

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

Brent Tweed, et al

v.

The Town of Nottingham, et al.

Docket No. 218-2019-CV-398

MOTION FOR SUMMARY JUDGMENT

NOW COME the plaintiffs, Brent Tweed and G&F Goods, LLC, by and through counsel, and respectfully move that this Honorable Court grant this motion for summary judgement, and in support thereof state as follows:

1. At its March, 2019 town meeting, the Town of Nottingham adopted an ordinance called "Freedom from Chemical Trespass."

2. The court should grant summary judgment for at least four reasons.

3. First, the ordinance is ultra vires in that the New Hampshire General Court never authorized towns to adopt such an ordinance.

4. Second, the ordinance is unconstitutionally overbroad, void for vagueness, and violates the First Amendment rights of New Hampshire citizens.

5. Third the subject matter of the ordinance is preempted by state and federal laws and regulations.

6. Fourth, the ordinance violates Part I, Article 37 of the New Hampshire Constitution in that it usurps core judicial branch functions and purports to grant them to the town.

7. A memorandum of law setting for the legal reasoning supporting this motion is being filed contemporaneously with this motion.

8. In the complaint in this matter, the plaintiffs asked the court to order the town to pay its legal fees. The plaintiffs reserve the right to advance this request in the event that the court grants this motion or otherwise provides appropriate relief.

9. Pursuant to Super.Ct.R. 12(g)(2), a separate statement of material facts is attached to this motion and is simultaneously being forward to counsel for the Town of Nottingham.

WHEREFORE, the plaintiffs respectfully move that this Honorable Court:

- A. Grant this motion for summary judgment; and
- B. Issue an Order declaring the Town of Nottingham, “Freedom From Chemical Trespass” ordinance to be unconstitutional, ultra vires, invalid, and unenforceable; and
- C. Issue an Order requiring the Town of Nottingham to pay the plaintiffs’ attorneys fees, or in the alterntive upon a successful conclusion to this matter, allow the plaintiffs to file a motion seeking attorneys fees; and
- D. Grant such other relief as may be just and proper.

Respectfully Submitted
Brent Tweed; and
G&F Goods, LLC
By their attorneys,
Lehmann Law Office, PLLC

January 13, 2020

/s/ Richard J. Lehmann
Richard J. Lehmann (Bar No. 9339)
3 North Spring Street, Suite 200
Concord, N.H. 03301
(603) 731-5435
rick@nhlawyer.com

CERTIFICATION

I hereby certify that a copy of this pleading was this day forwarded to opposing counsel via the court's electronic service system.

/s/ Richard J. Lehmann

Richard J. Lehmann