

July 13, 2019

BY EMAIL ([mroy@townofnewingtonnh.com](mailto:mroy@townofnewingtonnh.com))

Martha Roy, Town Administrator  
Town of Newington  
205 Nimble Hill Road  
Newington, NH 03801

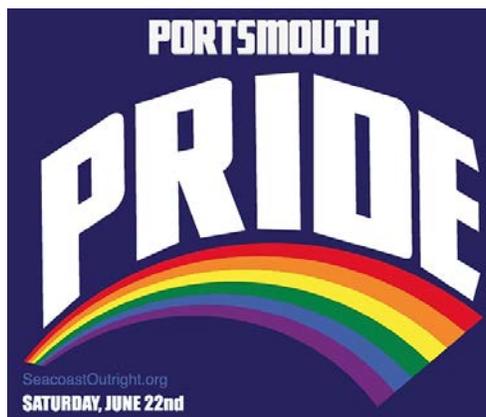
**RE: Newington's Unconstitutional Restriction of Yard Sign Speech**

Dear Ms. Roy:

We write on behalf of Seacoast Outright, an organization that has advocated for LGBTQ+ youth for over 25 years and that hosted its fifth annual Portsmouth Pride event on Saturday, June 22, 2019. Portsmouth Pride is a day full of celebration, reflection, and community-building for local LGBTQ+ people. We write concerning the Town of Newington's recent removal of yard signs on private and public property promoting this important event for the Seacoast LGBTQ+ community. I am sending this letter today so this matter can be discussed at this Monday's Board of Selectmen meeting.

**The Facts**

In June 2019, the Town—through its building inspector Kevin Kelley—removed a yard sign from a resident's private property. This yard sign was approximately 18 inches by 24 inches in dimension (2.5 square feet) and promoted the upcoming "Portsmouth Pride" event scheduled for Saturday, June 22, 2019. The yard sign looks like the following:



This resident received this yard sign from Patrick Patterson—a Newington resident, neighbor, and member of the Seacoast Outright's Board of Directors. After the Town removed the yard sign, the neighbor shared

on Facebook on approximately June 19, 2019 the fact that his sign was removed. This led to an outpouring of support from neighbors on Nimble Hill Road offering to place identical “Portsmouth Pride” yard signs on their property promoting the upcoming event.

As a result, at approximately 10:00 a.m. on Thursday, June 20, 2019—two days before the event—Mr. Patterson and Hershey Hirschkop, the Executive Director of Seacoast Outright, placed “Portsmouth Pride” yard signs on the private property of approximately 10 property owners on Nimble Hill Road who had given written permission to have these signs displayed. On the evening of June 19th, Mr. Patterson wrote you on the recommendation of Selectman Mike Marconi, stating: “I sit on the board for Seacoast Outright and also a resident of Newington. I wanted to see if I could put up a few ‘yard’ signs promoting PRIDE on the school side of Nimble Hill Road. Mike Marconi asked me to reach out to you.” Also on the morning of June 20, 2019, Mr. Patterson and Ms. Hirschkop placed two signs on public property at the end of School Road and by the fire station. After putting these signs up, Ms. Hirschkop went to Town Hall and asked to place a “Portsmouth Pride” sign in front of Town Hall. She was denied on the ground that this event was not a “town event” (though it is obviously a regional event).

Later that morning on June 20th, Mr. Patterson saw a Town truck taking all the “Portsmouth Pride” signs down on Nimble Hill Road. Mr. Patterson asked the man why, and the man said that he was just doing what he was told. Mr. Patterson then immediately went to Town Hall to discuss the removal of these signs from private property. We understand that you, Building Inspector Kevin Kelley, and Town Planner Gerald Coogan were participants in this discussion. Based on this conversation, Mr. Patterson informs us that you acknowledged that the “Portsmouth Pride” signs were removed at your direction under the belief that these signs required a permit under a Town ordinance—presumably under Article XI, Section 4 governing signs, which requires a permit for a “temporary sign” or “special event display.”<sup>1</sup> During this conversation, Mr. Patterson inquired as to whether, if a permit was required, he could receive permission from the Town to put up these signs, as the Portsmouth Pride event was two days away and he wanted to continue promoting it. Mr. Patterson was informed that this request for permission would be referred to the Town’s attorney. Mr. Patterson never received a response to his inquiry. The event came and went.

It also appears that the Town removed these signs despite the fact that the Town routinely allows signs to be displayed for other events without permits, like promotions for the Portsmouth Soccer League. Apparently the Town has issued only 4 sign permits this year. In short, it seems that, by requiring permits for “Portsmouth Pride” signs, the Town is enforcing its sign ordinance in a selective and arbitrary fashion.

### **The Law**

The Town’s removal of the “Portsmouth Pride” signs on private property violated the First Amendment and Part I, Article 22 of the New Hampshire Constitution. People in New Hampshire have a First Amendment right to place whatever signs they want on their property. As the United States Supreme Court has explained, “a special respect for individual liberty in the home has long been part of this Nation’s

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<sup>1</sup> See <https://www.newington.nh.us/sites/newingtonnh/files/file/file/signs.pdf>.

culture and law and has a special resonance when the government seeks to constrain a person's ability to speak there." *City of Ladue v. Gilleo*, 512 U.S. 43, 58 (1994) (ordinance prohibiting homeowners from displaying any signs on their property except residence identification signs, for sale signs, and signs warning of safety hazards violated the First Amendment). The Supreme Court has further explained: "Displaying a sign from one's own residence carries a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means, for it provides information about the speaker's identity, an important component of many attempts to persuade." *Id.* at 56.

Moreover, the Town's ordinance enforced here requiring permits for some signs, but not others, violates the First Amendment and Part I, Article 22 of the New Hampshire Constitution. Here, the Town's ordinance impermissibly discriminates on the basis of content. While the Town's ordinance, for example, requires a permit for "directional signs," "temporary signs," and "special event displays," the Town does not require a permit for "contractor's signs," rental or "for sale" signs, "yard sale" signs, or political candidate signs. This is content-based discrimination that cannot be justified and, thus, violates free speech constitutional rights. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) (a town's ordinance imposing more stringent restrictions on signs directing the public to a meeting of a nonprofit group than it did on signs conveying other messages were content-based regulations of speech that could not survive strict scrutiny).

The Town's actions are also concerning because it appears that the Town selectively enforces its ordinance by letting other organizations display signs without a permit, while requiring a permit for "Portsmouth Pride" signs. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 430 (1992) ("Viewpoint discrimination is censorship in its purest form ... and requires particular scrutiny, in part because such regulation often indicates a legislative effort to skew public debate on an issue.").

Accordingly, we demand that the Town give these signs back to the property owners from which they were taken, as well as cease enforcement of its sign ordinance in Article XI, Section 4. Please let me know by Monday, July 22, 2019 if the Town will agree to this demand. Do not hesitate to contact me if you have any questions.

Very truly yours,

/s/ Gilles Bissonnette  
Gilles Bissonnette  
Legal Director

cc: Gerald Coogan, Town Planner ([gcoogan@townofnewingtonnh.com](mailto:gcoogan@townofnewingtonnh.com))  
Kevin Kelley, Building Inspector ([kkelley@townofnewingtonnh.com](mailto:kkelley@townofnewingtonnh.com))  
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