UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

Pat "PJ" Newton, an individual; and O'Hara's, a sole proprietorship, Plaintiffs, v. Town of Shannon, Mississippi; Ronnie Hallmark; Paul Lyles; Joey McCord; Carl Trice; Jerry Grubbs; Bryant Thompson; and James Oswalt, Defendants.	Civil Action No: _____ COMPLAINT JURY TRIAL DEMANDED

PRELIMINARY STATEMENT

1. Pat "PJ" Newton ("Newton") is a lesbian and a small business owner. She brings this civil rights action against the Town of Shannon, Mississippi ("Shannon"); Ronnie Hallmark ("Hallmark"), its Mayor; and certain current and former Aldermen of Shannon ("Alderman"), all in their individual capacities (collectively, the "Defendants"), under 42 U.S.C. § 1983.

2. Newton sought an application for special exception use (a "business license") from Shannon to open a cafe and sports bar called O'Hara's. But the Aldermen, in consultation with Hallmark, denied the license.

3. The Defendants denied Newton's business license application because they did not want Newton to open a business in their town that would cater to the lesbian, gay, bisexual, and transgender ("LGBT") community, and not because of any failure to meet the criteria for opening and operating a business in the town.

4. In doing so, Defendants violated

12. Defendant Ronnie Hallmark is an individual who resides in Shannon, Mississippi. Hallmark is the Mayor of Shannon. Hallmark led a conspiracy to deny Newton a business license. Hallmark is sued in his individual capacity.

13. Defendant Paul Lyles is an individual who resides in Shannon, Mississippi. He currently is a member of the Board of Aldermen. He voted to deny a business license to Newton, in violation of Newton's constitutional rights. He also declined to reconsider his earlier unconstitutional vote. Lyles is sued in his individual capacity.

14. Defendant Joey McCord is an individual who resides in Shannon, Mississippi. He currently is a member of the Board of Aldermen. He voted to deny a business license to Newton, in violation of Newton's constitutional rights. He also declined to reconsider his earlier unconstitutional vote. McCord is sued in his individual capacity.

15. Defendant Carl Trice is an individual who resides in Shannon, Mississippi. He currently is a member of the Board of Aldermen. He voted to deny a business license to Newton, in violation of Newton's constitutional rights. He also declined to reconsider his earlier unconstitutional vote. Trice is sued in his individual capacity.

16. Defendant Jerry Grubbs is an individual who resides in Shannon, Mississippi. Grubbs was a member of the Board of Aldermen at the time the Board voted to deny a business license to Newton, in violation of Newton's constitutional rights. Grubbs is sued in his individual capacity.

17. Defendant Bryant Thompson is an individual who resides in Shannon, Mississippi. He currently is a member of the Board of Aldermen. Although he voted to grant the license on June 4, 2013, he declined to move or vote to reconsider the denial, despite receiving a demand letter

from Newton's counsel that explained that the denial violated the Constitution. Thompson is sued in his individual capacity.

18. Defendant James Oswalt is an individual who resides in Shannon, Mississippi. He currently is a member of the Board of Aldermen. He was not a member when the Board voted to deny Newton a license on June 3, 2013, but he was a member on July 9, and he declined to vote to reconsider the Board's unconstitutional denial. Oswalt is sued in his individual capacity.

FACTS COMMON TO ALL COUNTS

19. Newton is 55 years old and has managed several successful small businesses. She currently operates a small cleaning business with operations in two Tennessee cities.

20. Newton wears her hair short, and her appearance does not conform to some people's conception of traditional feminine gender stereotypes.

21. Rural Mississippi is not, as a general matter, a place that welcomes LGBT individuals like Newton. Some people in the region surrounding Shannon have vocalized their rejection of LGBT people and their lives. For example, one organization that frequently disseminates anti-LGBT propaganda demeaning and even demonizing LGBT people, the American Family Association, operates only miles away from Shannon.

22. Problems of anti-LGBT bullying and discrimination within the public realm have made prominent news in Mississippi in recent years. Schools have refused to permit same-sex couples to attend formal school proms. A high school erased a lesbian from her high school yearbook because she wore a tuxedo in her yearbook photo. A public museum refused to permit celebrations of same-sex unions on site, despite allowing similar celebrations by straight couples. The Mississippi National Guard refused to follow a Department of Defense directive, which

Mississippi voters passed a constitutional amendment banning marriage recognition to lesbian and gay couples with 86% of voters' support.

23. The Town of Shannon has an unfortunate history of acts of fear and bigotry towards LGBT individuals. On information and belief, first responders refused to assist a gay person who was deeply cut and bleeding, instead forcing the injured victim to await the arrival of an ambulance. Certain vendors have refused to deliver goods to an establishment because it served LGBT people. LGBT people report having been subjected to hateful slurs such as "faggot."

24.

camaraderie, refuge, and love. O'Hara's provided a respite from the discrimination and hostility often faced by LGBT persons in rural Southern communities.

30. Newton operated O'Hara's for four years without any serious problem.

31. Newton was a good citizen. With the help of her patrons and performers, she raised thousands of dollars for local charities and individuals in special need, including members and friends of the LGBT community who had fallen on hard times due to bad luck or illness, including HIV/AIDS. She encouraged her customers to frequent neighboring businesses, such as the local truck stop, which has since closed.

32. Newton later decided to sell O'Hara's and move on to other ventures.

33. Newton sold O'Hara's in 1998. Subsequent owners of the business continued operating it as a gay bar but under a different name, "Rumors."

34. Rumors was one of two Mississippi bars profiled in a 2006 documentary called Small Town Gay Bar, which was nominated for the Grand-Jury Prize at the Sundance Film Festival and received other recognitions and awards. The documentary examined the lives of LGBT people in the rural South and the importance of bars that cater to the LGBT community in that environment.

35. On information and belief, it is commonly known in Shannon that the location for O'Hara's has been the site of a gay bar, and that the bar was featured in the 2006 documentary.

36. Rumors eventually closed, too. Since the 2010 closing of Rumors, Northern Mississippi has been without a gay bar.

PlansT R 5 H R S H Q 2 ¶ + D U D ¶ V

37. Newton maintained her connections to the greater Shannon community since she first opened O'Hara's in 1994. In the past year or so, Newton's friends – both gay and straight –

54. After completing these upgrades, but before she applied for a license from Shannon, Newton again met with the Shannon building inspector. He told Newton that she did a terrific job with the upgrades and that the building and surrounding lots looked significantly better.

55. Newton spent many thousands of dollars and hundreds of hours upgrading the building and the adjoining land, obtaining her state business and liquor licenses, and paying rent on the property.

56. Newton then went to the Shannon Town Hall to sign up for water service. There, she spoke to Hallmark, who explained the process of applying for a business license under the town's zoning ordinance.

57. Newton had obtained every other license and permit needed to begin operation apart from the town business license.

58. Hallmark told Newton that she should submit her application papers and then come to a meeting of the Board of Aldermen to be held on June 4, 2013.

59. Newton asked the town clerk whether she needed a lawyer or anyone else to accompany her to the public meeting. The clerk informed her that she did not need to bring anyone with her to the meeting, as she would be fine on her own.

60. Newton submitted her application papers on May 14, 2013. The application papers properly stated all information necessary to secure approval of her application for a business license under Shannon's Zoning Ordinance.

61. Newton explained in her application that she hoped to operate a cafe and sports bar that provided food and sports entertainment, along with occasionally offering live music, karaoke, and cookouts.

62. She also submitted a letter addressed to the town, the Aldermen, Hallmark, and the

town's citizens (attached hereto as Exhibit A). In the letter, Newton explained her commitment to operating a safe business that would enhance the life of the community. She wrote:

> No underage customers will be tolerated! There will be onsite security during business hrs. to ensure my safety and the safety of my customers both inside and out. The business will be a host to TV sporting events, small local bands, piano players, guest radio DJs, and will also serve as a host to several charity fund raisers each month. I feel that the improvements already have made the property more appealing to the town and visitors. I will always strive to make improvements for my business as well as the property itself and surroundings. I feel that given the opportunity I will once again conduct my day to day operations in the manner that will make you proud and bring new business not just to me but

77. After accepting the petitions, Hallmark opened the floor to questions.

78. For over 30 minutes, Aldermen and citizens launched a series of hostile questions and comments directed at Newton.

79. The questions from the Aldermen and townspeople had nothing to do with whether Newton satisfied the requirements for the issuance of a business license but everything to do with the town's hostility towards her and the prospect of her reopening a gay bar in Shannon. The questions and comments included statements such as following:

(a) "How can you call yourself a Christian?"

(b) "Would you want your daughter to go into a bar like that?"

(c) "I don't want my son playing soccer anywhere near your bar."

(d) "Why would you want to open that bar in our town?"

80. Newton felt shocked and betrayed by the attack. Despite this hostility, she responded to the questions as best she could with poise and dignity.

81. When the questioning concluded, Jon Milstead, a local zoning consultant, conferred with Hallmark and the Board.

82. Within earshot of Newton, Milstead advised the Board that Newton met all the requirements for her application but that, if the Board wanted to deny the application, it could do so anyway by citing to concerns about public health and safety.

83. On information and belief, Milstead had actually conferred with the Mayor and the Alderman regarding Newton's application prior to the June 4, 2013 meeting.

84. Following his conference with Milstead, Hallmark called for a vote.

85. Four Aldermen –

91. Courts also have concluded that the previous, successful operation of the same or similar business in the same location demonstrates a "public need" for that business and satisfies that requirement of the ordinance.

No Valid Reason for Denial of Permit

92. As alleged above, Newton submitted substantial evidence of a "public need" for the cafe and sports bar.

93. She explained that she previously operated a similar bar successfully.

94. She explained that members of the community who previously frequented O'Hara's urged her to reopen it.

95. Social science confirms the critical "public need" for community spaces like gay bars,

Alderman McCord recently stated that he is looking forward to this lawsuit because litigation

104. Indeed, because there was an agenda posted outside the public meeting room that listed "Reconsideration on Special Exception Application of O'Hara's Bar & Grill" as one of the

113. This lawsuit follows.

in a way that reflects, or defers to, private biases of "some faction of the body politic."

124. The Supreme Court also held, in Romer v. Evans, 517 U.S. 620 (1996), that a governmental policy (such as the town's policy against granting licenses to gay establishments) that makes it "more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense."

125. The Defendants violated each of these constitutional principles. They denied Newton's application, and declined to reconsider that denial on account of hostility directed at Newton and her plans to operate a café and sports bar that would serve the LGBT community. Moreover, this denial was pursuant to a custom or policy of denying applications to operate gay establishments.

126. Defendants' disfavored treatment of Plaintiffs is without justification and is not supported by factors that are properly cognizable in a zoning proceeding. Defendants can assert no permissible bases for treating Plaintiffs di3(ff)(ffl5e9i70057>3l06(ng) no)]TJETme Court also vans

143. A violation of equal protection is also triggered by interference with exercise of a fundamental right under the First Amendment.

144. Defendants denied Plaintiffs' business license for the same reason they denied licenses to the earlier applicants who wanted to open the gay bar: to prevent anyone from operating a business in Shannon that would demonstrate that there are LGBT people in Shannon and its environs, and that those people are entitled to lead full and open lives.

145. The Constitution protects citizens and businesses who seek through their actions to express ideas, and the government may not impede such expression absent adequate justification.

146. Opening and operating a gay cafe and sports bar in Shannon is imbued with elements of expressive communication.

147. In opening and maintaining the bar, Newton intends to convey a particularized message: it is okay to be openly gay, and LGBT people are due an equal and respected place in the community.

148. Such a message is potently communicated by a lesbian businesswoman's successful operation of an establishment welcoming the LGBT community with dignity and respect within an environment where some vocal community members disdain and disparage LGBT people.

149. That message is well understood and opposed by some factions within the community, including the Defendants and those who spoke against the Plaintiffs at the initial town meeting by questioning Newton's Christianity as a lesbian business owner, as well as by the townsperson indicating that she did not want her son playing soccer anywhere near Newton's bar.

150. Newton's message that it is okay to be gay will also be understood by LGBT people in the community, including youth, who may be isolated and rejected by peers and without a positive role model, or in some cases, without hope.

159. Hallmark and the Aldermen took actions in concert with each other under color of law and with the specific intent to violate the aforementioned rights by denying Plaintiffs a business license and encumbering their exercise of protected expressive conduct.

160. On information and belief, Hallmark led the conspiracy against Plaintiffs through acts consistent with his acts ensuring denial of previous applications to reopen the gay bar.

161. Hallmark engaged in several acts in furtherance of the conspiracy.

162. For example, on information and belief, Hallmark, after learning of the plan to open the cafe and sports bar, encouraged townspeople to prepare a petition in opposition to O'Hara's, to gather signatures at local churches, and to submit the petition or petitions at the June 4, 2013 town meeting.

163. The conduct was outside the scope of Hallmark's authority as mayor.

164. Mississippi law expressly limits the powers and functions of a mayor. Miss. Code § 21-8-17 authorizes a mayor to do the following, for example: enforce the charter of the community; report annually on the state of the municipal government; supervise the municipal departments; approve or reject proposed ordinances; and attend (but not vote at) council meetings.

165. Nothing in Mississippi law authorized Hallmark to encourage the preparation and presentation of the petition; the effort was outside the scope of his authority, and undertaken on account of Hallmark's hostility towards Newton as a lesbian and his desire to prevent the reopening of a gay bar.

166. As an additional act, Hallmark initiated and participated in an unannounced meeting of Aldermen on the evening of July 8, 2013. On information and belief, that meeting was secretly convened in order to avoid public notice and was held in possible violation of Mississippi's Open Meeting Law.

167. The basis of this allegation is that Newton was contacted on the evening of July 8, 2013, by a townsperson who informed Newton that Hallmark and Aldermen appeared to be meeting at town hall even though they had abruptly cancelled their public meeting scheduled for July 2 after receiving the letter from Newton's counsel, thereafter postponing the meeting until July 9.

168. O0 1 72.04C005100lul

174. None of the overt acts by Hallmark alleged herein constitutes an act by an agent or employee of Shannon; rather, each act was taken by Hallmark in his personal capacity purely for his own personal reasons, including bias. Each of the alleged overt acts was taken outside Hallmark's authority, agency, or employment.

175. The denial of the license and each act to support that denial was motivated by Hallmark's personal discriminatory animus and, therefore, falls outside the scope of his office.

176. The valid interests of Shannon played no part in Hallmark's efforts to ensure denial of Plaintiffs' license.

177. The conspiracy was successful and caused Newton injury. Newton remains without the license necessary to conduct her business and has been damaged as alleged in the preceding paragraphs, such that she should be compensated for the injuries caused due to the deprivation of her constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment in their favor and against Defendants, providing the following relief:

a. an order granting Plaintiffs compensatory damages from Defendants for violation of the First and Fourteenth Amendments to the United States Constitution;

b. an order granting Plaintiffs punitive damages from Hallmark and the Aldermen;

c. an order requiring issuance of a business license to Plaintiffs without further impediment or delay;

d. a declaration that Defendants violated Plaintiffs' constitutional rights;

e. an order awarding attorneys' fees, expenses, and costs incurred in the prosecution of this action pursuant to 42 U.S.C. § 1988 and other applicable laws and rules; and

f. other and further relief as the Court deems just and proper.

October 1, 2013

Respectfully submitted,

s/ Jody E. Owens, II

Jody E. Owens, II, Mississippi Bar # 102333
Andrew Canter, Mississippi Bar # 102906
SOUTHERN POVERTY LAW CENTER
111 East Capitol Street, Suite 280
Jackson, MS 39201
Telephone: (601) 948-8882