

**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 Newton's federal constitutional rights to equal protection and free speech under the First and Fourteenth Amendments to the United States Constitution.

5. Plaintiffs seek an award of damages, an injunction allowing her to open the business, and an award of attorneys' fees and costs.

JURISDICTION AND VENUE

6. Plaintiffs allege claims arising under 42 U.S.C. § 1983. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), as well as under 28 U.S.C. § 1343(a)(3) (jurisdiction over Section 1983 claims).

7. This Court has personal jurisdiction over each of the Defendants because each resides in Mississippi.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because one or more Defendants resides in this District, and because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District.

PARTIES

9. Plaintiff Pat "PJ" Newton is a 55-year-old citizen who resides in Memphis, Tennessee.

10. Plaintiff O'Hara's is a sole proprietorship owned by Newton and prevented from operating in Shannon only because of the denial of the business license that is the subject of this complaint.

11. Defendant Town of Shannon is a Mississippi municipal corporation classified as a town pursuant to Miss. Code § 21-1-1, with the power to sue and be sued pursuant to Miss. Code § 21-17-1. The Town of Shannon is a "person" within the meaning of 42 U.S.C. § 1983.

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 Oswald 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. Oswald 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 granted same-sex married couples the same benefits as heterosexual couples. And, in 2004,

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. Newton herself has been the recipient of recent, bigoted threats; she has received repeated late-night, threatening phone calls saying, "you're never gonna open that gay bar here; why don't you just leave!"

The Bar Known as O'Hara's and for a Time, Rumors

25. Newton originally opened a bar in Shannon in 1994 in the same building and location where O'Hara's – her proposed new cafe and sports bar – would be located.

26. That location is in the principal commercial strip of Shannon, on Romie Hill Road.

27. Newton opened her bar in 1994 with the hope that, although it would be open and welcoming to all, the bar would provide a safe gathering place for the LGBT people living in Shannon and nearby communities.

28. Newton named her establishment "O'Hara's" in honor of Scarlett O'Hara, the gay icon and indomitable protagonist of *Gone with the Wind*.

29. The bar, which was the only gay bar within about 100 miles, thrived. It attracted patrons not just from Northern Mississippi, but also from Alabama, Tennessee, and elsewhere. People came to O'Hara's to be respected, to express themselves freely, and to find companionship,

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.

Plans To Reopen O'Hara's

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 –

urged her to consider reopening the bar.

38. LGBT residents of the area told Newton they miss having a place where they feel safe and can be themselves. They miss meeting other LGBT people face-to-face. They want a place to socialize where younger LGBT people can meet older members of their community.

39. Fundamentally, they say, they miss the sense of community the bar's presence allowed them to develop.

40. Finally, in consultation with her partner and her daughter, Newton decided to re-open O'Hara's in Shannon.

The Town of Shannon, Mississippi

41. Shannon lies about 11 miles south of Tupelo. It is a small town with fewer than 1,800 residents.

42. Shannon's website declares: "[W]e take pride in being on the quiet side of [the] county with our relaxed country living where traditions of family, faith, and brotherly love make up who we are today. With our can do spirit still protecting our family values and our cultures for future generations."

43. Unfortunately, Shannon's economy is struggling.

44. According to the United States Census Bureau, the median household income in Shannon has fallen significantly since 2000, and in 2011 was only \$25,734 – almost \$13,000 lower than the median household income in Mississippi.

45. Citi-data.com indicates that the median home value in Shannon is nearly twenty percent lower than the median statewide, and that the town issued no home building permits in 2009, 2010, or 2011.

46. The poverty rate in Shannon is a stunning 32.1%, according to the Census Bureau.

47. To make matters worse, many businesses have closed in Shannon in recent years, including the truck stop and Smith's Grocery.

48. On information and belief, Shannon has little money and a shrinking tax base. It struggles to maintain its police and fire forces and to provide other services to its residents.

49. Because of these recent struggles, Mayor Hallmark has encouraged the public to come to Shannon to open businesses. On the town website, he states: "We have the potential for growth and are ready when something comes our way. There are existing buildings and properties available. If you are interested in knowing what we have to offer give me a call"

Newton's Application To Reopen O'Hara's

50. Based on such encouragement, Newton expected that Shannon – the town in which she previously operated a successful business and where she made many fond memories – would welcome her back.

51. With this expectation in mind, Newton entered into a lease for the premises on May 6, 2013. She obtained a state business license and a liquor permit that would allow her to serve beer and wine.

52. Soon after she signed her lease, Newton met with the town building inspector to make sure the business met building codes and would pass inspection.

53. Newton made significant upgrades to the property. She expanded and cleaned up the large parking lot. She replaced deteriorated wood with new siding. She purchased new tables and chairs. She installed new emergency lighting. She cleared the adjoining outside lots that were previously an eyesore because they were filled with tires and trash. These improvements were made at significant cost to Newton and with the expectation that she would recoup these costs when O'Hara's re-opened.

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 the other businesses locally. I will encourage my clientele to support the town of Shannon in any ways possible Given the opportunity I will give your town my very best.

June 4, 2013 Board Meeting of Aldermen

63. On June 4, 2013, Newton appeared at the town meeting expecting a routine approval of her business license application.
64. Instead, when Newton arrived at the Shannon Town Hall, she found a crowd of 30-40 townspeople gathered in the public meeting room – a number far greater than she had expected would attend a typical town meeting.
65. Newton's application was listed as an agenda item. When the matter came up, Hallmark directed Newton to stand and address the Aldermen and the townspeople. He told Newton to justify why she wanted to open her cafe and sports bar in Shannon.
66. Because the clerk told Newton that there was no need to bring anyone with her to the meeting, Newton had no advance warning that she would be expected to make a presentation to a crowd of 30-40 townspeople. Newton nonetheless addressed Hallmark, the Aldermen, and the assembled townspeople.
67. She explained her desire to operate a good business in compliance with the law. She

recounted her fond memories of operating the bar at the same location in the 1990s, and the warm welcome she previously received in Shannon from many people.

68. Newton said she anticipated her cafe and sports bar would attract customers from neighboring towns around Mississippi and Alabama, and that those customers would bring needed revenue to Shannon.

69. She said members of the community told her they wanted the bar reopened, and that now was the time.

70. When Newton finished her presentation, one man stood and presented two petitions, allegedly signed by a total of almost 200 people, opposing the issuance of the license.

71. Hallmark accepted the petitions on behalf of the Board.

72. Newton had no prior knowledge that anyone in the town had signed a petition against her or her business license application.

73. On information and belief, Hallmark, by contrast, did know about the petitions.

74. On information and belief, it was Hallmark himself who encouraged the gathering of signatures for at least one of the petitions.

75. On information and belief, Darrell Clock, the townsperson who presented the petitions to the Board, stated that Hallmark encouraged his efforts. According to Clock, Hallmark explicitly encouraged him to start the petition.

76. On information and belief, at least one Alderman – Carl Trice – also knew about the petitions. Many of the signatures were gathered at Johnson Chapel Missionary Baptist Church in Shannon, where Trice currently holds a leadership position. Despite the fact that Hallmark and at least one of the Aldermen knew about the petitions, nobody revealed this fact to Newton prior to the June 4, 2013 town meeting.

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 – Jerry Grubbs, Paul Lyles, Joey McCord, and Carl Trice – voted to deny Newton’s application. Only one Alderman – Bryant Thompson – voted in favor of the application for O’Hara’s.

86. On information and belief, Hallmark and the members of the Board all knew that Newton’s application raised no legitimate concerns about public health and safety. No legitimate evidence regarding health and safety concerns was presented to them, and they had been advised by a zoning consultant that Newton met all the requirements to obtain a license.

87. The zoning consultant undoubtedly was correct; Newton *had* met all the requirements for the issuance of the license.

The Zoning Ordinance

88. Shannon’s zoning ordinance, enacted in 2009, declares that the parcel on which O’Hara’s is located is zoned “General Commercial District.” The ordinance provides that persons wishing to engage in any one of a number of establishment types – including churches, dog kennels, home businesses, and bars or nightclubs – must seek what is called a “special exception” to operate in the general commercial district.

89. Under the zoning ordinance, a business applicant for a special exception must demonstrate, among other requirements, a “public need” for the business.

90. Courts have interpreted zoning ordinances that are similar to Shannon’s zoning ordinance. These courts have concluded that, if an ordinance names a specific type of business as one that can operate pursuant to a special exception – as the Shannon ordinance does with bars and restaurants – that listing constitutes *prima facie* evidence that there is a “public need” for that type of business.

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, especially in rural and other locations that are hostile to the LGBT community. Support is essential for LGBT people in order to cope with prejudice and stigma prevalent in some rural areas. Such support most often is provided by others in the LGBT community who serve as models of success. Throughout a long history of the modern LGBT community, affiliation with community members has provided strength to LGBT people. People who are more connected to the LGBT community fare better than people who are less connected, and research has shown that LGBT-affirmative social environments are related to improved mental and physical health outcomes.

96. By contrast, there was no legitimate evidence presented to the Board of Aldermen suggesting that the re-opening of O’Hara’s would threaten public health or safety in any way.

97. Hallmark and the Aldermen who voted to deny the license, however, shared a common plan to prevent the opening of the bar, even if it meant denying the license without justification, and even if it meant triggering this federal civil rights lawsuit. On information and belief,

Alderman McCord recently stated that he is looking forward to this lawsuit because litigation would likely delay the opening of O'Hara's even longer.

98. Newton left the June 4, 2013 meeting immediately following the Board's vote. She could barely believe what happened to her during the meeting. She suffered public humiliation and affronts to her dignity.

Request for Reconsideration

99. Newton subsequently retained counsel, who sent a demand letter to Hallmark and the Aldermen.

100. The demand letter focused on two points. First, it explained that the Board's denial was a plain violation of the Constitution: municipalities cannot, consistent with the Equal Protection Clause of the Fourteenth Amendment, make zoning decisions that are based on, or reflect, hostility towards members of disfavored groups.

101. Second, the letter demanded that, in light of the plain constitutional violation, the Board should reconsider the application at its next scheduled meeting.

July 9, 2013 Board of Aldermen Meeting

102. After receiving the letter, Hallmark and the Aldermen postponed their regularly scheduled board meeting from July 2 until July 9, 2013. On information and belief, Hallmark and the Aldermen met in private on the evening before the July 9, 2013 meeting, (as discussed in more detail in Count III below), to decide how to respond to Newton's demand letter and request for reconsideration.

103. Newton arrived at the July 9, 2013 meeting with no knowledge that the Mayor and the Aldermen already had met and decided to deny her request for reconsideration.

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 agenda items, Newton fully expected that the Aldermen would reconsider the denial and ask and answer her questions about the application.

105. When the agenda item was called, Newton’s counsel spoke.

106. He reiterated Newton’s desire to operate a good business of which the town would be proud.

107. He explained that members of the community urged Newton to reopen the bar, and that she had spent thousands of dollars preparing O’Hara’s for reopening, including completing upgrades suggested by the town inspector.

108. He told the Aldermen that, since the original denial of her application, Newton had been receiving late night, anonymous, threatening phone calls saying things like: “You’re never gonna open that gay bar here; why don’t you just leave!”

109. He also reminded Hallmark and the Aldermen that it is unconstitutional to deny a license on account of someone’s membership in a disfavored group.

110. Counsel concluded his remarks and sat down. Neither Hallmark, nor any of the Aldermen, asked any questions of counsel. Instead, Hallmark quickly observed that none of the Aldermen appeared to be making a motion for reconsideration, and immediately called the next agenda item.

111. At that point, Newton’s counsel stood again. He apologized to Hallmark for interrupting but asked whether Hallmark, or any of the Aldermen, was willing to explain the basis for the decision to deny the license and refuse reconsideration.

112. Hallmark cut counsel off, stating that such a request would be out of order.

113. This lawsuit follows.

The Town's Custom or Policy of Denying Licenses to Gay Establishments

114. Newton is not the first person who has tried to open a gay bar in Shannon since the adoption of the 2009 zoning ordinance. Several others also have tried to open a gay bar in the same location after the 2010 closing of Rumors, but Shannon officials denied all applicants.

115. One applicant, Terry Harris, made his application in February 2011, but the town denied the application without citing any reason in the Board of Alderman meeting minutes. Harris reports meeting several times with Hallmark. But after Hallmark learned that Harris wanted to reopen Rumors as a gay bar, Hallmark indicated that he had no interest in discussing the matter further.

116. In August 2011, another applicant applied to reopen Rumors. Hallmark and the Aldermen refused to vote on his application, claiming that, under the zoning ordinance, it had not yet been a year since the previous application to reopen the bar was denied and therefore the application was improper.

117. In or around February 2012, another applicant, Matthew Smart, applied for a license. When Smart made his application, a city clerk specifically asked him what kind of bar he wanted to open. Smart replied that he did not think he had to divulge that information, but that he intended his bar would primarily be an LGBT establishment. The clerk told Smart that, based on her understanding, the community would not tolerate an establishment that catered to the LGBT community.

118. After this incident, Smart returned with a proposal to open a recreation center, instead of a bar. The clerk again asked what kind of establishment it would be. Smart replied that it would mainly serve the LGBT community. The clerk told him that the town would not process the

application. This response was deceptive: the zoning ordinance specifies that persons may operate recreation centers *without obtaining a license at all*. Because of this, the clerk's assertion that the town "would not process" the application can be seen only as further evidence of the town's policy against the opening of gay establishments.

119. By contrast, Shannon approved a business license under the 2009 zoning ordinance to an individual who intended to operate a bar, Hilltop Bar and Grill, that was not associated with LGBT persons. Although some have suggested that the town denied Newton's application simply because the town did not want another bar, Board minutes relating to the straight bar application in September 2010 indicate no opposition to the application simply on account of its being a bar.

120. Shannon has a custom or de facto policy of denying the benefits and privileges of a business license to applicants hoping to open a gay establishment – and to them alone – while continuing to make those benefits and privileges available to all others.

COUNT I
(Against all Defendants)
DEPRIVATION OF EQUAL PROTECTION, 42 U.S.C. § 1983

121. Plaintiffs re-allege and incorporate herein by reference the allegations set forth in paragraphs 1 through 120.

122. The Supreme Court of the United States held, in *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), that it is a violation of the Equal Protection Clause of the Fourteenth Amendment for a municipality to exercise its zoning authority to deny a business license based on hostility towards a disfavored group.

123. The Supreme Court also held, in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985), that it is an equal protection violation for a municipality to exercise its zoning power

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 differently than other businesses that are or would be permitted in the General Commercial District. Instead, Defendants relied on inappropriate motives such as negative attitudes toward or fear of LGBT persons.

127. Newton demonstrated through her written and oral presentations to the Board that she met all criteria for the issuance of the license.

128. By contrast, there was no legitimate evidence presented to or by anyone – neither the Aldermen, Milstead, the townspeople who spoke at the June 4, 2013 meeting, nor any of the nearly 200 people who allegedly signed a petition opposing the application – that contradicted or undermined Newton’s showing of entitlement to the license.

129. Newton demonstrated that she met the requirements for the issuance of the license and there was no contrary showing before the Board. The denial therefore was irrational and indicative of purposeful discrimination.

130. The denial was unconstitutional for the additional reason that Shannon, through its Aldermen, denied the license and declined to reconsider the denial because of bias and hostility towards Newton as a lesbian and the fact that her cafe and sports bar would serve the LGBT community.

131. Newton's sexual orientation and that of her patrons, like other classifications such as race, alienage, or national origin, are not relevant to any legitimate government interest. Official determinations grounded in such considerations reflect prejudice and antipathy – a view that LGBT people are not as worthy or deserving of dignity and respect as others.

132. Any pretext for the denial, such as disapproval of bars generally, is unfounded. First, the zoning ordinance specifically contemplates the operation of a cafe and sports bar on the subject parcel. Second, the pretext is disproven by the fact that Shannon, since adopting the 2009 zoning ordinance, *approved* an applicant who wanted to open a bar unassociated with LGBT people, while *disapproving* several applications (in addition to Newton's application) made by people who sought to open a gay bar.

133. The denial also was unconstitutional because it was made pursuant to a custom, policy, or decision of Shannon to withhold the benefits and privileges of a business license from applicants who want to open a gay establishment, while making those benefits available to others.

134. O'Hara's is similarly situated to the straight bar that was permitted to open after 2009 and is similarly situated to other uses that are permitted as of right, or by special exception application, in the General Commercial District.

135. As a result of Defendants' constitutional violation, Newton suffered substantial monetary harm in the form of, among other injuries, consequential losses.

136. For example, Newton continues to pay rent on the premises under her lease, although she has been unable to operate her business to cover the carrying costs on the property.

137. Newton lost the profits she would have made operating her business during the delay caused by the unconstitutional denial.

138. Newton spent many thousands of dollars on upgrades and repairs. These investments in the property will be lost if Newton is not ultimately permitted to open her cafe and sports bar.

139. Newton also suffered extreme and public humiliation as a result of the denial and the refusal to reconsider that denial, including from the abuse she endured at the public hearing on June 4, 2013.

140. Newton also suffered emotional distress over the denial of the business license, including loss of sleep and other health consequences.

141. Shannon acted through its Board of Aldermen and Mayor to deny Newton's application and to decline reconsideration. These actions constitute an official custom, policy, or decision of the town, as well as two distinct unconstitutional acts by a municipal decision-maker with final policymaking authority, and therefore make the town liable for the constitutional violations alleged herein. The Town of Shannon, Hallmark, and the Aldermen acted under color of law when, through a vote of the Board of Aldermen, they denied Newton's license application.

Defendants also acted under color of law when they denied her request to reconsider that denial.

COUNT II
(Against all Defendants)
DEPRIVATION OF EQUAL PROTECTION
TO IMPEDE PROTECTED EXPRESSIVE CONDUCT, 42 U.S.C. § 1983

142. Plaintiffs re-allege and incorporate herein by reference the allegations set forth in paragraphs 1 through 141.

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.

151. Newton recently received this statement from a former patron, Eric Coplin, recognizing the significance of O'Hara's in his own life and in the lives of local LGBT people:

Wow keep your head up P.J. and hang in there. I'm from Nettleton, Ms. When I was younger and first came out you owned the bar back then. That place helped save my life from suicide bc I had no clue there were others out there that were like me. I was close to suicide bc thought I was alone in this world and with being able to go to the bar and just sit and talk to others that were like me made new realize hey I'm not alone. P.J. I Love You for who you are and what your standing for.... I stand beside you and back you.

152. Indeed, opening and running a gay bar carries a particularly important expressive message in a town whose official website endorses "family values" (often used as code for anti-LGBT sentiment), and "protecting our cultures for future generations."

153. The operation of a gay cafe and sports bar in rural Mississippi signifies that there should be a dignified and respected place for LGBT people in the community.

154. Plaintiffs' speech activity was a substantial motivating factor in Defendants' decision to deny her application for a business license.

155. Defendants' actions to deny Newton's business license were "under color" of law and were the cause of damages sustained by Plaintiffs.

156. Defendants have no adequate or legitimate reason for burdening Plaintiffs' First Amendment expression; nor does one exist.

COUNT III
(Against Defendant Hallmark)
CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS, 42 U.S.C. § 1983

157. Plaintiffs re-allege and incorporate herein by reference the allegations set forth in paragraphs 1 through 156.

158. Hallmark conspired with other Defendants and townspeople to violate Plaintiffs' rights protected under the First and Fourteenth Amendments, as presented in the previous counts.

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. On information and belief, Defendants discussed and agreed in private that the request for reconsideration would be denied.

169. On information and belief, the purpose of the meeting was to close ranks and ensure that none of the Aldermen would vote to reconsider the unconstitutional denial of the license. The participants in that meeting agreed that no Alderman would move to reconsider the prior denial.

170. On information and belief, the attendees at that meeting also discussed and determined that none of them would say anything, or answer any question, about the request for reconsideration at the public meeting.

171. The basis for this allegation is that, when asked by Newton's counsel whether Hallmark or any of the Aldermen was willing to explain the basis for denying the license or reconsideration, Hallmark quickly stated that it would be out of order, even though Defendants failed to provide any specific rationale for the original denial or the refusal to reconsider that denial.

172. Despite that the reconsideration request had been listed as an agenda item for public discussion, it was obvious to Newton that the Defendants already had agreed that there would be no discussion and no reconsideration.

173. On information and belief, Defendants agreed to maintain the denial even after receiving a legal demand letter from Plaintiffs' attorneys underscoring the violation of constitutional standards and requesting reversal of the denial.

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

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