

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

SIMON B. AMAYA PRICE,

Plaintiff,

v.

CITY OF NASHUA AND LORI WILSHIRE,
President, Board of Aldermen, City of Nashua, in
her official and individual capacities,

Defendants.

Civil Action No. 1:26-cv-00216-TSM

**THE DEFENDANTS, CITY OF NASHUA AND LORI WILSHIRE'S
MEMORANDUM OF LAW IN SUPPORT OF THEIR PARTIAL MOTION TO DISMISS**

NOW COME the Defendants, City of Nashua (the “City”) and Lori Wilshire (“Wilshire”) (collectively the “Defendants”), by and through counsel, and hereby submit this Memorandum of Law in support of their Partial Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1). As stated in greater detail below, most of the Plaintiff, Simon B. Amaya Price’s (the “Plaintiff”) Complaint is moot in light of the recent passage of City ordinance O-26-006.

I. INTRODUCTION

The Plaintiff filed a Complaint against the Defendants, alleging that NRO § 5-14 C (3), which requires that people participating in public comments provide their address prior to speaking is an unreasonable restriction on its face and as applied to him. He is seeking injunctive relief, declaratory relief, and nominal damages.

On May 12, 2026, the City’s Board of Alderman passed City ordinance O-26-006, which amended NRO § 5-14 C (3) by eliminating the address requirement and replacing it with a

requirement that the person wishing to speak identify their town or city of residence or business. See Ordinance, attached as Exhibit A.¹ As a result, the facial challenge, as well as the declaratory and injunctive relief sought by the Plaintiff in his Complaint is moot.

II. BACKGROUND

On February 10, 2026, the City's Board of Aldermen held a meeting wherein it was to discuss and vote upon, among other things, a proposed City ordinance O-26-001. The purpose of this proposed ordinance was to amend the Nashua Revised Ordinances to clarify that flagpoles on City Hall grounds are exclusively for city government use and are not public forums.

The Plaintiff, who is a self-described ex-transgender activist, states in his Complaint that he intended to speak at this meeting to warn the public that O-26-001 did not go far enough. He claims that he was disconcerted that the City would still be permitted to fly certain flags, such as the Progress Pride Flag, so long as it was a City official that wished to do so, that the flag belonged to the City, and that the decision to raise the flag did not involve public input. However, when he went to speak, he was asked to provide his address pursuant to NRO § 5-14 C (3). The Plaintiff alleges that due to his activism, he has been threatened in the past. He explained to the City's Board of Aldermen that he had been advised by his security team that he should not provide his address due to safety concerns. Due to his refusal to provide his address, he was not permitted to speak.

Later in the meeting, the City's Board of Aldermen passed proposed City ordinance O-26-001. Approximately one month later, on March 23, 2026, the Plaintiff filed his Complaint against the Defendants. In his Complaint, the Plaintiff alleges that NRO § 5-14 C (3) is

¹ Pursuant to Fed. R. Evid. 201(c)(2) this Court may take judicial notice that the City's Board of Alderman passed ordinance O-26-001. See Philips v. Pitt Cnty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir.2009) (stating that when deciding a motion to dismiss, the court "may properly take judicial notice of matters of public record.").

unconstitutional on its face and as applied to him. He seeks nominal damages, declaratory relief, and injunctive relief. In response, on May 12, 2026, the City’s Board of Aldermen passed City ordinance O-26-006, which amended NRO § 5-14 C (3) by eliminating the address requirement and replacing it with a requirement that the person wishing to speak identify their town or city of residence or business.

III. ARGUMENT

“The proper vehicle for challenging a court's subject-matter jurisdiction is Federal Rule of Civil Procedure 12(b)(1). This rule is a large umbrella, overspreading a variety of different types of challenges to subject-matter jurisdiction.” Valentin v. Hospital Bella Vista, 254 F.3d 358, 362 (1st Cir. 2001). One such challenge is mootness. Id. “Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.” Powell v. McCormack, 395 U.S. 486, 496 (1969). The Supreme Court describes mootness as “the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue through its existence (mootness).” United States Parole Comm'n v. Geraghty, 445 U.S. 388, 397 (1980) (quoting Henry P. Monaghan, “Constitutional Adjudication: The Who and When,” 82 Yale L.J. 1353, 1384 (1973)).

“Article III of the Constitution restricts [the federal court’s] jurisdiction to ‘Cases’ and ‘Controversies.’” In re Ruiz, 83 F.4th 68, 73 (1st Cir. 2023) (quoting U.S. Const. art. III, § 2). “[This] ensures that the parties before [the court] retain a ‘personal stake’ in the litigation.” Moore v. Harper, 600 U.S. 1, 14 (2023) (quoting Baker v. Carr, 369 U.S. 186, 204 (1962)). “As ‘[a] corollary to this case-or-controversy requirement,’ there must exist a dispute ‘at all stages of review, not merely at the time the complaint is filed.’” Id. (quoting Genesis HealthCare Corp. v.

Symczyk, 569 U.S. 66, 71 (2013)). The “[m]ootness doctrine ‘addresses whether an intervening circumstance has deprived the plaintiff of a personal stake in the outcome of the lawsuit.’” Id. (quoting West Virginia v. EPA, 597 U.S. 697, 719 (2022)). “[If] a plaintiff has initial standing to bring a particular claim, a federal court is duty bound to dismiss the claim as moot if subsequent events unfold in a manner that undermines any one of the three pillars on which constitutional standing rests: injury in fact, causation, and redressability.” Ramirez v. Sanchez Ramos, 438 F.3d 92, 100 (1st Cir. 2006); see also Goodwin v. C.N.J., Inc., 436 F.3d 44, 46 (1st Cir.2006) (“A case becomes moot if, at some time after the institution of the action, the parties no longer have a legally cognizable stake in the outcome.”); Mangual v. Rotger-Sabat, 317 F.3d 45, 60 (1st Cir.2003) (“If events have transpired to render a court opinion merely advisory, Article III considerations require dismissal of the case.”).

Voluntary cessation moots a case where there is “no reasonable expectation that the alleged violation will recur,” and “interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.” County of Los Angeles v. Davis, 440 U.S. 625 (1979) (cleaned up). “The voluntary cessation doctrine precludes mootness where a defendant (1) decides, on its own volition, to stop ‘the challenged practice in order to moot the plaintiff’s case’ and (2) ‘there exists a reasonable expectation that the challenged conduct will be repeated’ after the suit’s ‘dismissal.’” Ramos-Ramos v. Jordán-Conde, 2026 U.S. App. LEXIS 8723, *9 (1st Cir. March 26, 2026) (citation omitted). Generally, “‘voluntary cessation of challenged conduct moots a case . . . only if it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.’” Brandon A. v. Donahue, 2002 U.S. Dist. LEXIS 6230, *3-4 (D. N.H. April 5, 2002) (quoting Adarand Constructors, Inc. v. Slater, Sec. of Transp., 528 U.S. 216, 222 (2000)) (cleaned up). The party asserting mootness has “the heavy burden of

persuading the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness.” Id.

Although the standard is high for finding mootness based on voluntary cessation by a private party, the burden of demonstrating mootness is lower when the government has voluntarily discontinued the challenged conduct. The Supreme Court has explained that lawsuits against private parties that have voluntarily ceased illegal conduct that “might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.” Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 189 (2000). With that said, “‘cessation of the allegedly illegal conduct by government officials has been treated with more solicitude by the courts than similar action by private parties’ and that ‘[the government’s] self-correction provides a secure foundation for a dismissal based on mootness so long as it appears genuine.’” Bench Billboard Co. v. City of Cincinnati, 675 F.3d 974, 981 (6th Cir. 2012) (quoting Mosley v. Hairston, 920 F.2d 409, 415 (6th Cir. 1990)). The government is given this solicitude because courts assume “that [the government] acts in good faith.” Fikre v. FBI, 904 F.3d 1033, 1037 (9th Cir. 2018) (citation omitted). As such, courts are confident that any alleged wrongful conduct by the government is unlikely to recur. See Friends of the Earth, 528 U.S. at 189; see also 13C Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Juris. § 3533.7 (3d ed. 2008) (“Courts are more likely to trust public defendants to honor a professed commitment to changed ways; individual public defendants may be replaced in office by new individuals, with effects that have little parallel as to private defendants; remedial calculations may be shaped by radiations of public interest; administrative orders may seem to die or evolve in ways that leave present or future impact unclear.”). This assumption of good faith applies to both legislative and non-legislative

governmental actions. See Hanrahan v. Mohr, 905 F.3d 947, 961-62 (6th Cir. 2018); Ammex, Inc. v. Cox, 351 F.3d 697, 705 (6th Cir. 2003). With that said, “‘the repeal of a challenged statute’—or other similar pronouncement—is ordinarily ‘one of those events that makes it absolutely clear that the allegedly wrongful behavior . . . could not reasonably be expected to recur.’” Keohane v. Fla. Dep’t of Corr. Sec’y, 952 F.3d 1257, 1268 (11th Cir., March 11, 2020) (citation omitted).

Here, the Plaintiff’s Complaint has largely been mooted due to the Defendants’ acting in good faith by amending NRO § 5-14 C (3), and doing away with the requirement that people participating in public comments provide their address prior to speaking. This subsequent event has undermined the Plaintiff’s standing as to causation and redressability as it relates to Count One of his Complaint (Unreasonable Restriction, Facial Challenge), and has partially undermined his standing as to redressability as it relates to Count Two of his Complaint (Unreasonable Restriction, As-Applied Challenge), with the exception of his requested relief of nominal damages. The Defendants “need not do much more than simply represent that it would not return to the challenged [ordinance].” Thomas v. City of Memphis, Tenn., 996 F.3d 318, 324-25 (6th Cir. 2021). The Defendants make such a representation here.

IV. CONCLUSION

This Court should grant the Defendants’ Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) because Count One of the Plaintiff’s Complaint is now moot, and Count Two of the Plaintiff’s Complaint is also moot, with the exception of the requested relief of nominal damages.

WHEREFORE, the Defendants, City of Nashua and Lori Wilshire, respectfully request that this Honorable Court:

- A) GRANT the Defendants' Partial Motion to Dismiss and
- B) GRANT any further relief that is deemed just and proper.

Respectfully submitted,
City of Nashua and Lori Wilshire,
Defendants
By their Attorneys,

/s/ Jonathan A. Barnes
Steven A. Bolton, Esq. (NH Bar #67)
Jonathan A. Barnes, Esq. (NH Bar #20061)
City of Nashua
Office of Corporation Counsel
229 Main Street, P.O. Box 2019
Nashua, NH 03061-2019
(603) 589-3250
boltons@nashuanh.gov
barnesj@nashuanh.gov

Dated: May 26, 2026

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this day been forwarded via the Court's electronic filing system to Simon B. Amaya Price via his counsel of record.

/s/ Jonathan A. Barnes
Jonathan A. Barnes