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November 20, 2009

Raymond W. Taylor, Clerk
Rockingham County Superior Court
P.O. Box 1258
Kingston, NH 03848-1258

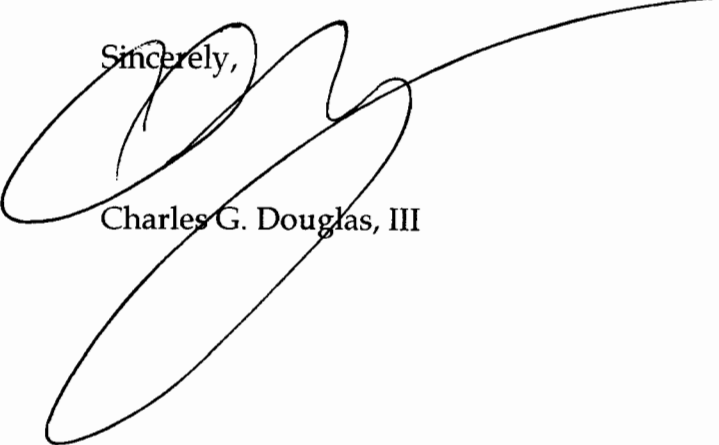
RE: Leon B. Artus, et al. v. Philip V. Consentino, et al.

Dear Clerk Taylor:

Enclosed please find Plaintiff's Motion to Amend Declaration as well as First Amended Declaration for filing with the Court in the above-referenced matter.

Thank you for your assistance in this matter.

Sincerely,


Charles G. Douglas, III

CGD:kjb

Enclosures

cc: Garry R. Lane, Esq.
James G. Walker, Esq.
Charles Bauer, Esq.

THE STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS SUPERIOR COURT

LEON B. ARTUS, GARY BROWNFIELD,
STEVEN LEWIS

v.

PHILIP V. CONSENTINO
PAUL SULLIVAN
FRED CHILDS
WILLIAM FRIEL
FRANCIS POLITO
in their individual and official capacities; and
THE TOWN OF ATKINSON, N.H.

PLAINTIFF'S MOTION TO AMEND DECLARATION

NOW COME the plaintiffs, by and through their attorneys, Douglas, Leonard & Garvey, P.C., and hereby move to amend their Declaration to add additional plaintiffs and a state law constitutional tort claim based on violations of the plaintiffs' freedom of speech. In support thereof, the plaintiffs' state:

1. This case was originally filed in Rockingham Country Superior Court stating a claim for violation of the plaintiffs' federal civil rights under 42 U.S.C. § 1983 and violation of one plaintiff (Gary Brownfield)'s rights under New Hampshire Right-to-Know Law, RSA 91-A. The case was removed to the U.S. District Court for the District of New Hampshire.

2. The case was recently remanded to the Rockingham Superior Court following the U.S. District Court's granting of a motion to dismiss the plaintiff's § 1983 claim based on a factual finding that "persons of ordinary firmness" would not have their free speech freedoms chilled by the coercive and retaliatory conduct of the defendants, including Police Chief Philip Consentino, as described in the plaintiff's original lawsuit.

3. Currently, the only claim before the Superior Court is plaintiff Brownfield's claim for violation of his rights under RSA 91-A.

4. The plaintiffs seek to amend to add several new parties, including Mark Acciard, who was subjected to retaliation by Philip Consentino after speaking out against him, and two taxpayer organizations (the Atkinson Taxpayers for Fair Evaluations Committee and the Atkinson Taxpayers Committee) headed, respectively, by current plaintiffs Leon Artus and Gary Brownfield.

5. In addition, the proposed Amended Declaration (attached hereto at Tab 1)¹ seeks to add a constitutional tort claim for all of the plaintiffs under the New Hampshire Constitution, Part 1, Articles 8, 14, 22, and 32, based on the defendants' retaliation for exercise of free speech rights that are specifically protected by those articles of our State Constitution.

6. It is a "settled principle that a denial of a constitutional right 'demands some vindication in the law.'" Marquay v. Eno, 139 N.H. 708, 721 (1995); N.H. Const., Part 1, Article 14. "Where no established remedy exists [under statutory, common law or administrative law] or the established remedies would be meaningless ... [the New Hampshire judicial branch] will not hesitate to exercise [its] authority to create an appropriate remedy." Id. at 721-22.

7. The plaintiffs are not aware of any established, meaningful remedy under New Hampshire statutory, common law, or administrative law that would permit the plaintiffs to vindicate the violations of their constitutional rights under the New

¹ The amended portions of the Declaration are highlighted in the [Proposed] First Amended Declaration attached at Tab 1.

Hampshire Constitution, as required by Part 1, Article 14, other than by a suit for common law damages.

8. The defendants will not be prejudiced by granting this Motion to Amend. The defendants were put on notice of violations of plaintiffs rights but (under a federal theory of recovery) in the original pleading that instituted this lawsuit, and in amendments made to the case once it was removed to federal court. Moreover, no structuring order or discovery schedule has yet been entered in this case, and no discovery or depositions have taken place as of the date of this Motion.

WHEREFORE, the plaintiffs respectfully request that the Honorable Court:

- A. Grant this Motion;
- B. Adopt the plaintiff's [Proposed] First Amended Declaration as the operative pleading in this case; and
- C. Grant such other and further relief as the Court deems just and equitable.

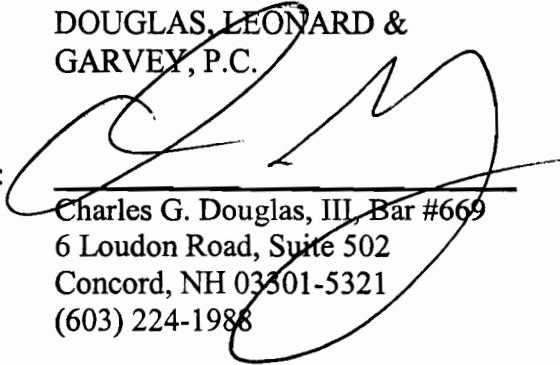
Respectfully submitted,
LEON B. ARTUS,
GARY BROWNFIELD,
STEVEN LEWIS

By their attorneys,

DOUGLAS, LEONARD &
GARVEY, P.C.

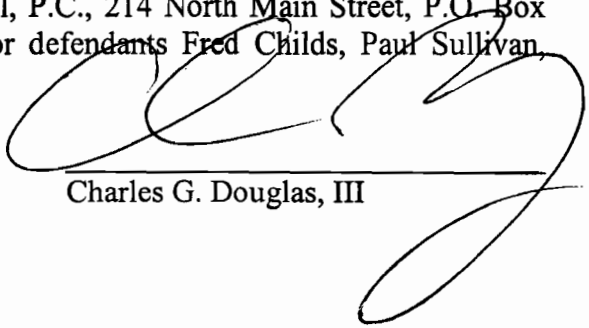
Date: November 20, 2009

By:


Charles G. Douglas, III, Bar #669
6 Loudon Road, Suite 502
Concord, NH 03301-5321
(603) 224-1988

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Motion to Amend has been served, this 19th Day of November, 2009, upon Garry R. Lane, Esq. Ransmeier & Spellman, P.C., One Capitol Street, P.O. Box 600, Concord, NH 03302-0600, counsel for defendants Consentino and Polito, James G. Walker, Esq., Walker & Buchholz, P.A., 50 Bridge Street, Suite 205, Manchester, NH 03101-1699, co-counsel for defendant Polito, and Charles Bauer, Gallagher, Callahan & Gartrell, P.C., 214 North Main Street, P.O. Box 1415, Concord, NH 03302-1415, counsel for defendants Fred Childs, Paul Sullivan, William Friel, and the Town of Atkinson.



Charles G. Douglas, III

THE STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS SUPERIOR COURT

LEON B. ARTUS, GARY BROWNFIELD,
STEVEN LEWIS, ATKINSON TAXPAYERS
FOR FAIR EVALUATIONS COMMITTEE,
ATKINSON TAXPAYERS COMMITTEE,
and MARK ACCIARD

v.

PHILIP V. CONSENTINO
PAUL SULLIVAN
FRED CHILDS
WILLIAM FRIEL
FRANCIS POLITO
in their individual and official capacities; and
THE TOWN OF ATKINSON, N.H.

FIRST AMENDED DECLARATION

I. Parties

1. Plaintiff, Leon B. Artus, is a resident of the State of New Hampshire with a mailing address of 114 Maple Avenue, Atkinson, New Hampshire 03811.

2. Plaintiff, Gary Brownfield, is a resident of the State of New Hampshire with a mailing address of 19 Chase Island Road, Atkinson, New Hampshire 03811.

3. Plaintiff, Steven Lewis, is a resident of the State of New Hampshire with a mailing address of 95 Main Street, Atkinson, New Hampshire 03811.

4. Plaintiff Atkinson Taxpayers for Fair Evaluations Committee is an unincorporated association with a principal business address of 114 Maple Avenue, Atkinson, New Hampshire 03811.

5. Plaintiff Atkinson Taxpayers Committee is an unincorporated association with a principal business address of 19 Chase Island Road, Atkinson, New Hampshire, 03811.

6. Plaintiff, Mark Acciard, is a resident of the State of New Hampshire with a mailing address of 6 Christine Drive, Atkinson, New Hampshire 03811.

7. Defendant, Philip V. Consentino, is a resident of the State of New Hampshire with an address of 140 Main Street, Atkinson, New Hampshire 03811. At all relevant times, defendant Consentino held the positions of Chief of the Atkinson, New Hampshire Police Department and Director of Elderly Affairs. Defendant Consentino is sued in both his individual and official capacities.

8. Defendant, Paul Sullivan, is a resident of the State of New Hampshire with a business address of 14 Brendan Road, Atkinson, New Hampshire 03811. Defendant Sullivan is a current member of the Atkinson Board of Selectmen. Defendant Sullivan is sued in both his individual and official capacities.

9. Defendant, Fred Childs, is resident of the State of New Hampshire with a mailing address of 53 East Road, Atkinson, New Hampshire 03811. Defendant Childs is a current member of the Atkinson Board of Selectmen. Defendant Childs is sued in both his individual and official capacities.

10. Defendant, William Friel, is a resident of the State of New Hampshire with a mailing address of 5 Kelly Lane, Atkinson, New Hampshire 03811. Defendant Friel is a current member of the Atkinson Board of Selectmen. Defendant Friel is sued in both his individual and official capacities.

11. Defendant, Francis Polito, is a resident of the State of New Hampshire with a mailing address of 14 Coventry Road, Atkinson, New Hampshire 03811. Defendant Polito is a former selectmen and currently the moderator for the Town of

Atkinson, New Hampshire. Defendant Polito is sued in both his individual and official capacities.

12. Defendant, Town of Atkinson, is a municipal corporation with a principal business address of 21 Academy Avenue, Atkinson, New Hampshire 03811.

II. Jurisdiction & Venue

13. This Court has jurisdiction over the subject matter of this action pursuant to RSA 491:7.

14. Venue is proper in Rockingham County, as it is the county of residence of the parties.

III. Factual Background

15. This case arises out of the defendants' violations of the plaintiffs' and other Atkinson citizens' rights to freedom of speech and to petition and have fair access to their government officials and proceedings, as guaranteed to them by ___ of the New Hampshire Constitution and New Hampshire law.

16. The defendants have engaged in an organized conspiracy to suppress the views of the plaintiffs, which are critical of the defendants' conduct in their official positions. The conspiracy involves the Atkinson Chief of Police, its current and former Selectmen, and the Town's current Moderator. Each of these individuals has taken part in organizing and furthering the purpose of the conspiracy, which is to intimidate, humiliate and oppress the plaintiffs and other similarly-situated Atkinson residents for attempting to voice their opposing viewpoint to certain decisions of their police chief and local government.

A. Chief Consentino's Suppression of Citizens' Free Speech Rights Through Official Intimidation.

17. Defendant Philip V. Consentino has been the Chief of the Atkinson Police Department for more than 30 years. Defendant Consentino is also the “Director of Elderly Affairs,” is run out of the Police Department and which provides transportation services and other assistance to Atkinson’s senior citizens. He thus works fulltime at two part-time jobs.

18. Despite being certified only as a part-time police officer, Chief Consentino defends his “turf” as head of the police department and Elderly Affairs Director with an iron fist, using and abusing the authority granted by his position to intimidate, bully, and retaliate against citizens who question his actions or oppose his views on various issues.

19. Chief Consentino’s intimidating and retaliatory actions have been the subject of a multitude of lawsuits and other official adjudications since 1981. Despite the multiple monetary settlements and findings that Chief Consentino has inappropriately abused his position as police chief, the Town of Atkinson has established a pattern and practice of permitting Chief Consentino continue to violate citizens’ constitutional rights – particularly their rights to free speech and to petition their government – with virtual impunity. He runs the Town of Atkinson like a stereotypical southern sheriff of the 1920’s.

20. The instant case is just the latest in a long line of well-documented violations of citizens’ rights by Chief Consentino, which have been allowed and approved explicitly or tacitly by the Selectmen of Atkinson. The plaintiffs and other Atkinson citizens in their positions are but the latest victims of Chief Consentino’s flagrant abuses of power.

21. Plaintiff Leon Artus is the director and spokesman for Atkinson Taxpayers for Fair Evaluations Committee ("ATFEC"). Gary Brownfield is the director and spokesman for Atkinson Taxpayers Committee ("ATC"). Both ATFEC and ATC are unincorporated associations of local taxpayers that, among other concerns, seek to increase public oversight of the actions of the Atkinson Select Board and the Chief of Police, particularly in regard to spending issues. Both groups rely almost entirely on grassroots support, and stay in touch with their various supporters through mailing lists they have compiled.

22. In early January, 2009, Mr. Artus and Mr. Brownfield, together with other members of ATFEC and ATC, circulated a series of petitions for warrant articles amongst citizens of the Town of Atkinson, seeking signatures that would allow the articles to be placed on the Town Warrant ahead of the annual Town Meeting.

23. Two of the proposed warrant articles touched on Chief Consentino's "turf." One sought to establish a full-time, fully certified Police Chief (a position that defendant Consentino is not qualified to fill). The other sought to modify and improve the goals and management of the Elderly Affairs Office, which is currently under the total control of Chief Consentino. See Tabs A and B attached hereto and incorporated herein by reference.

24. The citizen-signed petitions were filed at the Atkinson Town Offices on January 13, 2009. Within an hour of the petitions being filed with the Town Clerk, and before the petitions had even been verified by the Town Clerk, Chief Consentino had been provided copies of them by other Town of Atkinson officials, and was phone-calling citizens who had signed them.

25. Many of the citizens who received calls from Chief Consentino were elderly, and thus reliant upon the Elderly Affairs Office for services. It is known that Chief Consentino angrily demanded from one citizen an explanation as to why his family "signed this shit?"

26. Not surprisingly, within 24 hours many of the citizens who received the intimidating and angry phone calls from Chief Consentino began calling Mr. Artus, Mr. Brownfield, and others who worked to have the petitions signed, as well as the Town Offices, to request that their signatures be removed from the warrant article petitions.

27. Chief Consentino's use of his authority as Police Chief and Director of the Elderly Affairs office to intimidate Atkinson citizens into remaining silent on issues which affect his public positions constitutes an abuse of his office and a violation the plaintiffs' state constitutional rights to petition their government.

28. As a result of Chief Consentino's use of his position as Police Chief and Elderly Affairs director to bully petition-signers, many of those individuals contacted Mr. Artus and Mr. Brownfield and requested to have their names removed from the mailing lists maintained by ATFEC and ATC. Some of those individuals have also demanded that Mr. Artus, Mr. Brownfield, ATFEC and ATC have no further contact with them.

B. The Atkinson Select Board's Complicity and Tacit Approval of Chief Consentino's Suppression of Constitutional Free Speech Freedoms through Official Intimidation:

29. Chief Consentino's conduct with regard to the citizen-petitioned warrant articles filed in January of 2009 would be alarming enough if it were the first time it had ever happened. However, it is not the first time that Chief Consentino has been allowed to abuse the authority of his official position to jealously protect his interests, to the detriment of Atkinson citizens' rights.

30. To the contrary, the Town of Atkinson has a nearly three decades old record of allowing Chief Consentino to engage in abuses of power and coercion of citizens who dare to stand up to him, without any meaningful consequence to him.

For instance:

- a) In 1981, a civil rights lawsuit was filed against Chief Consentino by then-Atkinson resident Wayne Peak, alleging that the Chief had engaged in a plan to discredit, disgrace, and coerce Mr. Peak by repeatedly charging him with baseless motor vehicle and criminal complaints, resulting in Mr. Peak being forced to move out of state to avoid Chief Consentino's harassment. The harassment began after Mr. Peak filed a writ of mandamus seeking to compel Chief Consentino to account for monies collected by the Police Department. Upon information and belief, this lawsuit resulted in a significant monetary settlement in Mr. Peak's favor. Despite that, the Town of Atkinson did nothing to change or eliminate Chief Consentino's propensity for retaliating against political opponents or abusing his power as police chief.
- b) In 1999, the Public Employee Labor Relations Board ruled that Chief Consentino had engaged in a pattern of harassment, intimidation, and coercion against members of the Atkinson Police Department who sought to unionize. The PELRB's Order of December 23, 1999, stated that "[s]uch fears, interference, domination and coercion must be abated. The Town's conduct, through its agent and employee is, taken as a whole, violative of RSA 273-A:5." Despite this documented finding of overt bullying toward even his fellow police officers, the Board of Selectmen continue to this day to allow Chief Consentino to go on abusing his position of power and trust. See Tab C attached hereto and incorporated herein by reference.
- c) In 2000, plaintiff Steven Lewis circulated a petition for a warrant article to have a full-time police chief appointed. See Tab D attached hereto and incorporated herein by reference. The warrant article in question was much like the one that Mr. Artus circulated this year. Chief Consentino responded by visiting Mr. Lewis' office, leaving his cruiser running outside. Inside the office, he loudly and abusively castigated Mr. Lewis for having the audacity to initiate the petition. Chief Consentino then followed up by contacting a local police chief and attempting to torpedo Mr. Lewis' son's application for employment. This incident was widely reported, and yet Chief Consentino still holds his position as Chief. Chief Consentino continued to threaten and harass Mr. Lewis at least as late as 2007, when an officer under his control forwarded a message from Chief Consentino that Mr. Lewis "had better watch he says" about Chief Consentino and his police department in the Town of Atkinson.

- d) In 2005, Chief Consentino flagrantly violated Orders of the Rockingham County Superior Court in a case initiated by plaintiff Mark Acciard that required Consentino to leave Selectmen's meetings at any time the agenda turned to matters involving the Police Department or Elderly Affairs Office. See Tab E attached hereto and incorporated herein by reference. He ignored the judge's order and was found to be in contempt of court by Judge McHugh. See Tab F attached hereto and incorporated herein by reference.
- e) Also in 2003, Chief Consentino retaliated against Atkinson resident Leigh Komornick after she raised concerns about an illegally established firing range used by the Atkinson Police Department near her property. The Chief of the Haverhill Massachusetts Police Department taped Chief Consentino calling Leigh Komornick a "f—king whackjob" or words to that effect in an attempt to silence and embarrass her into dropping her complaint about the illegal firing range.
- f) In 2006, former Selectwoman Carol Grant filed a petition to have Consentino removed from his position as Chief of Police. Her petition cited a lengthy history of rogue behavior which would have justified removing Chief Consentino from the position which he so frequently abused. See Tab G attached hereto and incorporated herein by reference. Among other things, Chief Consentino unlawfully taped Ms. Grant during a conversation, in violation of New Hampshire's wiretapping statute, and then destroyed the evidence of that illegally taped conversation. Despite these serious violations of the law, the Selectmen took no meaningful action to curb Chief Consentino's flagrant abuses of his official position. A lawsuit filed by Ms. Grant resulted in the Town being forced to pay out another settlement because of the Chief's outrageous conduct, yet he still holds his position and continues to abuse it with the knowledge and apparent complicity of the Select Board.
- g) Also in 2006, Chief Consentino angrily erupted during a Board of Selectmen's meeting when a citizen, Brian Kaye, read a prepared statement concerning his opposition to Chief Consentino's plan to expand use of a communications tower near Kaye's property. Consentino's rude and belittling responses to Mr. Kaye's concerns were then followed up by his sending Mr. Kaye two threatening letters, on police department stationary, demanding that Mr. Kaye provide him copies of his prepared statement. This is yet another example of the Chief abusing his position to intimidate a citizen who dared to speak out against him. See Tabs H and I, attached hereto and incorporated herein by reference. When Mr. Kaye's attorney wrote the Selectmen to complain about Consentino's conduct the letters were ignored and went unanswered for over a year. See Tabs J and K attached hereto and incorporated herein by reference.

- h) During the early 2008 election cycle, several temporary political lawn signs put up by the "Atkinson Reporter Blog," a website dedicated to observing and reporting on matters of public interest in the Town of Atkinson, were taken down by order of the Atkinson Board of Selectmen. The Atkinson Reporter Blog supported candidates opposing the sitting Board of Selectmen and Chief Consentino, and publicized criticism of the actions of Chief Consentino and the Board. Some of the removed signs were seen in the Atkinson Police Station. Then-Selectman Jack Sapia claimed that he obtained clearance from the Town's counsel to remove the signs – a claim which was later publicly refuted by Selectman Paul Sullivan. The advice had been not to remove the signs.

31. Plaintiff Steven Lewis was approached on at least two separate occasions this year by members of ATFEC and/or ATC who asked him to sign the same petitions that Mr. Artus and Mr. Brownfield were circulating regarding the Chief's position. While Mr. Lewis agreed with the goals of the petitions, he refused to sign them, based on his fear of further retaliation from Chief Consentino following his experiences from 2000-2002, and 2007, after attempting to have a similar warrant article for a full-time police chief approved back in 2000, as described in Paragraph 30-c, *supra*.

32. Plaintiff Mark Acciard at one time chaired the Atkinson Budget Committee. He filed an ethics complaint against Chief Consentino in 2005, and then (as described in paragraph 30-d above) filed suit in Rockingham County Superior Court seeking an order that the Chief could not serve as a Selectman and chair meetings related to police department and elderly affairs issues.

33. After obtaining a Court Order from Judge McHugh requiring Chief Consentino to recuse himself from Select Board discussions and votes pertaining to police and elderly affairs matters (Tab E), Chief Consentino violated the Order, and was found in contempt (Tab F).

34. Chief Consentino retaliated against Mr. Acciard by first attempting to portray him as a fringe member of society with a personal "vendetta" against the Chief, and then by filing a lawsuit against Mr. Acciard for money damages. Consentino dropped the lawsuit several weeks before trial.

35. Chief Consentino then continued to retaliate against Mr. Acciard in early 2006 by attempting to publicly portray him as a "lawbreaker" by charging him with trumped up traffic offenses and contacting vendors for Mr. Acciard's business to tell them that Mr. Acciard was "under investigation by the Atkinson Police Department."

36. Then, in September 2007, Chief Consentino sent Mr. Acciard a certified letter, on official police department letterhead, threatening legal action if Mr. Acciard did not cease his protected free speech criticism of the Chief's conduct as a public official. See Tab L attached hereto and incorporated herein by reference. This was followed in December 2007 by an open and forcefully intimidating threat from Chief Consentino to Mr. Acciard. Chief Consentino confronted Mr. Acciard outside the local post office, and began the following oral exchange with him:

CHIEF: Mark, Mark, do you believe in the scripture that states do unto others, as you would have them do unto you?

ACCIARD: Yes I do.

CHIEF: Then you better be prepared!

ACCIARD: What did I do now Chief? You know that sounds like a threat!

CHIEF: You don't know the meaning of a threat yet!

37. Subsequent to this exchange, in August of 2008 and March of 2009, Plaintiff Acciard had his vehicle and home vandalized. His car had every panel scratched

down to bare metal with slogans saying "NO \$. LEAVE THE CHIEF ALONE. MOVE." See Tab M. In March of 2009, his home had a sentence spelled out in foot high red letters saying "MOVE. LEAVE CHIEF ALONE. MOVE." See Tab N.

38. Chief Consentino's conduct toward Mark Acciard constitutes a continuing, serial violation of his civil rights under New Hampshire's Constitution. The Town of Atkinson's conduct in permitting Chief Consentino to bully, intimidate and harass Mr. Acciard unchecked constitutes a systemic continuing violation of Mr. Acciard's civil rights going back many years.

39. This well-documented history of aggressive, intimidating, and coercive behavior of on the part of Chief Consentino has a past and future chilling effect on the freedom of speech of the plaintiffs and other Atkinson citizens on matters of public concern. The ongoing chilling effect is a direct result of the past and present Atkinson Board of Selectmen (specifically including past and present members Polito, Sapia, Consentino, Sullivan, Friel, and Childs)'s continued refusal to take any meaningful action to put a stop to it.

40. The past and present (as made up by defendants Polito, Sapia, Consentino, Sullivan, Friel, and Childs) Select Board's refusal to remove or even meaningfully restrain Chief Consentino has clearly emboldened him over the years to the point that he now continues to personally confront simple townsfolk who sign a petition for a warrant article to intimidate them into removing themselves from the political process. His reputation for getting away with such harassment now has a prospective chilling effect on other citizens, like Mr. Lewis, who refuse to participate in the political petition process at all in regards to the Chief, despite their desire to voice their opinion.

41. The Town's inaction constitutes an established pattern and practice of ratifying and complying with Chief Consentino's flagrant violations of Atkinson resident's civil rights.

C. The Town of Atkinson's Effort to Publicly Humiliate and Suppress the Freed Expression of Gary Brownfield

42. The deliberative session for Atkinson's annual town meeting was held on January 31, 2009. Plaintiff Gary Brownfield attended that meeting, acting as professional photographer for the Coalition of New Hampshire Taxpayers newspaper.

43. Mr. Brownfield sat at the back of the room, and took approximately ten photographs of the proceedings and various Town of Atkinson officials from his seat. He did not stand, use a flash, or take any action which could reasonably be construed as a "disturbance." He simply and quietly took approximately ten photographs of the proceedings, in exactly the same manner as did other press photographers who attended the meeting.

44. The Moderator for the meeting, Frank Polito, loudly ordered Mr. Brownfield to cease taking photographs of the meeting while Polito was at the podium. Mr. Brownfield went to the citizen microphone to protest, pointing out that other photographers were in the room taking photographs just like he was.

45. Mr. Polito angrily insisted that Mr. Brownfield was not allowed to take photographs of the public meeting without his permission. He ordered Mr. Brownfield to stop taking pictures, and to delete the photographs he had already taken. These orders were given angrily and very publicly in front of the entire assembly of Town residents, and visible to anyone watching the meeting on the local cable access network. In addition, video footage of the embarrassing tirade has already been posted on

Youtube.com.

46. Mr. Brownfield protested that the New Hampshire Right-to-Know Law explicitly provides him a right to take photographs of the open public meeting. RSA 91-A:2, II provides, in relevant part, that:

Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such [open public] meetings.

(emphasis added).

47. But Mr. Polito shouted him down and accused Mr. Brownfield of causing a disruption to the meeting and threatened to eject him from the proceeding. He then called for a public vote to prohibit Mr. Brownfield from doing any further photography of the meeting.

48. As a result of Mr. Polito's open threat and intimidating public humiliation of the plaintiff, Mr. Brownfield did not speak to the citizen-petitioned warrant articles which he supported and had obtained signatures for, as described, *supra*. This is but another example of the retaliatory and intimidating tactics of Atkinson town officials having a chilling effect on the free speech rights of Atkinson citizens with an opposing viewpoint to the local "Politburo."

49. At the next break in the meeting, Mr. Brownfield was approached by former Selectman Jack Sapia who demanded that any pictures of him be deleted. He was accompanied by one of his supporters. He was then approached directly by Mr. Polito, who was also accompanied by a supporter. Mr. Polito loudly demanded that Mr. Brownfield dispose of the pictures he had taken. When Mr. Brownfield simply stated that he did not want to talk to them, Mr. Polito threatened that Mr. Brownfield "would be

hearing from his lawyer.”

50. These actions by the Moderator and former Selectman Polito constitute official intimidation and an effort to suppress Mr. Brownfield’s rights under Part 1, Articles 8 and 32 of New Hampshire’s Constitution, which guarantees a right of reasonable access to public government proceedings.

51. The actions of Mr. Polito is all the more shameless and audacious given that by the time he committed these acts, they had already been put on notice of Mr. Artus’ and Mr. Brownfield’s intent to file a lawsuit alleging violations of his freedom of speech rights. See Tab O attached hereto and incorporated herein by reference.

52. Mr. Brownfield is a professional photographer who is well known in the area, and as a result of the public humiliation perpetrated by Mr. Polito and the negative press coverage portraying Mr. Brownfield as a “disruption” (despite the fact that he did no more than point and click a camera from his seat) are likely to have a deleterious impact on his ability to obtain private photography work. In addition, the incident has caused Mr. Brownfield emotional distress and embarrassment.

D. The Defendant’s Civil Conspiracy to Violation and Suppress the Plaintiffs’ Freedom of Speech.

53. The defendants have engaged in an orchestrated conspiracy to silence their critics through intimidation and official oppression of the plaintiffs’ free speech freedoms as guaranteed by Part 1, Articles 8, 22 and 32 of the New Hampshire Constitution.

54. In a news article date February 24, 2008, defendant Polito admitted that he kept track of who signed petitions supported by the plaintiffs, as well as who attended the 2008 town meeting, and noted the “huge disparity.” Mr. Polito’s public announcement that he “had done the math regarding this year’s deliberative session” constitutes a form

of official intimidation of those who oppose Mr. Polito and the other defendants who are currently in power in Atkinson. It demonstrates that the defendants are keeping track – Hugo Chavez style – of those who oppose them.

55. Police Chief Consentino also keeps track of those who oppose him and sign petitions which impact his public position, with the assistance of other Town of Atkinson officials.

56. Jack Sapia and Chief Consentino undertook an organized effort to suppress the free speech rights of those putting up the Atkinson Reporter Blog political signs during election season, and had the audacity to talk about it during public meetings.

57. Frank Polito enlisted the aid of former selectmen Jack Sapia and an Atkinson Police Officer (under defendant Consentino's command) to attempt to intimidate and coerce Gary Brownfield and other Atkinson residents from taking and possessing lawful photographs of an open public meeting.

58. The other defendants consented to and joined in these efforts to undermine and suppress the free speech and political access rights of the plaintiffs, in furtherance of a conspiracy to violate the plaintiffs' and other similarly-situated Atkinson citizens, rights of freedom of speech and petition.

COUNT I

Constitutional Tort Action Pursuant to Part 1, Articles 8, 14, 22, and 32 of the New Hampshire Constitution (All Defendants)

59. The plaintiffs re-allege and incorporate herein by reference all the allegations contained in paragraphs 1 through 58.

60. Under the New Hampshire Constitution, Part 1, Article 14, citizens of this State are "entitled to a certain remedy, by having recourse to the laws, for all injuries he

may receive in his person, property, or character ... completely and without any denial; promptly, and without delay, conformably to the laws.” In the absence of an otherwise-established common law tort, the Court may recognize a constitutional tort to provide an adequate remedy to New Hampshire citizens whose State Constitutional rights have been violated by government officials. See Marquay v. Eno, 139 N.H. 708, 721-22 (1995); Rockhouse Mt. Property Owners Assoc. v. Town of Conway, 127 N.H. 593, 598 (1986).

61. There are no established common law torts, statutory or administrative causes of action under New Hampshire law that provide an adequate remedy for the violations of the plaintiffs’ constitutional rights under the New Hampshire Constitution as set forth herein. In such circumstances, the judicial branch “will not hesitate to exercise its authority to create an appropriate remedy.” Marquay, 139 N.H. at 722.

62. Acting under color of State law and the authority of the defendant Town of Atkinson, defendant Philip Consentino recklessly, and/or with complete and deliberate indifference for the plaintiffs’ rights has caused plaintiffs to be deprived of their rights protected under the New Hampshire Constitution by abusing the authority provided to him as Chief of Police to intimidate Atkinson citizens, including plaintiff Steven Lewis, from partaking in a petition circulated by plaintiffs ATFEC, ATC, Artus and Brownfield. Defendant Consentino’s interference and intimidation has violated the rights of the plaintiffs, and all other similarly situated, to petition their government for redress and to express their views on matter of public importance, as protected by the Part 1, Articles 8, 14, 22, and 32 of the New Hampshire Constitution. The plaintiffs have suffered reputation harm and damage to their ability to generate and maintain support for their associational goals.

63. Defendant Consentino has also engaged in a continuing series of threats, public belittlement, a lawsuit, and retaliatory "investigations" of plaintiff Mark Acciard, charging him with trivial, trumped-up traffic offenses and contacting third parties regarding his "criminal investigations" of the plaintiff in an effort to embarrass, intimidate, and silence the plaintiff. Chief Consentino followed that up by threatening Mr. Acciard with "legal action" for having the audacity to exercise his free speech rights, and then with face-to-face threats of future harm. Mr. Acciard then became a victim of vandalism committed by someone supportive of Chief Consentino – criminal actions which have never been denounced or brought to justice by Consentino, despite the fact that they were committed in his name.

64. Defendants Town of Atkinson, Paul Sullivan, Fred Childs, William Friel, and Francis Polito, acting under color of state law, intentionally, recklessly, and/or with complete indifference for the plaintiffs' rights, authorized, permitted, and tolerated Chief Consentino's custom and practice of engaging in retaliatory and intimidating oppression of citizens' speech by failing to:

- a. appoint, promote, train and supervise members of the Atkinson Police Department who would enforce the laws in effect in the Town of Atkinson and who would protect the constitutional rights of the people of the Town of Atkinson;
- b. enforce the published policy of the Atkinson Police Department to respect the constitutional rights of citizens. See Tab M attached hereto and incorporated herein by reference.
- c. promulgate procedures and policies for protection of all citizens' free speech rights that are consistent with the requirements of New Hampshire's Constitution; and
- d. prohibit the policy and custom of oppressing citizens' freedom of speech which was followed by the Atkinson Police Department as managed by defendant Consentino,

thereby proximately causing the deprivation of Plaintiffs' rights under Part 1, Articles 8, 14, 22, and 32 of the New Hampshire Constitution.

65. Under the totality of the circumstances, it was not reasonable for defendant Consentino to believe that he had a right to use his position of authority to berate and harass citizens who signed a petition for a warrant article that affected his personal interests, or to engage in his decades-long practices of intimidation and retaliation toward citizens like Steve Lewis and Mark Acciard who expressed views opposed to his, thereby suppressing their free speech rights.

66. As detailed above, the oppression of the plaintiffs' and other Atkinson citizens' free speech rights on this and other occasions was inconsistent with well-settled law regarding official oppression of political speech. See Snelling v. City of Claremont, 155 N.H. 674 (2007). Reasonable officers in defendant Consentino's position would not believe that his conduct of calling elderly citizens to question their participation in a political petition was a lawful or appropriate use of his authority as Chief of Police or Director of Elderly Affairs. Nor would a reasonable officer in defendant Consentino's position believe that retaliating and threatening citizens with viewpoints in opposition to personal interests was a lawful or appropriate use of his authority as Chief of Police or Director of Elderly Affairs.

67. Reasonable public officials in the position of the Atkinson Select Board Members would not believe that Chief Consentino's conduct in regards to the instant case, or his track record of committing similar acts in the past, was a lawful or appropriate use of his authority as Chief of Police or Director of Elderly Affairs.

68. Defendant Frank Polito through public humiliation and intimidation, forced plaintiff Gary Brownfield to stop taking photographs of an open public meeting this year, which he was lawfully and peaceably attending. The defendants' actions constitute a willful violation of Mr. Brownfield's Part 1, Article 22 and 32 rights to have reasonable access to government proceedings, and to record and comment publicly on those proceedings through photography. The intimidating actions of Mr. Polito and Mr. Sapia were carried out under color of state law, with Mr. Polito acting as an official moderator for a town meeting, and Mr. Sapia accompanied by a member of the Atkinson Police force.

69. Reasonable public officials in the position of Mr. Polito and Mr. Sapia could not reasonably believe that they were lawfully exercising their authority when they intimidated Mr. Brownfield into ceasing his lawful activities at the town meeting, and when they attempted to coerce him into turning over lawfully taken photographs.

70. A person of ordinary firmness situated in the any of the positions occupied by plaintiffs in the context of this case would feel that their free speech rights as guaranteed by Part 1, Article 22 of the New Hampshire Constitution were chilled by the government conduct described herein.

71. The defendants have acted with extreme, reckless or callous indifference to the plaintiffs' and other similarly-situated Atkinson citizens' constitutional rights under Part 1 Articles 8, 22, and 32 of the New Hampshire Constitution, which were clearly established when they acted, directly and indirectly, to oppress political speech that was adverse to each of the defendants' official interests. Such conduct constitutes a pattern and practice of longstanding official oppression going back into the 1980's.

72. As a direct and proximate result of the defendants' violation of the plaintiffs' rights protected under the New Hampshire Constitution, the plaintiffs have suffered injuries including mental anguish, embarrassment, violation of their right to effectively petition the government for redress, loss of membership and support, damage to reputation, and other compensable damages. The plaintiffs further seek an award of attorneys' fees and costs.

73. The plaintiffs also seek a permanent injunction prohibiting the defendants from engaging in future violations of the plaintiffs' freedom of speech and petition rights under the New Hampshire Constitution, as described herein.

COUNT II

Violation of New Hampshire Right-to-Know Law – RSA 91-A (Against Frank Polito and the Town of Atkinson)

74. The plaintiffs re-allege and incorporate herein by reference all the allegations contained in paragraphs 1 through 73.

75. Defendant Frank Polito, through public humiliation and intimidation, forced plaintiff Gary Brownfield to stop taking photographs of an open public meeting, which he was lawfully and peaceably attending. The defendant's actions constitute a willful violation of Mr. Brownfield's rights under RSA 91-A:2, II, which specifically provides that he, as a member of the public, is permitted to record the meeting with a camera.

76. The Town of Atkinson is liable for the acts of its authorized agent in the context of a violation of a New Hampshire statute.

77. The plaintiffs seek all remedies available to them under RSA 91-A:7 and A:8, including costs, attorneys' fees, and a permanent injunction against future violations as described herein.