

June 28, 2013

Mayor Ronnie Hallmark
Shannon Town Hall
1426 North St.
Shannon, MS 38868

Aldermen Debra Grubbs, Paul Lyles, Joey McCord, Bryant Thompson, and Carl Trice
Shannon Town Hall
1426 North St.
Shannon, MS 38868

VIA EMAIL, FACSIMILE, AND FIRST-CLASS MAIL

Re: Denial of Pat Newton's License to Open Gay Bar

Dear Mayor Hallmark and Board of Aldermen:

The Southern Poverty Law Center (hereafter "SPLC") represents Pat Newton, who applied for a special exception license from the Shannon Board of Aldermen (hereafter "Board") to operate a bar to be called O'Hara's, at 637 Highway 145 South, Shannon, Mississippi. On June 4, 2013, the Board unlawfully denied Ms. Newton's application because she is a lesbian and because the customers of the bar she intends to operate will include LGBTQ (lesbian, gay, bisexual, transgender, and queer or questioning) people.

Over a century ago, the Supreme Court recognized that when a municipality denies a business license based on hostility towards a particular group, the municipality violates the Constitution. *See Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (holding that administration of a neutral zoning ordinance in a discriminatory manner violates the Equal Protection Clause). We therefore request that the Board reconsider its denial and approve Ms. Newton's application by July 2, 2013, the next Board meeting. If not, Ms. Newton will pursue all available legal remedies, including filing suit in the U.S. District Court for the Northern District of Mississippi against the town and its officials (including the mayor and members of the Board in their individual capacities). The lawsuit will allege that defendants have violated Ms. Newton's federal constitutional rights, and will seek money damages, injunctive and declaratory relief, and attorneys' fees and costs.

Background

Pat Newton is a businesswoman who successfully owned and operated a bar called O'Hara's from 1994 until 1998 in Shannon, Mississippi. O'Hara's was known widely to be a "gay bar." Although open and welcoming to all customers, O'Hara's provided its LGBTQ customers in particular – young and old, men and women, black and white – a refuge to be themselves. Ms. Newton sold her bar in 1998, but subsequent owners continued to operate it as a gay bar until 2011. Because the nearest gay bar is more than 100 miles away in Memphis, Tennessee, the original O'Hara's and its successors met a crucial need in the northern Mississippi LGBTQ community.

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Having received requests from prior customers and others to re-open O'Hara's, Ms. Newton recognized the community need and decided to re-open. Ms. Newton entered a lease on May 6, 2013. She expanded and fixed the parking lot, replaced deteriorating wood with siding, purchased tables and chairs, and cleared up the outside lots that had been filled with rubber and trash. Shannon's building inspector told Ms. Newton that the property looked "so much better."

Ms. Newton went to town hall to obtain water service where she spoke with Mayor Ronnie Hallmark. The mayor told Ms. Newton she would have to apply for a permit under the town's zoning ordinance in order to open her business. The mayor also told Ms. Newton that she would need to attend a Board meeting on June 4, 2013 at which time the Board would vote on her application.

Ms. Newton arrived at town hall on June 4 and was surprised to find a crowd of more than thirty people gathered. Without any advance warning, the mayor asked her to make a presentation justifying why she should be permitted to open her bar. Ms. Newton spoke at length to the mayor, Board, and the assembled townspeople. She explained her history in Shannon and the need for the bar. Ms. Newton told the Board that she anticipated the bar would attract customers from neighboring towns around Mississippi and Alabama, and that those customers would bring needed revenue to Shannon. Her customers wanted O'Hara's back, and she had decided now was the time.

After Ms. Newton spoke, Mayor Hallmark invited questions from the crowd. One man stepped forward with a petition – allegedly signed by 192 people – asking the Board to deny Ms. Newton's application. The Board accepted the petition but did not read it aloud or show it to Ms. Newton. Then, for approximately half an hour, citizens and aldermen pressed her with questions in a thinly veiled attempt to discredit her, asking how she could call herself a Christian and whether she would let her daughter go into "a bar *like that*." One individual stated that she did not want her son, who plays sports nearby, playing near O'Hara's. Ms. Newton noted that another bar already operates across the street. At the end of questioning, the mayor asked a man – who appeared to be the town counsel – to advise the Board. The man referred to the zoning ordinance and advised the Board that Ms. Newton had met all the requirements for her application but that if the Board wanted to deny the application, it could cite to concerns about public health and safety. After that, the mayor called a vote and the Board denied the application by four to one.

The Board's Disapproval of O'Hara's Violates Federal Law.

The Board's denial of O'Hara's permit violates the Fourteenth Amendment of the U.S. Constitution and must be reversed. The Fourteenth Amendment provides that no government body shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Equal protection requires that "all persons similarly circumstanced shall be treated alike." *Plyler v. Doe*, 457 U.S. 202, 216 (1982).

In a case with facts similar to those presented here, the U.S. Supreme Court expressly held that irrational fear or prejudice of an unpopular group is not a valid basis upon which to employ a zoning ordinance against that group. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 446-47, 50 (1985); *see also United States v. Windsor*, No. 12-307, slip op. at 20 (U.S. Jun. 26, 2013) (a governmental desire to "harm a politically unpopular group cannot justify disparate treatment of that group."). In *Cleburne*, the Supreme Court moreover specified that it is irrational and unconstitutional for a city council to exercise its zoning power in a way that reflects or defers to private biases of "some faction of the body politic." 473 U.S. at 448 ("Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.").

Yet the Shannon Board denied O'Hara's business license because the bar would serve LGBTQ people. Under the guarantees of equal protection, that denial cannot stand.

Conclusion

Ms. Newton has invested a substantial amount of money in her business and is eager to open O'Hara's as quickly as possible. Given this urgent financial situation, we request that the Board notify us of Ms. Newton's approved application no later than July 3, 2013, the day after the Board's next meeting.

Sincerely,

A handwritten signature in black ink that reads "David Dinielli". The signature is written in a cursive, flowing style.

David Dinielli, *Deputy Legal Director*

Sam Wolfe, *Senior Staff Attorney*
LGBTQ Rights Project

Jody Owens, *Managing Attorney*
SPLC Mississippi Office