injunctive relief as it “may deem necessary to prevent continued violation of [RSA 354-B] or to protect lawful exercise of the rights secured by [RSA 354-B].” RSA 354-B:3, II.

6. To establish a violation of the New Hampshire Civil Rights Act, the Attorney General must demonstrate by clear and convincing evidence that the defendant interfered or attempted to interfere with the rights of the victim to engage in lawful activities by threatening to engage in or actually engage in property damage or trespass upon property when such actual or

threatening conduct was motivated by race, color, religion, national origin, ancestry, sexual orientation, sex, gender identity, or disability. RSA 354-B:1.

7. Where a statute provides for injunctive relief, a court's decision to issue injunctive relief is no longer rooted in traditional principles of equity; rather, it is based upon the statutory guidelines. *See N.H. Dept. of Env. Servs. v. Mottolo*, 155 N.H. 57, 64 (2007) (recognizing that “[c]ourts have found that when Congress decides to make available the remedy of injunction for violations of a statute’s substantive provisions, irreparable injury is presumed to flow from such violations and [i]t is settled that where a statute designed to protect the public authorizes an injunction, considerations applicable to private actions such as irreparable injury and a balancing of the equities are not relevant.”). Thus, this Court need not consider the traditional equitable considerations of irreparable harm or inadequacy of other remedies when considering the requested injunction. *See id.*; Attachment A (*State v. Protasowicki*, No. 212-2018-CV-00102, Order of Preliminary Injunction (Carroll Cty. Sup. December 20, 2018) (“Because the State has demonstrated a likelihood of success on the merits of its claim, the court may impose temporary injunctive relief pursuant to the Act.”)); *see also Hecht v. Bowles*, 321 U.S. 321, 331 (1944) (When Congress expressly authorizes the government to enforce a statute by way of an injunction, “the standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief.”); *S.E.C. v. Mgmt. Dynamics*, 515 F.2d 801, 808 (2nd Cir. 1975) (“Unlike private actions, which are rooted wholly in the equity jurisdiction of the federal court, SEC suits for injunctions are ‘creatures of statute.’ Proof of irreparable injury or the inadequacy of other remedies as in the usual suit for injunction is not required.”); *State Comm’n on Human Rels. v. Talbot County Det. Ctr.*, 803 A.2d 527, 535 (Md. Ct. App. 2002) (“When injunctive relief is provided by statute, however, a court’s decision to

issue injunctive relief is no longer rooted in traditional principles of equity; rather, it is based upon the statutory guidelines.”).

II. The State is likely to success on the merits of its Civil Rights Act claims.

8. RSA 354-B prohibits a person from interfering with another’s right to engage in lawful activities and to exercise statutory rights. RSA 354-B:1, I. Here, the victims—the targeted businesses, houses of worship, and residences, have the right to, among other things: (1) freely worship; (2) express support or solidarity for individuals, groups, and communities who are marginalized because of their protected characteristics, including religion, race, sexual orientation, and gender identity; and (3) display flags, signs, stickers, and other symbols that demonstrate that support or solidary. These rights are part of the core of the rights protected by the First Amendment to the United States Constitution and Part I, articles 1, 4, 5, and 22 of the New Hampshire Constitution. Members of the public also have the right to patronize businesses, attend religious services, and travel through their communities free from property damage and trespass that suggests or otherwise makes them, their friends, or their communities feel unsafe or unwelcome. *Cf.* RSA 631:4, I(b) (recognizing that leaving objects or graffiti on the property of another can be a threatening act).

9. The defendant interfered with those rights and the victims’ and public’s otherwise legal activities when he: (1) damaged and stole or attempted to steal rainbow LGBTQ+ Pride flags expressing support for and solidarity with the LGBTQ+ community; (2) stole and destroyed a Ukrainian flag while recording a video denouncing Ukraine, Ukrainians, and the LGBTQ+ community; (3) vandalized houses of worship and what he perceived as houses of worship for holding religious views different from or inconsistent with his own; (4) vandalized businesses for expressing support for or solidarity with the LGBTQ+ community; (5) vandalized residences for

expressing support for or solidarity with communities of different races, the LGBTQ+ community, and other marginalized communities; (6) vandalized businesses that may support religious or spiritual practices different from or inconsistent with his own; and (7) vandalized businesses and public locations with slogans and symbols of antisemitism, racism, homophobia, transphobia, and other hate-motivated associations that would be seen and visible to the public at large.

10. The evidence permits no dispute: the defendant's conduct was not mere random acts of mischief, but a targeted and executed plan to damage businesses and residences that showed support for marginalized communities, particularly the LGBTQ+ community, the Black community, and different religious communities, including the Jewish community. The defendant targeted locations where he had seen LGBTQ+ Pride flags, signs or expressions of solidarity with these different communities, and houses of worship affiliated with these communities. Witnesses saw or identified the defendant during his acts on April 20, 2022, and surveillance footage captured an individual later identified through investigative efforts as the defendant as he moved around Portsmouth and committed the property damage that occurred on February 21, 2023.

11. The evidence equally establishes that the defendant's interference with the victims' and public's rights was motivated by race, religion, sexual orientation, and gender identity and the defendant's views and perception of the victims' religion or support for or affiliation with the Black community, the LGBTQ+ community, and the Jewish community. RSA 354-B:1; *see State v. Costella*, 166 N.H. 705 (2014) (“[W]e hold that pursuant to RSA 651:6 the State must prove only that a defendant was substantially motivated to commit a crime

because of his hostility towards the victim’s perceived “religion, race, creed, sexual orientation . . . , national origin or sex,” and that it need not prove the actual status of the victim.”).

12. These protected characteristics were central to the property damage at issue in this case. The defendant singled out businesses and locations that displayed LGBTQ+ Pride flags or other signs or symbols of support for the LGBTQ+ community. The defendant singled out the only synagogue in Portsmouth and painted notorious symbols of antisemitism and genocide on its property. The defendant singled out businesses, houses of worship, and other locations that he perceived as having religious views inconsistent with his own. The defendant singled out residences that displayed signs or symbols expressing solidarity with communities of color, the LGBTQ+ community, and other marginalized groups and defaced those symbols of solidarity and support. In committing these acts of vandalism, the defendant routinely used the swastika, a symbol of Nazism and white supremacy that is commonly considered a symbol of antisemitism, racism, homophobia, transphobia, and other hate-motivated views. The defendant would also use crosses in locations with differing religious views or Stars of David in locations that he may associate with Judaism or LGBTQ+ solidarity.²

13. Based on the foregoing, the State has demonstrated a likelihood of success on the merits of its Civil Rights Act claims against the defendant.

III. To protect the victims and the public, this Court should enjoin the defendant from further violating the Civil Rights Act, engaging in future unlawful acts motivated by protected characteristics, and contacting the victims of his previous acts.

² Increasingly, white supremacist and neo-Nazi groups associate efforts to support the LGBTQ+ community and other marginalized communities with Judaism. *See* Anti-Defamation League’s Center on Extremism, “Antisemitism & Anti-LGBTQ+ Hate Converge in Extremist and Conspiratorial Beliefs” (Jan. 24, 2023) (*available at* <https://www.adl.org/resources/blog/antisemitism-anti-lgbtq-hate-converge-extremist-and-conspiratorial-beliefs>).

14. The Civil Rights Act protects residents of and visitors to New Hampshire from bias- and hate-motivated violence, threats, trespass, and property damage. RSA 354-B, I.

15. Here, the defendant identified, targeted, and damaged the property of businesses, residents, houses of worship, and other locations because of his perception of their religion, support for people of different sexual orientations and gender identities, support for people of different races, and support for people of different religions. While the defendant is free to hold personal views, New Hampshire law prohibits him from acting upon his biases and prejudices to interfere with the lawful conduct of others through property damage, among other unlawful acts. Such conduct is a civil rights violation. RSA 354-B:1.

16. Within the course of a single year, the defendant has engaged in two sets of incidents that involve multiple victims and multiple Civil Rights Act violation. His conduct has increased in scope, severity, and secrecy over the course of these incidents. The State's complaint includes allegations that the defendant has likely targeted some locations, specifically St. John's Masonic Lodge and the Cotillion Bureau, multiple times. To protect the victims as well as the public, from further bias- and prejudice-motivated violence, it is necessary to enjoin the defendant from engaging in or threatening conduct that is violative of the New Hampshire Civil Rights Act or any other laws motivated by race, color, religion, national origin, ancestry, sexual orientation, sex, gender identity, or disability. Doing so will deter future unlawful conduct because the defendant will be subject to additional criminal liability if he violates the injunction. RSA 354-B:3.

17. Given the fact that the defendant has targeted some locations multiple times and to also better protect the businesses, residences, and houses of worship from future harm, it is necessary to enjoin the defendant from visiting the property of or contacting, directly or

indirectly, any owner, staff person, congregant, or resident of the businesses, houses of worship, residences, and other locations targeted by the defendant. Doing so will protect those already harmed by the defendant's conduct from being retraumatized or re-exposed to the defendant.

18. Acts of hate-motivated violence send a message to the victim and other members of the victim's group that they are unwelcome and unsafe in their own community because of who they are. The requested injunction promotes the public interest by protecting the victims, their communities, and other members of the public from future violence and future interference with the free exercise of their rights. Moreover, the legislature has expressed a public policy in favor of all members of society having equal rights and abilities to engage in legal activity free of threats of violence based on their identity, including race, religion, sexual orientation, and gender identity. Imposing injunctive relief here furthers that policy objective.

CONCLUSION

19. For the foregoing reasons, this Honorable Court should find that the defendant violated the New Hampshire Civil Rights Act and enjoin the defendant from engaging in future bias-motivated unlawful conduct and having direct or indirect contact with the victims of his previous acts.

Respectfully submitted,

JOHN M. FORMELLA
ATTORNEY GENERAL

April 27, 2023

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Attachment A

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

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NOTICE OF DECISION

File Copy

Case Name: **State of New Hampshire v Priscilla Protasowicki**
Case Number: **212-2018-CV-00102**

Enclosed please find a copy of the court's order of December 20, 2018 relative to:

Order on Preliminary Injunction

December 21, 2018

Abigail Albee
Clerk of Court

(406)

C: Elizabeth A. Lahey, ESQ; Allen J. Lucas, ESQ

THE STATE OF NEW HAMPSHIRE

CARROLL, SS.

SUPERIOR COURT

State of New Hampshire

v.

Priscilla Protasowicki

Docket No. 212-2018-CV-00102

ORDER ON PRELIMINARY INJUNCTION

The State of New Hampshire (“State”) filed a complaint against the defendant, Priscilla Protasowicki (“Protasowicki”), seeking damages and injunctive relief for violation of the New Hampshire Civil Rights Act, RSA 354-B. (Court index #1.) The State now moves for preliminary and permanent injunctive relief against the defendant.¹ (Court index #2.) The court held a hearing on the preliminary injunction on August 24, 2018. Based on the relevant facts, the parties’ arguments at the hearing, and the applicable law, the State’s request for preliminary injunction is granted.

FACTS

The facts are based on offers of proof proffered by both parties during the hearing. On April 17, 2018, Chahrazade Mounaji (“Mounaji”) and her eight-year-old daughter traveled to Conway, New Hampshire for a vacation. Mounaji and her daughter stayed in a hotel for one or two nights, and her husband, Mohamed Ghallami (“Ghallami”), joined them at the hotel for the last one or two nights of their stay. On what was supposed to be the last day of their vacation, their daughter was sad to be leaving and wished to stay in New Hampshire another night.

¹ At the time of the hearing, the defendant had not filed a responsive pleading to the State’s motion for injunctive relief but sought a stay of all proceedings while she looked to retain counsel. The court denied the request to stay but agreed to limit the hearing to the preliminary injunction request, and would take up the issue of the permanent injunction at a later date. The defendant has since retained counsel and filed an objection. (See court index # 23.)

Accordingly, Ghallami surprised his family with an extra night of vacation, but he had to return to Massachusetts for work. Ghallami used the website Booking.com to search for a hotel, and eventually booked a room at the Covered Bridge River View Lodge (the “Lodge”) in Jackson.

Prior to checking into the Lodge, Mounaji called ahead to see if Ghallami had to be present for check-in, as his credit card had been used to book the room online.² Mounaji spoke to Protasowicki, who confirmed that Ghallami had to be present when the family checked in. Protasowicki had processed the online reservation and, based upon their unique names, could tell they “were not born in America” and that they had some sort of Middle Eastern heritage or religion. She stated this did not dissuade her from reserving them a room and accommodating their needs. She further indicated she has studied the Muslim religion, knows quite a lot about it, and has no objection to “Arabians.”³

When the family arrived at the Lodge, they noticed the accommodations did not resemble the photographs they viewed online. The family went inside the Lodge to cancel their reservation and get a refund. Mounaji, who wears a hijab or head scarf, approached Protasowicki, who was at the front desk in the lobby. They exchanged pleasantries. Protasowicki’s mother Halina was sitting in a chair in the corner. Mounaji indicated that she wanted to cancel the reservation; Protasowicki said it was not possible and refused to do so.⁴ The terms and conditions for renting a room stated that there were no refunds. Further, the Lodge does not guarantee the quality of rooms or service. Protasowicki did her best to accommodate them and wanted them to stay at the Lodge. Ghallami asked why they could not receive a refund. Halina offered the family a voucher instead, but they were not interested.

² Protasowicki proffered that Mounaji called at 7:00 a.m. to see if she could check in early because her husband had paid for the room with his credit card and was leaving town. Protasowicki allowed Mounaji to check in early.

³ Mounaji and Ghallami are from Morocco, not the Middle East.

⁴ Protasowicki stated that in some circumstances she gives customers a refund if there is an error with the room, such as a clogged toilet.

Protasowicki then asked the family if they were “commies”⁵ and pointed to Mounaji, commenting on her hijab. Protasowicki made comments about the family being Muslim, asked if they were legally in the country, and said “you can’t be here.” Ghallami interjected and told her that she could not speak to them like that. Protasowicki then came around from behind the desk and grabbed Ghallami’s arm and tried to force him out of the Lodge by pushing him towards the exit.⁶ Ghallami raised his arms above his head so it could not be interpreted later that he was pushing Protasowicki. Mounaji began to film the incident on her phone. When Protasowicki saw Mounaji recording, she tried to grab the phone and continued to yell that Mounaji “should not be here.” Mounaji turned her back to Protasowicki to protect herself and held the phone above her head to keep it out of reach. Protasowicki then pushed Mounaji. The couple’s daughter witnessed these events and became upset and started to cry. Protasowicki continued to push the family and accused them of being from the Middle East and stated that “Muslims kill children.”

At that point, Protasowicki’s brother Derek entered the Lodge and intervened. He asked what happened and escorted the family outside. Protasowicki and Halina remained in the Lodge. Once outside, the family called the police. Protasowicki continued to yell at the family after they exited the Lodge, screaming that they were from the Middle East and that Muslims kill children.

Shortly thereafter, Officer Ryan McDonald from the Jackson Police Department arrived. He was responding to a 911 call made by Protasowicki in which she alleged she had been punched by Ghallami. When he arrived, McDonald observed the family outside and noticed that Mounaji and her daughter were extremely upset and the daughter was crying. McDonald first

⁵ Presumably the term was used to refer to “communists.”

⁶ Protasowicki contends that the confrontation began when Mounaji and Ghallami refused to provide identification to validate the credit card information and reservation when the family was checking in. (Def.’s Obj. State’s Mot. Prelim. And Perm. Inj. ¶¶ 3–4.) According to Protasowicki, Mounaji and Ghallami became belligerent and started yelling and threatening her upon learning of the Lodge’s cancellation policy. (*Id.* ¶ 5.)

spoke with Protasowicki, who claimed that Ghallami reached across the front desk and grabbed her shirt because he was upset he could not get a refund. After speaking with Protasowicki, McDonald went outside to speak with the family. Once he heard their version of events, he went back inside the Lodge to speak with Protasowicki. This time, Protasowicki claimed that Ghallami grabbed her shirt because he could not get a refund, but did not say she had been punched. When McDonald asked Protasowicki if she made any statements that could be construed as racist towards the family, she stated that she called the family “commies” and questioned if they were legally in the country.

The family left the Lodge and went to the police station to make statements regarding the incident. Mounaji and Ghallami have lived in the United States for approximately twenty to twenty-five years and have never experienced an incident like this. This was the first time they felt like they did not belong. Their daughter is now scared of being targeted when she becomes old enough to wear a hijab, and is questioning whether she wants to wear one at all. After they returned home, the family discovered they had been charged \$85.79 for one night at the Lodge.

The following day, McDonald returned to the Lodge to speak with Halina.⁷ McDonald asked Halina if Protasowicki had made any comments to the family, and she stated that Protasowicki called the family “commies,” stated they were “Muslims from the Middle East” and that “Muslims kill kids.” McDonald also asked Halina about whether there was any physical contact between Protasowicki and Ghallami. Halina initially said there was no physical contact, but when McDonald told her there was a video of the incident, she stated that the video would show Protasowicki pushing Ghallami towards the door of the Lodge.

⁷ Protasowicki proffered that McDonald did not take a statement from Halina, and that Halina would never make statements regarding the incident that have been attributed to her. Further, Protasowicki stated that her parents have lived in Jackson for twenty years, the Jackson Police Department has continuously failed to investigate any criminal acts at the Lodge, and has never taken statements from either of her parents during previous incidents.

On May 11, 2018, McDonald arrested Protasowicki for simple assault.⁸ Protasowicki stated at the hearing that her actions were within her rights as an innkeeper but otherwise did not support or develop this contention.⁹

ANALYSIS

The State seeks to enjoin the defendant from engaging in or threatening physical force or violence, damage to property, or trespass on property against any person, including Ghallami or Mounaji, and their families, motivated by race, color, religion, national origin, ancestry, sexual orientation, gender, or disability. (State’s Mot. Prelim. And Perm. Inj. ¶ 3; see State’s Memo. Supp Mot. Prelim. And Perm. Inj. B.) The defendant objects, arguing that the State has failed to prove there is an immediate danger of irreparable harm, that there is no other adequate remedy of law, and that it will be successful on the merits. (Def.’s Obj. State’s Mot. Prelim. And Perm. Inj. ¶ 16.) The defendant argues it cannot be inferred that she violated the New Hampshire Civil Rights Act simply because she was arrested, and therefore it cannot serve as the basis for the State’s claim of success on the merits. (Id. ¶¶ 16.) Lastly, the defendant asserts that the State’s requested conditions are already in place as a result of her arrest. (Id. ¶ 21.)

Pursuant to RSA 354-B, the New Hampshire Civil Rights Act (the “Act”), all persons have the right to participate in lawful activities and to exercise and enjoy the rights secured by the United States and New Hampshire laws and constitutions 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, gender, or disability.” RSA 354-B:1,

⁸ Protasowicki’s criminal case, 212-2018-CR-00198, is pending in the Superior Court.

⁹ Because the defendant’s argument that she was entitled under RSA 353:3-c to take the actions she did were not fully developed or argued, the court will not address the reach of RSA 353:3-c in this preliminary injunction order.

I. When the State has probable cause to believe that a person has violated any of these rights, it may bring a civil action for injunctive or other appropriate equitable relief. RSA 354-B:2, I.

To establish a violation of the Act, the State must prove by clear and convincing evidence that the defendant interfered or attempted to interfere with the rights of another. RSA 354-B:2, IV. For each violation of the Act, the court may impose a civil penalty of not more than \$5,000 per violation, injunctive relief to prevent continued violation of the Act or to protect lawful exercise of rights protected by the Act, or other equitable relief that the court deems necessary, including restitution to the victim. RSA 354-B:3, I–III.

For purposes of this preliminary injunction request, the court finds the State has demonstrated a likelihood of success on the merits of its Civil Rights Act claim against Protasowicki, establishing that Protasowicki interfered with Mounaji's and Ghallami's rights to participate in lawful activities and to exercise and enjoy the rights secured by the laws and constitutions of the United States and New Hampshire, free from actual physical force or violence motivated by religion or national origin, pursuant to RSA 354-B. See State v. Costella, 166 N.H. 705, 713 (2014) (holding that in the context of the hate crime statute, RSA 651:6, the “State must prove only that a defendant was substantially motivated to commit a crime because of his hostility towards the victim’s perceived ‘religion, race, creed, sexual orientation . . . , national origin or sex’ and that it need not prove the actual status of the victim”). Offers of proof credibly suggest that Protasowicki used physical force to try and remove Ghallami and Mounaji from the Lodge based on their religion and perceived national origin. Although at the hearing Protasowicki stated she has studied the Muslim religion, knows quite a lot about it, and has no objection to “Arabians,” the court finds the proffer by the State to be credible. Proffers regarding statements made by Protasowicki throughout the incident, and even after the incident, indicate

that she believed Ghallami and Mounaji were Muslim, based on their last names and Mounaji's hijab, and that she had strong opinions and biases based on her beliefs.

At the hearing, Protasowicki stated that she had rights as an innkeeper and that she had gone out of her way to allow Mounaji and Ghallami to check in early. She argued it would have been obvious from the booking information that the people seeking to stay at the Lodge "were not born in America" and if she had wanted to discriminate, she would never have accepted the online reservation. At no point during the hearing, however, did Protasowicki actually deny the allegations against her, nor refute the evidence presented, other than to say the victims' statements contradicted one another. The court is persuaded that Protasowicki has the potential of engaging in this type of behavior again—she remains employed at the Lodge, as it is her family business, continues to interact with the public on a daily basis, and has access to Ghallami and Mounaji's contact information.

Because the State has demonstrated a likelihood of success on the merits of its claim, the court may impose temporary injunctive relief pursuant to the Act. See, e.g., New Hampshire Dep't of Envtl. Servs. v. Mottolo, 155 N.H. 57, 64 (2007) (finding that although the Court had not addressed the issue of whether proof of statutory non-compliance is sufficient to demonstrate the harm necessary to support an injunction when authorized by statute, "[a]t least with respect to some statutory injunction provisions, . . . courts have found that when Congress decides to make available the remedy of injunction for violations of a statute's substantive provisions, irreparable injury is presumed to flow from such violations" and "[i]t is settled that where a statute designed to protect the public authorizes an injunction, considerations applicable to private actions such as irreparable injury and a balancing of the equities are not relevant") (citations omitted)); ATV Watch v. New Hampshire Dep't of Res. & Econ. Dev., 155 N.H. 434, 438 (2007) (finding the right to issue an injunction pursuant to the statutory language

“permissive and thus, even assuming, without deciding, that the traditional elements for granting an injunction are not required, the trial court retains the discretion to determine whether such relief should be ordered in a particular case”); Hecht v. Bowles, U.S. 321, 331 (1944) (finding that when the government is expressly authorized by Congress to enjoin a defendant from engaging in acts which constitute a statutory violation, “the standards of the public interest not the requirements of private litigation measure the propriety and need for injunctive relief in these cases”); State Comm’n on Human Relations v. Talbot Cty. Det. Ctr., 803 A.2d 527 (Md. Ct. App. 2002) (stating that “[w]hen injunctive relief is provided by statute, however, a court’s decision to issue injunctive relief is no longer rooted in traditional principles of equity; rather, it is based upon the statutory guidelines”); S.E.C. v. Mgmt. Dynamics, Inc., 515 F.2d 801, 808 (2d Cir. 1975) (finding that “[u]nlike private actions, which are rooted wholly in the equity jurisdiction of the federal court, SEC suits for injunctions are ‘creatures of statute.’ ‘(P) roof of irreparable injury or the inadequacy of other remedies as in the usual suit for injunction’ is not required.”) (citation omitted)).


Accordingly, the court finds that a preliminary injunction is an appropriate remedy to prevent a future violation of the Act, as well as to protect the public’s lawful exercise of guaranteed rights under the Act. See RSA 354-B:3, II.

CONCLUSION

For the foregoing reasons, the State’s request for a preliminary injunction is GRANTED, pending resolution of the State’s permanent injunction request.

So Ordered.

December 20, 2018



Amy L. Ignatius
Presiding Justice