

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

PATRICIA REGAN,	)	
	)	CASE NO.
Plaintiff,	)	
	)	
vs.	)	<b>VERIFIED COMPLAINT FOR</b>
	)	<b>DECLARATORY AND</b>
	)	<b>INJUNCTIVE RELIEF</b>
HUDSON SCHOOL DISTRICT; and RANDY	)	
BELL, individually and in his official capacity	)	
as Superintendent of the Hudson School District,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff Patricia Regan, by and through counsel, and for her Complaint against the Defendants Hudson School District and District Superintendent Randy Bell, states the following:

**I. INTRODUCTION**

1. This is a civil rights action under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution, brought to challenge the Defendants’ prohibition of Patricia Regan from informing members of the community, through distribution of printed materials to District students, about various nonprofit religious activities to which she is associated for children and adults.

2. By policy and practice, the Defendants permit nonprofit organizations like Drama Kids International; Cub Scouts; National Inventors Hall of Fame; Adult Learning Center; Hudson United Soccer Club; Hudson Recreation Department; and the Southern New Hampshire Medical Center, among others, to avail themselves of a forum for distributing printed informational materials and announcements (collectively “flyers”).

3. By granting access to such organizations, the Defendants permit the distribution of flyers to students and parents that promote cultural, community, charitable, recreational, and education-related activities.

4. Yet Patricia Regan remains an outsider, unable to gain access to the Defendants' flyer forum because of the religious content and viewpoint of her flyers and Vacation Bible School activities, among others, despite the fact that the flyers and activities promote similar educational, cultural, charitable, community, and recreational undertakings.

5. The Defendants' exclusion of Ms. Regan from their flyer forum violates her well-established First Amendment right to engage in free speech in a public forum.

6. Ms. Regan accordingly challenges both the application of the Defendants' policies that prohibit her from accessing the flyer forum, and the facial validity of the policies as construed to apply to her religious speech.

## **II. JURISDICTION AND VENUE**

7. This action arises under the United States Constitution, specifically the First and Fourteenth Amendments, and under federal law, particularly 28 U.S.C. § 2201 and 42 U.S.C. §§ 1983 and 1988.

8. This Court possesses jurisdiction over Plaintiff's claims by operation of 28 U.S.C. §§ 1331 and 1343.

9. This Court is vested with authority to grant Plaintiff's requested declaratory relief by operation of 28 U.S.C. §§ 2201 and 2202 and pursuant to Rule 57 of the Federal Rules of Civil Procedure.

10. This Court is authorized to grant Plaintiff's requested injunctive relief pursuant to 42 U.S.C. § 1983 and Rule 65 of the Federal Rules of Civil Procedure.

11. This Court is authorized to award Plaintiff's requested damages pursuant to 28 U.S.C. § 1343.

12. This Court is authorized to award Plaintiff's attorneys' fees pursuant to 42 U.S.C. § 1988.

13. Venue is proper in the United States District Court for the District of New Hampshire under 28 U.S.C. § 1391 because the events giving rise to Ms. Regan's claim occurred within the District, and because all parties reside in the District.

### **III. IDENTIFICATION OF THE PLAINTIFF**

14. Plaintiff Patricia Regan is an adult female who resides in Hudson, New Hampshire.

15. Ms. Regan's three children attended Nottingham West Elementary School in the District during the 2007-08 school year.

16. Ms. Regan is a professing Christian.

17. Pursuant to her sincerely held religious beliefs, Ms. Regan volunteered her time and efforts as Assistant Director of her local church's Vacation Bible School ("VBS"), recently held June 23-27, 2008.

18. Ms. Regan's desire to distribute flyers through District schools promoting the church's Vacation Bible School activities – as well as flyers promoting upcoming events and activities conducted by other nonprofit organizations throughout the school year – is premised upon these sincerely held religious beliefs.

19. By accessing the Defendants' flyer forum and promoting activities offered to the community by nonprofit organizations, Ms. Regan aims to provide friendly outreach and support to District students and their parents, including those to whom no one is reaching with the good news of the Gospel of Jesus Christ.

#### **IV. IDENTIFICATION OF THE DEFENDANTS**

20. Defendant Hudson School District (“District”) is a separate and distinct political subdivision of the State of New Hampshire and is legally organized as a municipal corporation by the State.

21. The District may sue and be sued in its corporate name.

22. The District is charged with the administration and operation of Nottingham West Elementary School (“NWES”), and all other schools under its jurisdiction.

23. The District bears responsibility for the enactment, enforcement, and existence of policies and practices related to the distribution of flyers from nonprofit organizations to students.

24. The District is responsible for the enactment of its policies and practices, outlined above, censoring religious speech.

25. Pursuant to final authority delegated by the District and codified in the challenged District Policy 7.3(b), attached hereto as Exhibit 1, the District Superintendent denied Ms. Regan’s VBS flyers based solely on their religious content and viewpoint, and thus through the actions of the District Superintendent, the District bears responsibility for the enforcement of its policies against Ms. Regan’s proposed flyers.

26. The District is additionally aware of, acquiesces in, sanctions, supports, and is deliberately indifferent to the actions of Defendant Bell in the enforcement of District Policies against Ms. Regan’s proposed flyers.

27. Defendant Randy Bell is the Superintendent of the Hudson School District.

28. Defendant Bell possesses District-delegated responsibility, final authority, and discretion as to the administration of District policies pertaining to the distribution of flyers from nonprofit organizations to students.

29. Additionally, in this capacity, Defendant Bell is responsible for the Policies and practice leading to the denial of Ms. Regan's proposed flyers for distribution.

30. Defendant Bell is also responsible for the denial of Ms. Regan's proposed flyers for distribution.

31. Defendant Bell is sued both individually and in his official capacity as District Superintendent.

## **V. STATEMENT OF FACTS**

### **The Challenged Policy and Practice of the Defendants**

32. District Policy 7.3(b) ("Policy") includes certain requirements for the distribution or display of printed informational materials and announcements sent home with students. Exhibit 1.

33. The Policy provides, in relevant part, that "[p]rinted informational materials and announcements from nonprofit community organizations must be distributed through the office of the principal." *Id.*

34. According to the Policy, materials submitted by nonprofit organizations must have the following printed disclaimer: "These materials are neither sponsored nor endorsed by Hudson School District, Hudson School Board, the Superintendent, or this school." *Id.*

35. Nonprofit community organizations must provide documentation verifying nonprofit status to the school before their printed materials can be approved for distribution. This documentation must be in the form of a copy of a letter from the Internal Revenue Service stating that the organization is considered tax exempt under Section 501(c)(3), or a copy of a notarized letter on the organization's letterhead stating that the organization is a nonprofit organization. *Id.*

36. The Policy requires that all materials be delivered to the school five days prior to the day designated for distribution and that the flyers be collated into stacks of 30. *Id.*

37. Under the Policy, any school principal “concerned that informational material or an announcement submitted for distribution or display may violate law or [Hudson School District] policy shall immediately submit a copy to the Office of the Superintendent.” *Id.*

38. The Policy also states that the Superintendent’s Office must receive “a copy of any print material distributed in the schools.” *Id.*

39. The Policy does not provide a specific time frame in which the Principal or Superintendent must grant or deny a nonprofit organization’s request to have literature distributed. *Id.*

40. The Policy contains no guidelines to assist District officials in determining whether a flyer promoting a nonprofit organization’s event or activity should be approved or denied. *Id.*

41. Pursuant to the Policy, nonprofit organizations produce flyers or other information at their own expense. *Id.*

42. The messages printed on the flyers are not discussed in class or otherwise incorporated into the instructional component of the school day.

43. Access to the Defendants’ flyer forum allows organizations to utilize a valuable communicative channel in informing parents and students about upcoming activities and meetings.

44. The following is a sample of what the Defendants allow to be distributed to students:

- a. A flyer for “Camp Invention,” sponsored by the National Inventors Hall of Fame Foundation. The flyer states that the camp program is “filled with activities that foster creativity, teamwork, and inventive-thinking skills for children . . . .”

- b. A Cub Scout Pack 20 flyer providing sign-up information for boys interested in hiking, camping, doing crafts, eating pizza, “hanging out with a bunch of other kids [their] age, or just about anything else that is fun . . . .”
- c. An Adventure Club-Adult Learning Center flyer promoting a “recreational program providing a safe and stimulating environment for school age children in neighborhood schools.” Featured program activities include: “sports, arts and crafts, games, reading, enrichment, [and] music . . . .”
- d. A Cub Scout Pack 20 flyer promoting an annual “School-Year Closing Campfire.” The flyer states that Cub Scout meetings foster values regarding “citizenship, cooperation, courage, health and fitness, honesty, respect and responsibility,” and that being involved in Cub Scouts means “meeting new friends, learning new skills, [and] having lots of fun with a purpose!” (Emphasis in original.)
- e. A flyer from the Southern New Hampshire Medical Center promoting a “Fitness University” for children ages 3 to 14. The flyer promotes a free running fitness program that culminates with “games, prizes and plenty of laughter for all,” and teaches lessons to help children “develop good healthy habits for life.”
- f. A flyer from Drama Kids International promoting weekly classes “specifically designed to build self-confidence” in children through activities and performances.

- g. A flyer from the Hudson Recreation Department promoting winter basketball registration for children. Participating children will be placed on teams and afforded an opportunity to participate in weekly practices and games. According to their website, the Hudson Recreation Department's mission is to provide citizens "with a broad range of fun, safe and affordable recreational opportunities and leisure activities to enhance the quality of life in the community."

45. The Defendants thus permit nonprofit organizations to promote their community, charitable, cultural, recreational, and education-related activities by providing printed information to students and parents.

46. Yet, pursuant to its Policy, the Defendants prohibit nonprofit organizations from addressing and promoting any of these activities from a religious perspective, as their exclusion of Ms. Regan's VBS flyer (described below) shows.

**Ms. Regan's Desired Access to the Flyer Forum**

47. The VBS activities for which Ms. Regan served as Assistant Director occurred June 23-27, 2008.

48. The theme of the VBS program was "Amazon Expedition: The Ultimate Trek Through Time."

49. The VBS activities addressed many of the same subjects and activities addressed by other nonprofit organizations given access to the District's flyer forum.

50. VBS participants sang songs; participated in drama exercises; listened to history lessons; cultivated healthy lifestyle choices; received instruction on creationism and evolutionary

theory; constructed crafts; played games; and learned about cooperation, respect, honesty, love, and self confidence – all from a religious perspective.

51. To inform District students and their parents about the VBS activities, Ms. Regan desired to utilize the same communicative channel provided by the District to other nonprofit organizations, that is, the flyer forum.

52. In seeking full access to the flyer forum, Ms. Regan, with authority to act on behalf of Calvary Bible Church (“CBC”), complied with District Policy 7.3(b) in every respect.

53. During the morning of June 12, 2008, Ms. Regan delivered her VBS flyers, collated into stacks of 30, to Peter Durso, Principal of Nottingham West Elementary School. (A true and correct copy of Ms. Regan’s VBS flyer is attached as Exhibit 2.)

54. The date on which Ms. Regan delivered the VBS flyers, June 12, 2008, was five days prior to the date of their intended distribution.

55. The flyers contained the following requisite language: “These materials are neither sponsored nor endorsed by Hudson School District, Hudson School Board, the Superintendent, or this school.”

56. Ms. Regan also gave to Principal Durso at that time documentation of the organization’s tax exempt status.

57. Ms. Regan additionally provided a copy of the VBS flyer that same morning to the Office of the Superintendent.

58. The next day, June 13, District Superintendent Randy Bell denied Ms. Regan’s VBS flyer solely because of its religious content and viewpoint.

59. Superintendent Bell also stated to Ms. Regan that he had denied written materials from other church groups and organizations in the past, and that he was “not going to have anything to do with vacation Bible schools and that stuff.”

60. In the future, Ms. Regan desires to submit flyers for distribution regarding upcoming events and activities conducted by religious nonprofit organizations which she has authority to act on behalf of, including Calvary Bible Church and an affiliate chapter of Child Evangelism Fellowship of New Hampshire, without having the flyers denied by District officials based solely on their religious content or viewpoint.

61. Calvary Bible Church (“CBC”) conducts a weekly AWANA program for which Ms. Regan would like to send home flyers through the flyer forum during the 2008-09 school year.

62. The AWANA program educates children in Biblical teachings regarding significant life skills and values, including loving and serving others within the community; taking responsibility for your actions, living a life of honesty and integrity; and cooperating with others.

63. The AWANA program will be held at the church starting the second week in September.

64. A CBC outreach program called “King’s Court” is an additional event that Ms. Regan desires to promote through the flyer forum. This program is a charitable ministry that exists to serve children in the community through basketball activities, Biblical teachings, and fellowship.

65. King’s Court educates children about teamwork, cooperation, and taking care of their bodies through exercise.

66. King’s Court will meet at the church during the 2008-09 school year.

67. Ms. Regan also desires to promote weekly after-school Good News Club meetings sponsored by a Child Evangelism Fellowship of New Hampshire (“CEF”) affiliate chapter.

68. At CEF's Good News Club meetings, children learn about Biblical principles, moral values, good character qualities, respect for authority, and making healthy, smart choices that will affect the rest of their lives. Activities include dynamic Bible lessons, creative learning activities, inspiring missionary stories, meaningful songs, and Scripture memorization.

69. The CEF chapter desires to conduct Good News Club meetings within the District during the 2008-09 school year, beginning in September.

## **VI. ALLEGATIONS OF LAW**

70. All of the acts of the Defendants, their officers, agents, employees, and servants were executed and are continuing to be executed under the color and pretense of the policies, statutes, ordinances, regulations, customs, and usages of the State of New Hampshire.

71. Ms. Regan's speech and religious expression are fully protected by the United States Constitution.

72. Denial of access to a public forum to engage in protected religious speech is a violation of the First Amendment and the Fourteenth Amendment to the United States Constitution.

73. The decision to deny Ms. Regan access to the flyer forum is a direct result of policies, practices, customs, and usages officially adopted and promulgated by the Defendants.

74. Unless and until the Defendants' exclusion of Ms. Regan from the flyer forum is enjoined, Ms. Regan will suffer and continue to suffer irreparable harm to her federal constitutional rights.

75. Ms. Regan has no adequate or speedy remedy at law to correct or redress the deprivation of her rights by the Defendants.

**FIRST CAUSE OF ACTION: VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH  
UNDER THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

76. Ms. Regan re-alleges and incorporates herein, as though fully set forth, all previous paragraphs of this Complaint.

77. The Defendants have, by Policy and practice, created a public forum by opening the flyer forum for use by a variety of nonprofit community organizations to promote cultural, community, charitable, recreational, and education-related activities.

78. These organizations include, but are not limited to, Drama Kids International; Cub Scouts; National Inventors Hall of Fame; Adult Learning Center; Hudson United Soccer Club; Hudson Recreation Department, and the Southern New Hampshire Medical Center.

79. Ms. Regan's proposed flyers promote similar educational, cultural, charitable, community, and recreational activities, albeit from a religious perspective, but she is barred from distributing her flyers through the flyer program.

80. The Defendants permit other nonprofit community organizations access to the flyer forum, while excluding Ms. Regan, for no other reason than the religious content and viewpoint of Ms. Regan's flyers and religious meetings and activities.

81. This unequal treatment of Ms. Regan premised on her religious speech or activities is a content-based restriction in an otherwise open forum.

82. The Defendants' denial of Ms. Regan's religious speech while permitting other secular speech also constitutes viewpoint discrimination.

83. Such viewpoint discrimination is unconstitutional in any type of forum.

84. The Defendants' Policies and practice also impose an unconstitutional prior restraint because they vest District officials with the unbridled discretion to permit or refuse protected speech equal access to the forum.

85. The Defendants' Policies also allow District officials to act with unbridled discretion when deciding if a nonprofit organization's literature promoting an event, activity, or instructional opportunity qualifies for distribution.

86. The Defendants' Policies and practice are additionally overbroad because they sweep within their ambit protected First Amendment rights in the form of religious expression.

87. The overbreadth of the Defendants' Policies and practice chills protected speech by discouraging individuals and groups from seeking access to the flyer forum to distribute literature promoting their events, activities, and instructional opportunities.

88. The Defendants' Policies and practice chill, deter, and restrict Ms. Regan from using District-provided communicative channels on an equal basis with others to discuss issues or to convey information that is religious in nature.

89. The Defendants are interpreting and applying their Policies to disqualify Ms. Regan from accessing equally all communicative avenues under their control and otherwise open to community groups, solely because of the religious nature of Ms. Regan's flyers and the religious content and viewpoint of her advertised meetings and activities.

90. The Defendants' Policies, both on their face and as interpreted and applied by them to prohibit equal use as requested by Ms. Regan, are not the least restrictive means necessary to serve any compelling interest.

91. Accordingly, the Defendants' Policies and practice, both facially and as-applied, violate Ms. Regan's rights to Free Speech as guaranteed by the First Amendment to the United States Constitution as incorporated and applied to state action under the Fourteenth Amendment.

WHEREFORE, Ms. Regan respectfully asks that the Court grant the declaratory and injunctive relief set forth in the Prayer for Relief.

**SECOND CAUSE OF ACTION: VIOLATION OF THE EQUAL PROTECTION CLAUSE  
OF THE FOURTEENTH AMENDMENT**

92. Ms. Regan re-alleges and incorporates herein, as though fully set forth, paragraphs 1-75 of this Complaint.

93. The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated persons equally.

94. The Defendants opened the flyer forum by permitting its use by a variety of nonprofit organizations seeking to communicate information regarding educational, cultural, charitable, community, and recreational activities.

95. The Defendants, however, have denied Ms. Regan, on behalf of her associated nonprofit organizations, equal access to the flyer forum.

96. By discriminating against the content and viewpoint of Ms. Regan's speech, the Defendants treat Ms. Regan differently than other similar situated persons on the basis of the religious content and viewpoint of her speech.

97. The Defendants' Policies and practice violate fundamental rights held by Ms. Regan, including her rights to free speech and free exercise of religion.

98. When government regulations, like the Defendants' Policies and practice challenged in this case, infringe on fundamental rights, discriminatory intent is presumed.

99. The Defendants lack a rational or compelling state interest for its disparate treatment of Ms. Regan.

100. The Defendants' denial of access to Ms. Regan is also not narrowly tailored.

101. Accordingly, the Policies and practice of the Defendants, both facially and as applied, violate Ms. Regan's right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Ms. Regan respectfully asks that the Court grant the declaratory and injunctive relief set forth in the Prayer for Relief.

**THIRD CAUSE OF ACTION: VIOLATION OF THE  
FREE EXERCISE OF RELIGION CLAUSE OF THE FIRST AMENDMENT**

102. Ms. Regan re-alleges and incorporates herein, as though fully set forth, paragraphs 1-75 of this Complaint.

103. Ms. Regan desires to engage in expressive activities described above on the basis of her sincerely held religious beliefs and to share those beliefs with others, including children attending schools within the District, as well as their parents.

104. The Defendants' Policies and practice substantially burden Ms. Regan's free exercise of religion by conditioning receipt of government benefits, such as access to the flyer forum, on foregoing her protected free exercise rights.

105. The Defendants' Policies and practice substantially burden Ms. Regan's free exercise of religion by forcing her to select between engaging in religious speech and foregoing the government benefit of equal access to the flyer forum, or foregoing the free exercise of religion so as to receive equal access.

106. The Defendants' Policies and practice substantially burden Ms. Regan's free exercise of religion by denying her permission to access all communicative channels, including the flyer forum, equally so as to promote meetings and activities of nonprofit community organizations.

107. The Defendants' Policies and practice substantially burden Ms. Regan's free exercise of religion by denying her the ability to send home informational flyers with students within the District in order to let students and their parents know about various upcoming meetings and events.

108. The Defendants' conduct constitutes the imposition of special disabilities on Ms. Regan due to her religion and to her intent to engage in religious expression through distribution of flyers.

109. These special disabilities placed on Ms. Regan are not neutral or generally applicable.

110. These special disabilities target only religious speech and exercise, and no other speech.

111. The Defendants' conduct cannot be justified by a compelling governmental interest and is not narrowly tailored to advance any such interest.

112. The Defendants' interpretation and application of its Policies chill Ms. Regan's freedom of religious discussion and exercise, both of which are fundamental rights guaranteed to her by the First Amendment.

113. The Defendants' Policies and practice, both facially and as applied, constitute an excessive burden on Ms. Regan's rights to freedom in the exercise of her religion and violate the Free Exercise Clause of the First Amendment to the United States Constitution.

WHEREFORE, Ms. Regan respectfully asks that the Court grant the declaratory and injunctive relief set forth in the Prayer for Relief.

**FOURTH CAUSE OF ACTION: VIOLATION OF THE DUE PROCESS CLAUSE  
OF THE FOURTEENTH AMENDMENT**

114. Ms. Regan re-alleges and incorporate herein, as though fully set forth, paragraphs 1-75 of this Complaint.

115. Ms. Regan sought, and continues to seek, equal access to the flyer program afforded to nonprofit organizations like Drama Kids International; Cub Scouts; National Inventors Hall of Fame; Adult Learning Center; Hudson United Soccer Club; Hudson Recreation Department; and the Southern New Hampshire Medical Center, among others.

116. Further, Ms. Regan's flyers promote cultural, charitable, community, and recreational activities similar to the above named groups and others, that fit squarely within the contours of the Defendants' flyer forum.

117. Ms. Regan followed all requisite procedures within District Policies to obtain permission to have her VBS flyers distributed.

118. Despite Ms. Regan's satisfaction of all relevant criteria, the Defendants are applying their Policies and practice to deny Ms. Regan equal access to the flyer forum based on her religious speech.

119. The Defendants' Policies and practice are vague and allow for unbridled discretion to grant or deny a flyer distribution request, by Ms. Regan or by other groups, for any reason or for no reason at all.

120. There are no guidelines in the Defendants' Policies on how to determine whether a proposed flyer promoting an event or activity should be approved or denied.

121. The Defendants' Policies also do not contain any time frame within which school officials must make a decision on a nonprofit organization's request to have a flyer distributed.

122. The lack of a specified time frame for decisions to be made on proposed literature imposes too great a burden on protected expression.

123. The Defendants' Policies and practice, both on their face and as as-applied, violate Ms. Regan's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Ms. Regan respectfully asks that the Court grant the declaratory and injunctive relief set forth in the Prayer for Relief.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for judgment as follows:

- a. That this Court issue a Preliminary and Permanent Injunction, restraining the Defendants, their officers, agents, employees, and all other persons acting in active concert with them from enforcing District Policy 7.3(b) to exclude Plaintiff Regan from distributing flyers through the flyer forum, thereby granting Ms. Regan equal access to the forum;
- b. That this Court render a Declaratory Judgement declaring as unconstitutional, both facially and as-applied, District Policy 7.3(b) that bars Ms. Regan from distributing flyers to students through the flyer forum and from receiving equal access to all channels of communication afforded to nonprofit organizations;
- c. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment;
- d. That this Court retain jurisdiction of this matter for the purpose of enforcing any Orders;
- e. That the Court award Plaintiff's costs and expenses of this action, including a reasonable attorneys' fees award, in accordance with 42 U.S.C. §§ 1988.
- f. That this Court award damages for the violation of Ms. Regan's constitutional rights;
- g. That this Court issue the requested injunctive relief without a condition of bond or other security being required of Ms. Regan; and
- h. That the Court grant such other and further relief as the Court deems equitable and just in the circumstances.

Respectfully submitted this 21<sup>st</sup> day of July, 2008.

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\*Motion for admission *pro hac vice* forthcoming

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**VERIFICATION**

I, Patricia Regan, a citizen of the United States and a resident of the State of New Hampshire, have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of July, 2008 in Hudson, New Hampshire.

Patricia Regan  
Patricia Regan