NO: CV 07 4006100 : SUPERIOR COURT

PRATT, JOHN M., ET AL : JUDICIAL DISTRICT OF LITCHFIELD

VS. : AT LITCHFIELD

BOARD OF EDUCATION, REGIONAL
SCHOOL DISTRICT NO. 14 : MARCH 30, 2009

PLAINTIFF'S POST-TRIAL BRIEF

I. FACTS:

A. Stipulated Facts: Many of the material facts of this case were agreed upon and submitted to the Court at the start of the trial in the form of a written Stipulation executed by both counsel. The plaintiff incorporates the Stipulation of Facts by reference into this first section of this brief, and makes it a part hereof.

Particularly relevant to the plaintiff's claims are Stipulated Facts #12 - #20. These facts pertain to the issuance of the Final Report of the 1968 Study Committee, the submission of the Final Report to the State Board of Education, State approval of it, the mailing of it to all postal box holders in the two towns, and the fact that a plurality of the voters in each town approved The Plan for regionalization. The Plan was admitted in evidence as Exhibit #2.

Page 1 of the Final Report, that was mailed to all box holders in both towns in anticipation of their votes, sets forth in **bold-face print** the recommendations of the Study

Committee. The recommendations include, but are not limited to, the recommendations "…….That the towns of Bethlehem and Woodbury join to form a regional school district to include grades kindergarten through twelve. (Query: could the defendant amend this element without a plurality vote in each town?)

…….. That grades kindergarten through twelve be divided into elementary schools (grades K through 5), a middle school (grades 6 through 8), and a high school (grades 9 through 12).

…….That grades K through 5 be housed in the elementary school buildings in Bethlehem and Woodbury

B. Material Facts Established at Trial: In addition to the Stipulated Facts, a one-day trial was conducted on June 6, 2008. Three witnesses testified:

I. Dr. Robert Cronin, Superintendent of Schools for Region 14.

ii. Mrs. Susan Scherff, a named plaintiff in this case, resident of the Town of Bethlehem, and mother of two (2) elementary school children; and,

iii. Mrs. Erica Barber, a resident of the Town of Woodbury (since moved to Newtown, CT to avoid the impact of Reconfiguration on her family) and President of a Political Action Committee (PAC) named "Save Region 14 Elementary".

Exhibits: Eleven (11) exhibits, previously admitted at the hearing on a temporary injunction, were made full exhibits at the trial of this case by agreement of counsel. The Regional Plan of Education, ("The Plan") was admitted in evidence as Plaintiff's Exhibit #2.

Also, Plaintiff's Exhibit #15, a one-page document, was admitted during the trial, which is captioned "Region 14 Proposed Reconfiguration...A Message From Dr. Cronin", (hereinafter, "Message from Dr. Cronin") which is a printed copy of an electronic message that was posted and circulated on the Region 14 official website. This message was posted fewer than twelve (12) days before the now infamous BOE meeting. It was grossly misleading in that it falsely claimed that there would be "discussion" about reconfiguration; and never mentioned the vote .

Dr. Cronin's Testimony: At trial, Dr. Cronin testified that he was hired as the Superintendent of Region 14 in July, 2006 (T-15). He defined his role as Superintendent as essentially the "CEO" of the Region (T-15). After he was hired in July of 2006 he had an opportunity to read "The Plan" (T-18). He testified that on or about October 4, 2006, approximately two months after he was hired, Dr. Cronin recommended to the Board of Education an amendment to the "The Plan", which he called "Reconfiguration".

"Reconfiguration" as defined in Dr. Cronin, "Message" (Exhibit 15) was in fact the elimination of the two (2) K-5 elementary schools in Woodbury (Mitchell School) and Bethlehem (Bethlehem Elementary School), and the establishment of two new and dramatically different schools, i.e. Bethlehem Primary School, encompassing grades K-2; and Mitchell Intermediate School encompassing grades 3-5 (see Exhibit 15).

The two (2) new schools are not only different in name and grade composition, but have

new and different teachers, new and different schedules, new students from different towns, require at least 36 new, additional bus runs per day, and came with a host of new and unanticipated administrative problems.

Dr. Cronin testified that “Reconfiguration” was a “significant change” (to the plan) (T-27). (When asked if Reconfiguration was a “fundamental” change, his lawyer objected).

The Plan clearly states in **bold print**, on page one, that there would be a K-5 elementary school in each town. For forty (40) years the children of both towns spent the first six years of their schooling at their hometown elementary schools and were educated in accordance with “The Plan”, until the defendant amended the plan and closed down those elementary schools, beginning with the 2007 - 2008 school year.

Since the inception of Region 14, the two towns routinely adjusted the boundary line that defined which elementary school students in the Region would attend the Bethlehem school and which students in the Region would attend the Woodbury school. “The Plan” at page 2, has a map of the two towns showing the imaginary line (dotted), which has moved from time to time, depending on the demographics of the two towns, so that the population in each elementary school can be adjusted according to the population changes in each town.

The members of the 1968 Study Committee, i.e. the founders of Region 14, contemplated population growth and demographic changes when they established the Region,

and this imaginary line was designed to move to accommodate any such changes, while still retaining a K-5 elementary school in each town. Dr. Cronin admitted this. (T- 30-37). "The Plan" not only required a K-5 elementary school in each town, but it also made provisions that were designed to maintain this structure by creating the imaginary line, so that as the populations grew, the Board of Education could adjust the populations of the two elementary schools without having to amend the plan.

According to Dr. Cronin, the primary purpose of Reconfiguration was to ease a perceived "overcrowding" at the Mitchell Elementary School. (See: Dr. Cronin's testimony at T- 47-48). According to Dr. Cronin, at the height of what the defendant perceived to be "overcrowding", there were approximately 644 students in attendance at Mitchell School. T-59. The original 1968 Study Committee listed the projected enrollment statistics for the years 1968 - 1973 at page 5 of "The Plan". See: Exhibit 2, page 5. The enrollment forecasts for 1968 to 1973 varied between 635 and 660 students at the Mitchell School. These enrollment forecasts are in evidence (Exhibit 2, page 5) in this case, at page 5 of the plan. Thus, it is unclear that the "overcrowding" perceived by the defendant (at 644 students in Mitchell School) even existed.

The closing down of the two elementary schools and establishment of the new Primary School in Bethlehem, and the new Intermediate School in Woodbury resulted in the addition of an additional "tier" of busing, such that the Region's school buses now run three times each

morning and three times each afternoon, rather than twice. As a result of reconfiguration, the total number of school bus runs jumped from 36 to 54 each morning and each afternoon. (T-68). One consequence being at least four thousand (4000) more miles per week that the children ride.

It was uncontroverted at trial that another consequence of reconfiguration is that several hundred elementary age children are now bused out of their hometown to attend school each day. (T-65-68).

The instructional time for all students (grades K-12) in Region 14 was slashed to accommodate the Reconfiguration. At the High School level, the children are losing nearly an entire hour of class time each week as a result. At least this much class time was also taken away from the elementary and middle school grades. (T-84-85).

"Reconfiguration" also results in at least eight hundred and ten (810) more miles of busing *each day* that the children of Region 14 must travel to and from school (T- 140). Thus the Region's buses are traveling in excess of four thousand (4000) *more* miles per week, yet the children are losing approximately an hour of instructional time each week, despite all this additional busing.

As Dr. Cronin testified, Reconfiguration certainly does equate to a "significant" change.

<u>Named Plaintiff Susan Scherf's Testimony</u>:

The parties stipulated that Susan Scherf (and plaintiff John Pratt) are residents and

taxpayers in the Town of Bethlehem, and that the defendant amended the Plan and expended taxpayer funds without affording Pratt or Scherf a vote in accordance with Conn. Gen. Stat. 10-47© (or 10-56 for that matter).

Named plaintiff, Mrs. Susan Scherf, testified that she and her husband moved from the Catskills to the Town of Bethlehem, and that their decision to move to Bethlehem was related to their son's medical condition, (Type I Diabetes). Ms. Scherf has two (2) elementary age children, her daughter, Claire, age 9, and her son, Leo, age 7. Ms. Scherf testified about Leo's inability to ride a school bus for 45 minutes (about the time it would take to get him to and from school under the new plan) without a doctor or his mother present (T- 98 -99). Ms. Scherf went on to describe her need to live within close proximity of her son's elementary school, and why this proximity is necessary to monitor and attend to her son's medical condition. (T - 97 - 100).

It was uncontroverted that the Reconfiguration will result in Ms. Scherf's child having to leave his local school by the third grade, and be bused out of his hometown. Ms. Scherf went on to testify that no provisions have been made for her son, notwithstanding the school's apparent knowledge of his medical condition.

Moreover, and contrary to the defendant's representations about having stopped using the new school names, Mrs. Scherf also testified that, as of a week before the trial, she received a

notice from her son's school on which it stated the name of the school as "Bethlehem *Primary* School". (T-119) [emphasis added]. However, in the Stipulated Facts at paragraph 29, the parties stipulated that the defendant, for a period of time, (after it decided to reconfigure the schools) referred to the new schools it created at Bethlehem Primary School and Mitchell Intermediate School (Stipulated Fact #29) and that the defendant subsequently stopped using those names, and reverted back to the original names, (presumably because the public was upset over the fact that the defendant had closed down the two Elementary schools in the region, and replaced them with two new schools, i.e. a "Primary" school and an "Intermediate" school).

The defendant claimed, at the time that the "Stipulated Facts" were created, to have stopped the practice of calling the new schools "Primary" and "Intermediate" and reverted to the term "Elementary" schools. However, according to the plaintiff's (Scherf's) unrefuted testimony, the defendant was still referring to the Bethlehem school as a "Primary" school. (T - 119), as of a week before the trial.

The Plan, of course, never established any "Primary" or "Intermediate" schools in Region 14. Not one single voter, in either of the two towns, ever voted to have a "Primary" school or "Intermediate" school in Region 14. The only schools approved by the voters were grades K-5 elementary schools in each of the two towns.

Testimony of Mrs. Erica Barber:

The plaintiffs called Mrs. Erica Barber as their last witness. Mrs. Barber testified that she is the President of a registered Political Action Committee (PAC) called Families For Region 14. She further testified that her husband, Attorney William Barber was a member of the defendant's transportation committee (which was established to study the impact of the reconfiguration on busing), and that the PAC kept records that pertained to the issue of school busing. Mrs. Barber testified that the school buses in Region 14 travel in excess of eight hundred (800) more miles per day (more than 4000 more miles per week) in order to accommodate reconfiguration.

II. LAW & ARGUMENT:

A. Common Sense:

Common sense informs us that the defendant did not have the legal authority to amend The Plan to the extent of eliminating two (2) of the four (4) schools in Region 14, and establishing two new and different schools, without a plurality vote in both towns. Our jurisprudence has long relied on "Common Sense" (the term is widely used in our case law) as the justification for judicial decisions at all levels. Black's Law Dictionary, Sixth Ed., actually devotes several lines to defining "Common Sense", for anyone in need of a formal definition of this term.

In the case at bar, the defendant's claim that it was permissible for it to amend The Plan,

by closing down the two elementary schools, and to then establish two new schools, without the approval of a plurality of the voters in the two towns, flies in the face of common sense. Moreover, for the defendant to claim that since no vote was held in accordance with CGS 10-47(c), no individual voter's rights were cut-off or diluted, is simply nonsense.

Region 14 was established *c*. 1968. As established, The Region consisted of four (4) schools: A High School, a Middle School and two (2) Elementary Schools: Mitchell Elementary School and Bethlehem Elementary School (each comprising grades K-5 for their respective towns). These four schools operated together to form Region 14, and remained operational for nearly forty (40) years.

The two elementary schools no longer exist. The defendant eliminated these schools; and moved all of their student populations out of the towns in which they lived for three (3) of the six (6) most tender years. The defendant also moved these two schools' teachers to the new schools it created. The defendant, by its actions, also added an additional school that all of the children in the region must attend; causing them to change schools (and move between towns) between the second and third grade, and thereby created a significant disruption in routine and continuity, and imposed another transition on all of the youngest children in Region 14.

Perhaps the most significant reason why the defendant's actions (and its position in this case) flies in the face of common sense is due to the inherent contradictions at the heart of the

defendant's case. The defendant repeatedly (at the hearing on the temporary injunction, and again throughout the trial) took the position that mere educational decisions fall within the defendant's authority (as though that is all this amounts to!). It took the position that busing matters are up to the defendant, and don't require a vote. It argued that it doesn't matter where in the region Johnny or Suzy gets schooled, as long a they get at least the minimum requirements mandated by the State, that slashing class time, disrupting routines and creating transitions are all decisions that IT has the power to make.

These arguments are inviting, but they are not availing. The problem with this logic and with all of these arguments, is that they tactfully avoid the "big picture" and are nothing but half-truths when applied to the facts of this case. The **whole truth** is that these points about the defendant's authority are nothing more than some of the *mere consequences*, the fallout, of the defendant's over-arching act, i.e. the illegal exercise of power in amending the Plan in the fundamental and/or significant manner that it did.

These consequences, for example, the extra 4000 miles of busing each week, although devastating to the parents, children and environment, *could* be found to be within the scope of the defendant's authority....So, if the defendant simply wanted to add another 4000 miles of bus runs, or make the littlest children wake up an hour earlier, it very well may have had the power to do these things. That is simply not the equivalent of saying that the defendant had the power to

bring about these changes by way of consequences of an illegal amendment to the Plan. Whereas the defendant may or may not have exceeded the scope of its authority in merely changing a start-time here or dismissal time there, etc, it certainly exceeded its authority in making the drastic amendment to the plan. And, it just so happens that some of the consequences of that action, i.e. some of the changes needed to support that amendment to the plan, may fall within the scope of the defendant's authority.

Whereas this Court may agree with the defendant about its authority with respect to some of the consequences of its actions, that does not equate to a blessing, or carte blanche for this defendant to have implemented these (possibly permissible) changes for the purpose of implementing an overarching, illegal scheme. Failing to enjoin the defendant's actions on the basis that some of the *mere consequences* of that action may have fallen within the scope of its authority, requires this Court to place the cart squarely before the horse-- and that makes no common sense.

The Plan clearly established and required two (2) elementary schools (unambiguously defined in the Plan as K-5 elementary schools) in Region 14, as part of regionalization. The Plan never authorized any "Primary" school; and it never authorized any "Intermediate" school.

The case of Atwood v. Regional Board No. 15, 169 Conn. 613 (1975) will be discussed in greater detail later in this brief; however, it certainly warrants mentioning at this time that, unlike

what the defendant in the instant matter has done, the defendant in the Atwood case never eliminated any schools and never established any new schools. This factual distinction is so material to this dispute-- it may very well be at the heart of it.

Rather, in Atwood, Region 15's High School was simply moved from one place to another. In Atwood, Region 15 still *had* a *High School* for grades 9-12 at the end of the day. The same cannot be said for Region 14's *two* Elementary Schools. One can certainly speculate what the outcome of the Atwood case would have been if, instead of building a new high school, the defendant took all of the 9th and 10th graders in the region and moved them into one of the grammar schools, and then placed all of the 11th and 12th graders in the region into the middle school, shifted the teachers around and changed the start times for the High Schoolers!

The undersigned lawyer for the plaintiff would strongly suggest that would not have passed muster in our Supreme Court; and these examples are much more analogous to what the defendant in the instant matter has done.

Moreover, in Region 12 (The Bridgewater case) all of the children in that region still attend a K-5 Elementary School-- granted, it is at a new, central location, but the classical institution of a K-5 Elementary School, as defined in Region 12's Plan, was still retained in that region. Again, the same cannot be said for Region 14's Elementary schools, which now cease to exist; having been replaced with new schools that bear little, if any resemblance to what the

voters in each town elected to have for their children back in 1968.

Page 1 of The Plan for Region 14 sets forth the recommendations of the Study Committee-- which were the foundational, that is *fundamental,* requirements of Regionalization in Woodbury and Bethlehem. The document explained in *fundamental language* what a vote in favor of Regionalization meant, in the most basic (*fundamental*) sense. The document informed the voters of exactly what they were getting, and what they were giving up, if they voted for and approved regionalization by a plurality vote in each of the towns. In fact, the first of the eight basic (fundamental) elements of The Plan states ".....That the towns of Bethlehem and Woodbury join to form a regional school district to include grades kindergarten through twelve." The second, basic (*fundamental),* element of what a vote in favor of regionalization meant in practicality, states precisely: "......That grades kindergarten through twelve be divided into elementary school (grades K through 5), a middle school (grades 6 through 8) and a high school (grades 9 through 12). And, if this element was not clear enough, the third *fundamental* element that required the voters' approval states: "......That grades K through 5 be housed in the elementary school buildings in Bethlehem and Woodbury".

By its actions, the defendant significantly changed (basically erased) the second and third foundational/fundamental elements of Region 14's Plan. If the defendant can accomplish *this much change,* and its impose this much power upon the townspeople without their vote, and

without any regard for the plain language in Conn. Gen. Stats. Section 10-47(c), then it logically follows that the defendant would be similarly protected if it decided to deport *all* of the children living in Woodbury to school in Bethlehem, and all of the children living in Bethlehem to school in Woodbury. Or, if it one day believed that some benefit would result if the children rode the buses and attended schools with different age groups, the defendant could just as easily reconfigure the region again so that grades Kindergarten, 3rd, 6th, 9th and 12th were in one building; grades 1st, 4th, 7th and 10th in another building, and so forth. Or, the defendant could decide to put all the boys in Woodbury and all the girls in Bethlehem, or vice versa. There are any number of other configurations that could be supplied for illustrative purposes, but the point is simple: The statutory scheme set forth in Part III, Chapter 164, including but not limited to CGS 10-43, 10-45 and 10-47c, does not vest the defendant with such powers, and if the defendant is not vested with these powers, then it is also without the power to do what it has.

The argument that the electoral process could protect these plaintiffs (or the rest of the townspeople) from such abuses is unavailing. By the time of the next election, the irreparable harm is already done, and the harm to the children, who lose a few years of proper schooling, is irreparable. Prevention of such abuses of power is exactly why CGS 10-47c was enacted. It is just as unavailing to claim that the defendant would *never* mix up the grades or divide up the sexes or flip-flop the towns as suggested in the examples above. There are, undoubtedly

thousands of people in Region 14 who *never* imagined that this reconfiguration scheme would have occurred.

The plaintiffs would submit that what was created by a plurality vote in each town cannot be undone without such a vote. This is not only common sense, but its also mandated by law: Reading CGS 10-43, 10-45 and 10-47© together as part of a comprehensive body of law makes this quite apparent. The obvious truth that this case is factually and legally distinguishable from the Atwood case (in very material ways) is also common sense. The Atwood case does not, by any stretch, conclusively overrule CGS 10-47c. The black-letter law of this State is that statutes are to be "construed according to the commonly approved usage of the language (CGS 1-1(a)) and the meaning of a statute "shall...be ascertained from the text itself and its relationship to other Statutes". (CGS 1-2z).

B. Equity and Clean Hands:

It was apparent the trial that the defendant acted in bad faith by concealing its "reconfiguration" plan from the plaintiffs (and all the townspeople) so that they would have no opportunity to file suit to restrain the defendant until after its plan was approved.

The defendant would have this Court believe that it had the absolute power to do these things (make drastic amendments to a regional plan of education, close down schools, establish new ones, mix up grades, etc) without a CGS 10-47c vote, and without even providing notice to

the townspeople in advance. See: Exhibit 15, which clearly establishes that fewer than twelve days (sometime after October 4, 2006) before the defendant decided to reconfigure the schools, Dr. Cronin sent the misleading electronic message, falsely advising the townspeople that there was only going to be a discussion about a proposal to Reconfigure at the October 16, 2006 meeting. This "electronic message" was a grossly misleading characterization of the defendant's true intentions for the October 16, 2006 meeting. Why?

Then, Please See Exhibit 5, which was the October 13, 2006 official notice of the BOE meeting planned October 16, 2006, which notice was not even posted by the defendant with the Town Clerk until the Friday before the Monday meeting, and even then never disclosed that there would be anything other than "discussion and possible vote on Reconfiguration". Why?

It is unimaginable that the defendant did not know what it really had planned for this meeting-- (The BOE voted unanimously, and only afterward took comments from the public!)

Not only did the defendant deprive the plaintiffs (and all the townspeople) of their right to vote on a fundamental change in the Plan, but it intentionally concealed the fact that *it* was voting on this issue at the October 16th meeting. There can be no doubt that the defendant knew when it posted notice (Exhibit 5) of the BOE meeting that it was certainly going to vote on this issue, nor can there be any doubt that Dr. Cronin knew exactly what he was doing when he circulated his blatantly false and misleading "message" (Exhibit 15) fewer than twelve days earlier.

There is only one possible explanation as to why the defendant never informed the public of its true intentions for the October 16th meeting, but instead circulated the false and misleading message from Dr. Cronin, and then waited until the Friday afternoon before the Monday meeting to post notice of the meeting, and even then only hinted at what may happen: *".....possible* vote on reconfiguration..." at that meeting. The answer is simple: If the plaintiffs or the townspeople had any advance notice of what the defendant was actually plotting to do, they could have come into Court and sought a temporary injunction until the question of the defendant's authority for this action could be fully explored.

The plaintiffs, with all due respect, request that this Court take a moment now to review its own Memorandum of Decision on the temporary injunction hearing that was held in this case and filed by the Court on August 17, 2007; and that this Court does please now ponder whether or not the outcome of *that* hearing would have been different (and why) if the defendant had not concealed its true plans, and if the plaintiffs had any opportunity to file their application for injunction before the defendant went ahead with its reconfiguration, instead of after the fact.

Of course, only this Honorable Court itself can answer this question. However, all other facts being the same, the plaintiffs respectfully suggest to this Court that, based on the witnesses' testimony and this Court's own remarks in its decision on the temporary injunction, the outcome most certainly would have been different--- for the obvious reasons that this is a CGS 10-47c

question, and because the facts and the law of this case <u>are</u> materially different than in the <u>Atwood</u> case and the <u>Bridgewater</u> case; and also because the *excuse* relied on by the defendant at the injunction hearing, i.e., that the reconfiguration was already in effect and it was two weeks before the start of school, would not have been available to the defendant.

Realistically, a lot of water has flowed under the proverbial bridge since then, **but the law has not changed**. And, if this Court concludes that it would not have permitted the defendant's actions at the temporary injunction hearing if no reconfiguration had been implemented, and nobody cried about the crisis on the first day of school, then the EXACT SAME LEGAL REASONS should be applied now to rectify this harm.

It is not only ironic, but actually quite outrageous, that it was the defendant that stood before this Court on August 13, 2007, at the temporary injunction hearing, and pleaded with this Court that a "balancing of equities" must inform the Court's decision......and it was the defendant who put on its witnesses, Hubblebank and Cronin, to testify all about the plans that they had already implemented, and all about what a hardship it would be if an injunction entered and how it would cause such upheaval and disruption two weeks before school began, and how the children would miss the first day, etc., etc (Transcript of August 13, 2007).

Now the truth has come out, (<u>Please See</u> Exhibits #5 and #15): And the truth is that it was the defendant all along who created the problem in the first place, by concealing its plan to

vote in its reconfiguration plan, and thereby self-imposed the very hardship that it so artfully claimed was being imposed by the plaintiffs, when they sought the protection of *this Court* from irreparable harm. This was the ultimate deception. It is the epitome of "unclean hands".

The injunction requested by the plaintiffs in this case is still an equitable (and legal) remedy. The plaintiffs would submit that if this Court finds that Exhibits #5 and/or #15 were misleading, then it must also draw the conclusion that the defendant comes to this Court with unclean hands; that the hardships complained of at the Injunction hearing were self-imposed; and that the great weight of the equities in this case falls squarely on the plaintiff's side of the justice scale. That the defendant knowingly and deceptively failed to give the public reasonable notice or any fair opportunity to enjoin or object to its plan prior to implementation, is obvious and well-proven in the record of this case.

C. "Fundamental" Change:

The defendant's actions "directly affect the voting rights of each individual elector" Atwood at 623. Each and every voter was denied his/her right to vote on a *fundamental* change to the Plan. . . The plaintiff would submit that it is evidently "**Fundamental**" because:

* Two (2) of the eight (8) basic elements of the Plan were eliminated.
* Two of the four schools in the regions were closed down.
* Two new schools (never even contemplated in The Plan) were established.

* Several hundred very young children (in fact, *all* of the very young children) in the region are now bused out of their towns for three consecutive, tender, years.

* Instructional time has been slashed significantly at all grade levels.

* Bus runs are up from 36 to 54 each morning and each afternoon.

* Start times and end times dramatically changed at all grade levels.

* Two school were re-named (even accepting the defendant's testimony that they changed the names back at a later date, over the testimony of the plaintiff, Scherff who was still receiving notices from "Bethlehem Primary School" as of a week before the trial.

* Four thousand (4000+) more miles of busing per week.
* Increased safety risks for parents and children.

* Substantially increased time getting to and from schools and onto and off buses at all elementary grade levels.

* Superintendent testified that change is "significant"....defendant objects when asked if Reconfiguration was a 'fundamental' change.......

"Fundamental?" Yes. Clearly for all of the above reasons, but especially because this action amounted to a complete "dilution" of <u>all</u> voters' rights on a CGS 10-47c Plan Amendment-- so diluted to the point that their right to vote at all was non-existent!.

Not a single one of the asterisk (*) marked factors listed above was at issue in the <u>Atwood</u> case. At the trial court level, the plaintiffs in <u>Atwood</u> merely sought a determination

whether the 10-56 referendum "resulted in an authorization.....to issue bonds and notes....".
Only later, on appeal, did they raise the issue "whether the referendum required a majority vote...pursuant to CGS 10-56, or a majority vote of each town, pursuant to 10-47c" (Atwood @ 614, both quotes).

While implicitly recognizing that replacing one high school building with a new high school building (in the same town) was a change, the Atwood Court found that this was not a significant or "fundamental" change to the region 15 Plan. It is at this key intersection that the facts of the Atwood case are so materially divergent from the facts in the instant matter.

As stated above, at the trial court level, the plaintiffs in Atwood were seeking to determine the CGS 10-56 bonding issue. On appeal, it appears that the appellants in Atwood decided to throw a 10-47c argument against the proverbial wall, to see if maybe that would stick. The Supreme Court was therefore compelled to address the argument, and it did; but the 10-47c issues were tangential, at best, to the holding in the Atwood case. Thus the language in Atwood that relates to CGS 10-47c, is really nothing more than dicta. It was not a necessary component of the holding.... And, the legal issue in Atwood could have been decided without any reference at all to CGS 10-47c. After all, Region 15 was merely replacing one high school building with another, and the referendum that was held was done in accordance with CGS 10-56. In the instant matter, there is NO 10-56 issue at all!

In stark contrast, amending (eliminating two of the eight) basic elements of Region 14's Plan, with all of the attendant changes and all of the impact, is "fundamental".

D. Voter's Rights:

The defendant illegally devised a plan to cut off voter's rights because it was apparent that if the voters were afforded their right to vote, the reconfiguration plan would not pass.

In the case at bar, it is common knowledge that, (and was testified to by the defendant at the temporary injunction hearing on August 13, 2007) that prior to devising its reconfiguration scheme, the defendant had attempted to renovate the Mitchell Elementary School, and did put *that* issue before the voters of Region 14, and held a referendum pursuant to CGS 10-56. It is also common knowledge that this 10-56 referendum was defeated. (Transcript from hearing on Temporary Injunction, August 13, 2007, pages 13 & 19).

Prior to holding that referendum, the defendant had expended money for architects, and spent time and effort studying the renovation plan, and putting their favored plan to a region-wide (10-56) vote. The defendant was, undoubtedly, enthusiastic about its initial plan for renovation of the Mitchell Elementary School. The defendant, BOE, was, undoubtedly disappointed and frustrated when that vote failed.

Rather than make any amendments to their construction plans and try another referendum, they adopted an attitude that can only be described as "If-you-don't-want-to-pass-

our-renovation-plan-then-we'll fix you!". The sensible (and legal) thing to do would have been to have their architects make a few cuts to their Cadillac-like renovation plans and try to pass a Buick-like plan instead.

Instead, they summarily scrapped all of their architects' work and all of their time and effort surrounding the whole idea of renovating the Mitchell School, and devised the reconfiguration scheme. The evidence strongly suggests that the feasibility of "Reconfiguration" was never studied in Region 14. It was recommended by a brand-new CEO, who was just hired two months earlier. (T - 19-22, testimony of Cronin).

However, the defendant, Board of Education, certainly had enough reason to believe that such a scheme, and such a fundamental change to the Plan WOULD NEVER PASS BY A PLURALITY VOTE IN EACH TOWN, so they just plain decided not to hold a vote. Instead, they artfully concealed their plan, as proven by Exhibits #5 and #15, until the last possible minute, and then just went into executive session and passed it themselves.

For sure, one way to guarantee that an 'election' comes out the way you want it to, is to not have the election at all. Ever since 1918, Dictators around the world have effectively utilized these very same tactics to maintain power and to control the outcome of events-- by cutting off people's right to vote. After all, why hold an election that you know that you can't win! Of course, the only problem with this logic, is that we happen to live in one of the original

thirteen colonies of the U.S.A., not Darfur.

Article Six of the Connecticut Constitution guarantees the right to vote. This right cannot be cut-off or diluted by an elected board as to individual town matters. CGS 10-47c guarantees that a regional plan of education, passed by a plurality of voters in all towns in the region will not be changed, and certainly not "significantly" changed, to use Dr. Cronin's term, without also having the approval of a plurality of voters in each town. CGS 10-47c is NOT overruled by the Atwood case, nor is it an insular body of law. It is part of a harmonious and consistent body of law, a Statutory Scheme set forth in Chapter 164, Part III, of the CGS, that our legislature painstakingly spent nearly twenty (20) years perfecting.

Since 1951, Part III of Title 10 of the Statutes has guaranteed to the voters of member towns a clear, unambiguous right to vote on five (5) pivotal questions pertaining to regional school districts: whether to become a member of a district (the first fundamental element of Region 14's plan); to add or subtract grades, *to amend an education plan*; to withdraw from a district; or to reapportion a regional board. CGS 10-43 & 10-45; 10-47b; 10-47c; 10-63a, c & n. [emphasis supplied].

These important issues of local, individual town autonomy are in stark contrast to the financial issues of a District, which are voted upon by a whole district. CGS 10-56 On fiscal matters, a larger town may overwhelm a smaller town, but NOT on any of the five (5) matters

that the legislature specifically carved out and reserved for local control.

The law of this State requires that the injunction be granted unless and until the defendant amends the plan accordance with Section 10-47c. No law of this State grants the defendant the absolute power to accomplish what it has without any vote! Powers that are not specifically granted to the government, are reserved for the people. Atwood certainly does not bestow upon this defendant any such specific powers, neither does Conn. Gen. Stat. Section 10-220, and that section certainly does not grant such power when it is read in conjunction with Section 10-47c.

E. CGS Section 10-220 cannot be relied upon by this Defendant to commit an end-run around its obligations under 10-47c.

The defendant would have this Court believe that since part of its actions in this case bear a resemblance to one of the permissibilities listed in CGS 10-220 (in part, this statute allows a school board to designate which facilities will be used by the children in a region), that this is somehow conclusive as to this issue. The defendant fails to mention that "designating which children attend which facilities" is but one consequence of its actions. However, for the Court to attach any weight to this argument, this Court would also have to draw at least one of the following conclusions:

a. That the legislature was not aware of 10-47c when it passed 10-220; and\or,

b. That the legislature intended that these two statutes be construed to be in direct

contradiction with each other, and applied that way.

c. That, when applying 10-220, it is also permissible to just ignore the **bold-face** terminology contained in a regional Plan.

The defendant's argument that CGS 10-220 is dispositive as to this issue completely overlooks the fact that nowhere in CGS 10-220 does it say that it is permissible to ignore or to amend a regional plan when "designating with facilities" will be used.

According to this State's rules of Statutory construction, the only interpretation of CGS 220 that is available in this case is that it would be permissible for the defendant to designate which facilities are used by the children in the region, *provided that such a designation does not violate CGS 10-47c* and/or did not require an amendment to a basic element of an educational plan, or the elimination of two (2) basic elements of a Plan, as was clearly done in our case. Accordingly, CGS 10-220 does not swoop down from heaven to save the day for this defendant.

Section 10-220 cannot be read or applied in such a way as to overrule or abrogate a cohesive, comprehensive body of law of which 10-47c is an integral part. Nor can this isolated language in CGS 10-220 it be used as an excuse for the defendant to violate Article Sixth of the Connecticut Constitution, and do an end-run around the peoples' right to vote on a "significant" amendment to the Plan that they approved. The meaning of a statute shall be "ascertained from

the text...*and its relationship to other statutes*" CGS 1-2z provides the foundation for this most basic rule of statutory construction. The defendant would have this Court simply overlook this black-letter law.

F. The defendant should not be permitted to argue that page 16 of the plan explicitly or even implicitly authorizes its conduct:

The plaintiffs offered the testimony of Dr. Theodore H. Martland, who was the Chairman of the Original 1968 Study Committee, the author of the basic elements of the plan, and the first Superintendent of the Region. Dr. Martland was prepared to testify as to the interrelationship between page 16 of the plan and page 1. The defendant objected! Dr. Martland, in his capacity as Chairman of the Study Committee, was prepared to testify as to what the study committee contemplated and what it intended. The defendant objected! Dr. Martland was present in Court on the day of trial, and this lawyer filed an offer of proof and a sworn affidavit outlining Dr. Martland's testimony. The defendant objected! The defendant, of course, does not want the truth to come out as to the true relationship between pages 16 and 1. Nor does the defendant want to hear where the language on page 16 was derived from, or why the Study Committee inserted it into the Plan.

Now, the defendant asks this Court to speculate about this relationship, speculate about the intent of the drafters, and speculate about the meaning of language that a ready, willing and

able witness could have answered conclusively. This Court should not hear any argument from the defendant on these issues. Moreover, it is obvious that the language on page 16 could be (a) read to support the plaintiff's position, or (b) read to support the defendant's position, or (c) read in such a way that it has no bearing on this case at all.

In any event, and regardless of how anyone may now speculate as to the meaning of page 16, or speculate about its relationship to page 1, one thing is certain: There is no way that the defendant can credibly argue that the language on page 16 can be read or applied in such a way that it trumps a clear mandate of the Connecticut General Statutes; i.e. 10-47c.

WHEREFORE, the foregoing reasons, the plaintiffs respectfully request that this Court order temporary and permanent injunctive relief, as more particularly set forth in the Plaintiff's Prayers for Relief in the Second Amended Verified Complaint dated July 27, 2006, and that this Court enter Declaratory Judgments, as was also more particularly prayed for in the Prayer for Relief in the Second Amended Verified Complaint dated July 27, 2006.

RESPECTFULLY SUBMITTED

BY:________________________________
ROBERT S. KOLESNIK, Jr.
PLAINTIFFS' LAWYER

CERTIFICATION

I hereby certify that a copy of the foregoing has been sent via fax and/or E-mail and also be US Mail, first class to Mark J. Sommaruga, Esq., 646 Prospect Ave, Hartford, CT 06105, fax 860-233-0516 and email: msommaruga@sscc-law.com

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Robert S. Kolesnik, Jr.
Commissioner of the Superior Court