

VERMONT SUPERIOR COURT  
ORLEANS UNIT  
CIVIL DIVISION

ANDREW CAPPELLO,

Plaintiff,

Civil Action No. \_\_\_\_\_

v.

CITY OF NEWPORT, TRAVIS BINGHAM,  
Newport Chief of Police, THOMAS BERNIER,  
Newport Public Works Director, and PAUL  
MONETTE, Mayor of Newport,

Defendants

**COMPLAINT**

Andrew Cappello, through his attorneys with the American Civil Liberties Union Foundation of Vermont, complains against the City of Newport, Travis Bingham, Thomas Bernier, and Paul Monette the following:

**NATURE OF THE CLAIM**

1. Mr. Cappello files this action for declaratory relief, injunctive relief, and damages to vindicate his right to be free from City employees misusing governmental powers to carry out petty personal grudges by denying him access to public property without due process.
2. A long-time City of Newport employee, Mr. Cappello ultimately quit his job in June 2021 after interpersonal conflicts with the City Manager and Public Works Director interfered with his work and home life.
3. On August 5, 2021, while Mr. Cappello was chatting with friends and City employees in a Newport public park, the Public Works Director approached and demanded he leave. Mr. Cappello refused.
4. At the Public Works Director's request, a City police officer then issued Mr. Cappello a trespass notice forbidding Mr. Cappello from entering two public parks and City of Newport property for one year. The notice contained no reason for why it was issued nor any procedure for challenging it.

5. The City, through its officers and employees, repeatedly denied Mr. Cappello's requests to explain the trespass notice or provide an opportunity to contest it.
6. Being arbitrarily barred from City property for a year interfered with Mr. Cappello's ability to spend time with his family and perform his duties at his new job.
7. Mr. Cappello brings this action to address the violation of his rights under the U.S. and Vermont Constitutions.

## **PARTIES**

### **A. Plaintiff**

8. Mr. Cappello is a resident of East Charleston, Vermont, where he lives with his wife and children.
9. Mr. Cappello was employed by the City of Newport, Vermont from approximately 2009 to June 2021.

### **B. Defendants**

10. Defendant City of Newport is a municipality located in Orleans County, in the State of Vermont, with administrative offices at 222 Main Street, Newport, VT 05855.
11. At all times relevant to this suit, the City of Newport employed Public Works Director Thomas Bernier and Chief of Police Travis Bingham, and Paul Monette was its Mayor.

## **JURISDICTION AND VENUE**

12. This court has jurisdiction over the subject matter of this dispute pursuant to 4 V.S.A. § 31.
13. Venue is proper in this territorial unit of the Court under 12 V.S.A. § 402(a).
14. This Court has personal jurisdiction over Defendants because the City of Newport is located in Orleans County and the events that give rise to this action occurred within Orleans County.

## **FACTUAL ALLEGATIONS**

### **A. Mr. Cappello had a fraught working relationship with the City Manager and Public Works Director.**

15. Mr. Cappello began working for the City of Newport's Parks and Recreation Department in 2009.
16. Tension arose in 2015 when Mr. Cappello challenged the decision of the City Manager, Laura Dolgin, to cut his allowance for using his personal vehicle for work while declining to reduce her own allowance.

17. In response, the City Manager accused Mr. Cappello that his comment “broached on insubordination” and put a note in his personnel file.
18. Problems further escalated in April 2020 when the Public Works Director, Thomas Bernier, asked Mr. Cappello to perform a task at work that Mr. Cappello believed violated social distancing guidelines and unreasonably exposed him to the COVID-19 virus.
19. Mr. Cappello filed a complaint with the Vermont Agency of Commerce and Community Development. Chief of Police Travis Bingham then shared the complaint with the City Manager, Public Works Director, and Mr. Cappello’s supervisor.
20. In response, the City Manager again made a note in his personnel file, writing up Mr. Cappello for insubordination and issuing a written warning.
21. Relationships continued to sour after Mr. Cappello and two other Parks and Recreation Department employees joined the union; in retaliation, the City soon after changed Mr. Cappello’s schedule, department placement, and supervisor, interfering with his ability to care for his family.
22. Mr. Cappello ultimately quit his job with the City in June 2021.
23. During his employment with the City, Mr. Cappello received several arbitrary write-ups for insubordination but never for interpersonal conflicts with his coworkers.

**B. Because of this grudge, the City of Newport, through its employees, arbitrarily served an overbroad trespass notice against Mr. Cappello, denying him access to City property.**

24. On August 5, 2021, Mr. Cappello was visiting friends, including several City employees with whom he maintains good relationships, at the Prouty Beach Campground in Newport.
25. The Public Works Director approached, accused Mr. Cappello of harassing public works employees, and demanded he leave.
26. Mr. Cappello refused and continued visiting with other friends in their campers.
27. Soon after, a Newport police officer entered the campsite and presented Mr. Cappello with a trespass notice. The notice read: “You are hereby notified, pursuant to Title 13, Vermont Statutes Annotated, Section 3705(a)(1), not to enter upon property that is lawfully possessed by: City of Newport[.]”
28. The notice prohibited Mr. Cappello from entering “Prouty Beach Campground, Gardner Park – Property that is owned by the City of Newport.” Gardner Park is a separate property located approximately one mile from the campground. The officer serving the trespass notice stated the notice covered “Prouty Beach Campground, Gardner Park, and all the other property owned by the City of Newport.”

29. The notice did not contain any information as to why the City had banned Mr. Cappello from its property.
30. The notice did not include any instructions on how to contest it.
31. When Mr. Cappello asked the officer why he was being served this notice, the officer responded, “I was told that there doesn’t have to be a reason for the order for any person on the State property.”
32. The officer eventually explained that he believed “there was some issue with some of the DPW [Department of Public Works] employees” but that he didn’t know what the issue was. Mr. Cappello replied that the Public Works Director had falsely accused him of harassing employees.
33. The officer invited Mr. Cappello to call the chief of police, since he was the person who issued the order, or the City Manager—“whatever you need to do,” in the officer’s words.
34. Before departing, the officer informed Mr. Cappello that the order was “effective immediately,” and, although he would not escort Mr. Cappello off the property, he would take Mr. Cappello’s word that Mr. Cappello would leave.
35. Mr. Cappello left his friends at the campground soon after.
36. To Mr. Cappello’s knowledge, no one else at the campground received a trespass notice that day. In fact, he is aware of trespass notices being issued only twice for parks during his many years of employment with the City, both times for clear violations of park rules.
37. The City employees with whom Mr. Cappello had been speaking at the campground had not felt harassed by Mr. Cappello; one employee expressed surprise that Mr. Cappello had received a trespass notice and attributed its issuance to Mr. Cappello’s poor relationship with the Public Works Director and City Manager.

**C. Mr. Cappello was provided no opportunity to be heard to contest the trespass notice.**

38. Mr. Cappello left the campground and called Chief Bingham to request an explanation for the notice.
39. Mr. Cappello recalls Chief Bingham saying, essentially, “the Public Works Director told me to issue it, so I issued it.”
40. Although he initially had no intention of challenging the notice further, Mr. Cappello learned in Spring 2022 that his two young children’s summer T-ball teams, for which he intended to volunteer, had practices and games scheduled in Gardner Park.
41. In addition, Mr. Cappello had recently started a position with NorthWoods Stewardship Center, which required him to access Prouty Beach.

42. Accordingly, on March 10, 2022, Mr. Cappello emailed Chief Bingham and the City Manager, explaining the needs of his children and job and asking when the notice would expire.
43. Chief Bingham replied via email that the notice was valid for one year.
44. Mr. Cappello then requested an explanation for why the notice had been issued; neither the Chief nor the City Manager responded.
45. The next day, Mr. Cappello emailed Mayor Paul Monette and the City Council, requesting “to petition the city council to lift [his] notice of no trespass from City of Newport property.”
46. In this email, Mr. Cappello stated that, since receiving the notice, he had not entered any City property. He also raised the unclear scope of the notice, questioning if even walking on the sidewalk would be a violation. He further explained his need to access Prouty Beach and Gardner Park: his work required access to the beach and, with his children’s T-ball in the park, he feared he would “be risking arrest or detainment” by dropping them off or attending their games.
47. The Mayor responded in a single-sentence email that he had “no intention of having this on any future city council agenda.”
48. At one point, Mr. Cappello received conflicting information verbally from Chief Bingham that, in contrast to the trespass notice’s text and the officer’s instructions upon its service, the notice actually applied only to Prouty Beach Campground and Gardner Park—a park Mr. Cappello was not in when the notice was issued. However, the trespass notice was never modified to clarify these contradictory parameters.

**D. The City of Newport has no policies or procedures for issuing, challenging, or tracking trespass notices issued for public property.**

49. As revealed through a public records request to the City, the City has no criteria for issuing trespass notices for public property.
50. Nor does the City have any procedure for recipients of trespass notices for public property to challenge the notice.
51. The City does not separately track trespass notices that concern public property specifically and, according to Chief Bingham, “[t]here is no way to track orders that have been served [without] specific names of individuals.”

**E. Mr. Cappello was and continues to be harmed by the unlawful trespass notice.**

52. As a result of the notice, Mr. Cappello did not enter City property for months, avoided City parks except to attend only one of his son’s T-ball games, was unable to visit friends residing at Prouty Beach Campground, and could not perform some of his job duties.

53. The single occasion Mr. Cappello did go to the park to cheer on his son, he spent the entire game anxious and afraid that he would be arrested in front of his friends and family.
54. Even after the expiration of the notice on August 5, 2022, Mr. Cappello remains affected by this incident and fears future reprisal. Although Mr. Cappello has visited the parks occasionally since the notice's expiration, he believes that, due to the Public Works Director and City Manager's animosity towards him, if they saw him in the parks, he would be arrested or served with another notice.
55. Mr. Cappello is so concerned that he has practiced quickly opening the camera app on his phone in the event of another encounter to record undisputed evidence of the mistreatment.

### **CAUSES OF ACTION**

56. To the extent that state law claims fall within the exclusivity provision of 24 V.S.A. § 901a, those claims are brought against the municipality only, whereas federal claims are brought against both the municipality and individually named defendants as specified.

**Count 1—42 U.S.C. § 1983 and the First Amendment and Article 13 of the Vermont  
Constitution  
Violation of Mr. Cappello's Freedom to Enter Traditional Public Fora**

57. Paragraphs 1–56 are incorporated by reference as if set forth at length here.
58. This claim is brought against the City of Newport, Chief Travis Bingham, and Public Works Director Thomas Bernier.
59. Public property such as parks have long been recognized as traditional public fora where individuals gather, converse, exchange ideas, and participate in their community.
60. The City's trespass notice excluded Mr. Cappello from City property, including two named parks, and included no exceptions or process for participating in First Amendment-protected activities.
61. This notice violated Mr. Cappello's rights to access public fora under the First Amendment and Article 13 of the Vermont Constitution.

**Count 2—42 U.S.C. § 1983 and the First Amendment and Article 13 of the Vermont  
Constitution  
Violation of Mr. Cappello's Freedom of Speech and Association**

62. Paragraphs 1–56 are incorporated by reference as if set forth at length here.
63. This claim is brought against the City of Newport, Chief Travis Bingham, and Public Works Director Thomas Bernier.
64. The City's trespass notice prevented Mr. Cappello from entering all City property—including a park a mile away—for one year.

65. This notice was overbroad and not narrowly tailored.

66. By so sweepingly barring Mr. Cappello from all public property for such an extended period, Defendants placed an overbroad restriction on Mr. Cappello's ability to speak and associate with others in violation of the First Amendment and Article 13 of the Vermont Constitution.

**Count 3—42 U.S.C. § 1983 and the Due Process Clause of the Fourteenth Amendment and Article 4 of the Vermont Constitution  
Violation of Mr. Cappello's Right to Receive Due Process to Challenge the Trespass Notice**

67. Paragraphs 1–56 are incorporated by reference as if set forth at length here.

68. This claim is brought against the City of Newport, Chief Travis Bingham, Public Works Director Thomas Bernier, and Mayor Paul Monette. The City of Newport is liable both under 24 V.S.A. § 901a and directly for its legally deficient custom and practice.

69. Defendants have no written criteria for issuing trespass notices for public property.

70. The trespass notices contain no information as to why the notice is being served.

71. Defendants have no procedure for recipients to challenge the trespass notice.

72. By issuing trespass notices in a manner that creates a high risk of the erroneous deprivation of rights, and by issuing a notice that deprived Mr. Cappello of his rights without notice or a meaningful opportunity to be heard, Defendants violated the Due Process Clause of the Fourteenth Amendment and Article 4 of the Vermont Constitution.

73. Because Mr. Cappello received a trespass notice to carry out City employees' grudges, and those grudges are ongoing, Mr. Cappello is at risk of arbitrarily receiving such a notice again.

**Count 4—42 U.S.C. § 1983 and the Due Process Clause of the Fourteenth Amendment  
Violation of Mr. Cappello's Fundamental Right to Access Public Parks and Areas**

74. Paragraphs 1–56 are incorporated by reference as if set forth at length here.

75. This claim is brought against the City of Newport, Chief Travis Bingham, and Public Works Director Thomas Bernier.

76. Mr. Cappello has a constitutionally protected liberty interest in travelling through and being present in public parks under the Fourteenth Amendment.

77. Defendants' interest in protecting City employees from alleged harassment does not justify banning Mr. Cappello from all public parks and property.

78. Defendants' decision to deny Mr. Cappello access to its property otherwise open to the public violated his substantive due process rights under the Fourteenth Amendment.

**Count 5—42 U.S.C. § 1983 and the Equal Protection Clause of the Fourteenth Amendment  
Violation of Mr. Cappello’s Right to Be Free from Discrimination**

79. Paragraphs 1–56 are incorporated by reference as if set forth at length here.
80. This claim is brought against the City of Newport, Chief Travis Bingham, and Public Works Director Thomas Bernier.
81. Defendants’ decision to intentionally issue a trespass notice against Mr. Cappello was not based on a legitimate government policy.
82. Instead, Mr. Cappello was singled out for mistreatment due to City employees’ personal dislike of Mr. Cappello.
83. This intentional and arbitrary discrimination violated the Equal Protection Clause of the Fourteenth Amendment.

**Count 6—Article 7 of the Vermont Constitution  
Violation of Mr. Cappello’s Right Not to be Deprived of a Common Benefit**

84. Paragraphs 1–56 are incorporated by reference as if set forth at length here.
85. This claim is brought against the City of Newport.
86. By denying Mr. Cappello access to City parks and property, the City denied Mr. Cappello a common benefit.
87. Other individuals who merely converse with City employees are not denied access to all City property.
88. This disparate and arbitrary treatment was driven by the ill will of City employees at Mr. Cappello’s expense and violated the Common Benefits Clause of the Vermont Constitution.

**PRAYER FOR RELIEF**

WHEREFORE, Mr. Cappello prays that the Court issue the following relief:

- a. A declaratory judgment that the City has violated his rights under the First and Fourteenth Amendments of the U.S. Constitution and Articles 4, 7, and 13 of the Vermont Constitution by issuing a legally deficient trespass notice;
- b. An injunction preventing the City from issuing a trespass order against him without constitutionally sufficient notice and an opportunity to be heard;
- c. An award of damages to compensate Mr. Cappello for the violations of his rights;
- d. An award of Mr. Cappello’s reasonable costs and attorney’s fees; and



e. Allow any further relief to which Mr. Cappello may be entitled.

89. Mr. Cappello demands a jury trial on any issues so triable.

/s/ Hillary Rich

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Dated: January 10, 2023