

William L. Chapman
wchapman@orr-reno.com
Direct Dial 603.223.9107
Direct Fax 603.223.9007

Orr&Reno
Professional Association

One Eagle Square, P.O. Box 3550
Concord, NH 03302-3550
Telephone 603.224.2381
Facsimile 603.224.2318
www.orr-reno.com

April 25, 2011

VIA HAND DELIVERY

Eileen Fox, Clerk
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

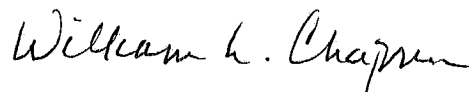
Re: *Union Leader Corporation v. New Hampshire Retirement System*
Docket No. 2010-0784

Dear Clerk Fox:

Enclosed for filing in this appeal are an original and eight (8) copies of Motion of *Amicus Curiae* of New England First Amendment Coalition to File Brief In Support of Union Leader Corporation, together with an original and eight (8) copies of Brief of New England First Amendment Coalition *Amicus Curiae*.

Thank you for your assistance.

Sincerely yours,



William L. Chapman

WLC/mem
Enclosures
cc: Kathleen C. Sullivan, Esq.
Edward M. Kaplan, Esq.

757540_1.DOC

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Union Leader Corporation

v.

New Hampshire Retirement System

Case No. 2010-0784

**MOTION OF AMICUS CURIAE NEW ENGLAND FIRST AMENDMENT
COALITION TO FILE BRIEF IN SUPPORT OF UNION LEADER
CORPORATION**

NOW COMES New England First Amendment Coalition, *amicus curiae*, and pursuant to Supreme Court Rule 30 submits the within brief in support of the position of Union Leader Corporation in this appeal. New England First Amendment Coalition is authorized to represent that the New Hampshire Retirement System, through counsel, consents to the filing of this brief.

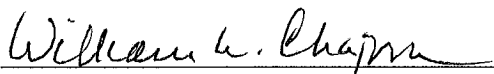
WHEREFORE, New England First Amendment Coalition respectfully requests the Court to grant this motion and such other relief as may be necessary.

Respectfully submitted,

NEW ENGLAND FIRST
AMENDMENT COALITION

By its Attorneys,

Dated: April 25, 2011

By: 
William L. Chapman, Esq. (NH Bar No. 397)
ORR & RENO, P.A.
One Eagle Square, P.O. Box 3550
Concord, NH 03302-3550
(603) 224-2381
wchapman@orr-reno.com

CERTIFICATE OF SERVICE

I, William L. Chapman, hereby certify that on this 25th day of April 2011, copies of this motion and brief have been sent by first class mail and by e-mail to Kathleen C. Sullivan and Edward M. Kaplan, counsel of record.

By: William L. Chapman
William L. Chapman

757511_1.DOC

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Case No. 2010-0784

Union Leader Corporation

v.

New Hampshire Retirement System

BRIEF OF NEW ENGLAND FIRST AMENDMENT COALITION
AMICUS CURIAE

ORR & RENO, P.A.

William L. Chapman, Esq.

N.H. Bar No. 397

wchapman@orr-reno.com

PO Box 3550

Concord NH 03302

(603) 224-2381

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
NEW HAMPSHIRE CONSTITUTION AND STATUTES	iii
STATEMENT OF INTEREST.....	1
SUMMARY OF ARGUMENT	2
ARGUMENT.....	2
I. STANDARD OF REVIEW	2
II. RSA 91-A:4,I-A REQUIRES DISCLOSURE OF THE NAMES AND PENSIONS OF THE RETIREMENT SYSTEM MEMBERS WHO RECEIVED THE 500 HIGHEST PENSIONS IN 2009.....	3
III. THE SUPERIOR COURT CORRECTLY RULED THAT RSA 91-A:5,IV DOES NOT PROHIBIT DISCLOSURE OF RETIREE NAMES AND PENSIONS	6
CONCLUSION.....	10
CERTIFICATE OF SERVICE	11

TABLE OF AUTHORITIES

<i>New Hampshire Cases:</i>	<u>Page</u>
<i>The Associated Press v. State</i> , 153 N.H. 120 (2005)	7
<i>ATV Watch v. N.H. Dep't of Res. & Econ. Dev.</i> , 155 N.H. 434 (2007).....	2, 5
<i>Gosselin v. New Hampshire Retirement System</i> , 153 N.H. 696 (2006).....	10
<i>In re Trailer and Plumbing Supplies</i> , 133 N.H. 432 (1990).....	10
<i>Mans v. Lebanon School Board</i> , 112 N.H. 160 (1972).....	Passim
<i>Prof'l. Firefighters of N.H v. Local Gov't Center, Inc.</i> , 159 N.H. 699 (2010)	Passim
<i>State Employees' Assoc. of New Hampshire v. State of New Hampshire</i> , ___ N.H. ___ (Slip Opinion April 14, 2011).....	4
<i>Union Leader Corp. v. N.H. Hous. Fin. Auth.</i> , 142 N.H. 540 (1997).....	5, 7
New Hampshire Constitution, Part 1, Article 8	3
 <i>New Hampshire Statutes:</i>	
91-A:1	iii
91-A:4	iii
91-A:4,I-a.....	Passim
91-A:5,IV	iv, 6, 9
 <i>Other Authorities:</i>	
<i>National Association of Retired Federal Employees v. Constance Horner</i> , 879 F.2d 873 (D.C. Cir. 1989).....	8, 9
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2518 (Philip Babcock Gove ed., Merriam-Webster Inc 2002)	5

NEW HAMPSHIRE CONSTITUTION AND STATUTES

NEW HAMPSHIRE CONSTITUTION

[Art.] 8. [Accountability of Magistrates and Officers; Public's Right to Know.] All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted.

NEW HAMPSHIRE STATUTES

RSA 91-A:1 Preamble. – Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.

RSA 91-A:1-a Definitions. – In this chapter:

III. "Governmental records" means any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records."

RSA 91-A:4 Minutes and Records Available for Public Inspection. –

I. Every citizen during the regular or business hours of all public bodies or agencies, and on the regular business premises of such public bodies or agencies, has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies, including minutes of meetings of the public bodies, and to copy and make memoranda or abstracts of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5. In this section, "to copy" means the reproduction of original records by whatever method, including but not limited to photography, photostatic copy, printing, or electronic or tape recording.

I-a. Records of any payment made to an employee of any public body or agency listed in RSA 91-A:1-a, VI(a)-(d), or to the employee's agent or designee, upon the resignation, discharge, or retirement of the employee, paid in addition to regular salary and accrued vacation, sick, or other leave, shall immediately be made available without alteration for public inspection. All records of payments shall be available for public inspection notwithstanding

that the matter may have been considered or acted upon in nonpublic session pursuant to RSA 91-A:3.

RSA 91-A:5 Exemptions. – The following governmental records are exempted from the provisions of this chapter:

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

757766_1.DOC

STATEMENT OF INTEREST

The New England First Amendment Coalition is a 501(c)(3) charitable organization established under Massachusetts law. In partnership with Northeastern University's New England First Amendment Center, the goal of the New England First Amendment Coalition is to promote and expand public access to the work government does. It accomplishes this, in part, by supporting individuals and organizations that seek access to governmental records.

Public access to the names of retired state employees who received the 500 highest pension payments in 2009, including the amounts they received, serves an important public interest. By its own admission the New Hampshire Retirement System ("Retirement System") is "one of New Hampshire's largest 'home grown' financial institutions" and its "annual 'payroll' of benefits to retirees is also one of the state's largest." NHRS Press Release, "New Hampshire Retirement System Keeps Its Promises." Appendix to the Brief of Appellant at 74. That large annual payroll, in part, is provided by state and local public bodies and their employees and, in turn, through tax collection.

Access to the 500 retirees and their pension payments "gives direct insight into the operations of the public body by enabling scrutiny of the ...[pensions] paid for the particular job titles." *Prof'l. Firefighters of N.H. v. Local Gov't Center, Inc.*, 159 N.H. 699, 709-710 (2010) ("Professional Firefighters") (approving disclosure of "employee names and individual salary information"). Whether a retiree was in management or the rank-in-file, knowing his or her name and pension adds to public information and sharpens public scrutiny.

SUMMARY OF ARGUMENT

The Superior Court correctly ruled that RSA 91-A:4,I-a requires disclosure of the names of the 500 Retirement System members who received the highest annual pensions in 2009 and the amounts of those pensions. Because the statute favors disclosure, the Court construes it broadly. The statute requires to be “available for public inspection” “[a]ll records of payments” to “an employee of any public body” upon “retirement of the employee.” Records of payments in 2009 to the 500 retirees fall squarely within the statute’s clearly-stated scope.

Independent of RSA 91-A:4,I-a, *Mans v. Lebanon School Board*, 112 N.H. 160 (1972)(“*Mans*”), and *Professional Firefighters* require disclosure of the 500 retiree names and pension amounts. Those cases stand for the proposition that the salaries of public employees are public and not barred from disclosure by RSA 91-A:5,IV. There is no principled reason to treat pension payments any differently: they are calculated on the basis of salary and serve, in effect, as salary continuation in retirement. Pensions, like salaries, are subsidized by money generated through tax collection, and public scrutiny of the operation of the State’s retirement system is served by disclosure of the names and pension amounts of the 500 highest beneficiaries.

ARGUMENT

I. STANDARD OF REVIEW

This appeal calls upon the Court to interpret the Right-to-Know Law, RSA ch. 91-A. The issue, therefore, “is a question of law that we review *de novo*.” *ATV Watch v. N.H. Dep't of Resources & Econ. Dev.*, 155 N.H. 434, 437 (2007). There, the Court stated:

When interpreting a statute, ‘[we] first look to the plain meaning of the words used ... and will consider legislative history only if the statutory language is ambiguous’ ... ‘We resolve questions regarding the Right-to-Know law with a

view to providing the utmost information in order to best effectuate the statutory and constitutional objective of facilitating access to all public documents.’

Accord, Professional Firefighters of New Hampshire v. Local Government Center, Inc., 159

N.H. 699, 703 (2010). The statutory objective of the Right-to-Know law is set out in its

Preamble: “Openness in the conduct of public business is essential to a democratic society. The

purpose of this chapter is to ensure both the greatest possible public access to the actions,

discussions and records of all public bodies, and their accountability to the people.” RSA 91-

A:1. The Right-to-Know law implements the public’s constitutionally guaranteed right to hold

the government “at all times accountable” by reasonable access to governmental records. New

Hampshire Constitution, Part I, Article 8.

II. RSA 91-A:4,I-A REQUIRES DISCLOSURE OF THE NAMES AND PENSIONS OF THE RETIREMENT SYSTEM MEMBERS WHO RECEIVED THE 500 HIGHEST PENSIONS IN 2009.

The Retirement System argues that the Superior Court erred by “adding the word ‘former’ to interpret ‘employee’” in RSA 91-A:4,I-a. Retirement System Brief at 8. Its position is that the statute only applies to payments made to an employee, and a retiree is no longer an employee. *Id.* This argument offends the statute’s plain meaning.

RSA 91-A:4,I-a reads:

Records of any payment made to an employee of a public body or agency listed in RSA 91-A:1-a, VI(a)–(d), or to the employee’s agent or designee, *upon the resignation, discharge, or retirement of the employee*, paid in addition to regular salary and accrued vacation, sick, or other leave, shall immediately be made available without alteration for public inspection. All records of payments shall be available for public inspection notwithstanding that the matter may have considered or acted upon in nonpublic session pursuant to RSA 91-A:3 (emphasis added).

Although the statute does not use the phrase “former employee,” there can be no dispute that it applies to payments made to former employees. The statute’s requirement to make

available to the public the “[r]ecords of any payment” is triggered *upon* –meaning, following – “the resignation, discharge or retirement of the employee.” In common understanding, each of these three events terminates the employment relationship.¹ As for retirement, the retiree’s status is that of a former employee. That is the plain and ordinary meaning of “employee” interpreted, not in alone, “but within the context of the statute as a whole.” *State Employees’ Assoc. of New Hampshire v. State of New Hampshire*, __ N.H. __ (Slip Opinion April 14, 2011) at 7-8.

The Retirement System attempts to bolster its argument by drawing the Court’s attention to the word “upon.” It asserts that RSA 91-A:4,I-a requires “records of payment to an employees ‘upon’ their resignation, discharge or retirement shall be immediately available,” and that only “incentive payments made in exchange for that retirement” are “immediately available.” *Id.* at 9. But this assertion also misreads the statute. While it is correct that the statute only applies to payments made “upon resignation, discharge or retirement,” the word “upon” does not appear in the last sentence of the statute.² Yet, that is the sentence to which the Retirement System refers and which requires “[a]ll records of payments shall be available for public inspection.”

There also is no merit to the Retirement System’s argument that RSA 91-A:4,I-a’s use of “upon” means the statute only applies to payments made “immediately or very soon after” the employee resigns, is discharged or retires. Retirement System Brief at 9. Rather, “upon,” read in context, is what triggers the statute; it applies to payments made following “resignation,

¹ The Retirement System reads “resignation or discharge” to mean that the statute only applies to “other than routine, regular retirement benefits.” It adds the words – “routine, regular” – to the statute, words the legislature did not use, words the Court will not consider in construing the statute. *See State Employees’ Assoc. of New Hampshire v. State of New Hampshire*, __ N.H. __ (Slip Opinion April 14, 2011) at 7 (Court will not “add language that the legislature did not see fit to include” when interpreting legislative intent). If anything, that the legislature did not use those words reinforces the conclusion that it intended the statute to apply to retirement payments, while use of “resignation or discharge” makes clear that the statute applies to former employees.

² *See State Employees’ Assoc. of New Hampshire v. State of New Hampshire*, __ N.H. __ (Slip Opinion April 14, 2011) at 7 (Court will not consider words the legislature did not use).

discharge or retirement.” See WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2518 (“Upon” means “when (something) occurs,” or “on the occasion of”). To read “upon” restrictively, as the Retirement System urges, would permit a public body to defer payment to avoid disclosure, or make several payments over time to avoid disclosure of all but the first one. Surely, that is a result the legislature did not intend. In fact, it added the last sentence which requires “[a]ll records of payments shall be available for public inspection” to cover payments regardless of when made. See *Union Leader v. New Hampshire Housing Authority*, 142 N.H. 540, 546 (1997)(“[W]e broadly construe provisions favoring disclosure and interpret exemptions restrictively”).

Nor is there merit to the Retirement System’s argument that RSA 91-A:4,I-a only applies to employees based on the provision: “paid in addition to regular salary and accrued vacation, sick or other leave.” The Retirement System contends that “read in the context of the entire provision, this additional payment must be made to an employee” *Id.* at 9-10. Why that is so, the Retirement System fails to explain.

Finally, the Superior Court correctly did not consider legislative history. As the Court stated just last year, it will consider “legislative history only if the statutory language is ambiguous.” *Professional Firefighters*, 159 N.H. at 703 (citing *ATV Watch v. N.H. Dep’t of Res. & Econ. Dev.*, 155 N.H. 434, 437 (2007)). For the reasons discussed, RSA 91-A:4,I-a is not ambiguous: resignation, discharge or retirement terminates the employer-employee relationship, and “all records of payments” to such terminated – former – employee must be available for public inspection.

II. THE SUPERIOR COURT CORRECTLY RULED THAT RSA 91-A:5,IV DOES NOT PROHIBIT DISCLOSURE OF RETIREE NAMES AND PENSIONS.

The Superior Court relied on *Mans* and *Professional Firefighters* in ruling that RSA 91-A:5,IV does not prohibit disclosure of the 500 retiree names and pensions. As it must, the Retirement System acknowledges that salaries of public employees do not constitute “intimate private details” and may be disclosed without invading the privacy of such employees. Retirement System Brief at 12. Instead, the Retirement System argues that retirement benefits are different because they depend on “a formulaic calculation based on two variables” and “an individual’s particular personal and financial situation. *Id.* at 13. That retirement benefits are determined by formula is a distinction without a difference for purposes of a privacy analysis. The operative fact remains that, like salary, they are monies paid as a result of an employment relationship with a public body. That is the key fact the Court relied on in *Mans* and *Professional Firefighters* in holding that the privacy interest had to yield to the public interest in disclosure. Drawing from *Mans*, the Court in *Professional Fighters* stated:

Regarding public need, we noted that the records [of “salaries of public officials and employees”] were pertinent to the mode and manner of public expenditures for school purposes and, thus, concluded that the Right-to-Know Law favored public scrutiny in order to enable resident voters to properly exercise their final appropriating authority.

159 N.H. at 708.

As to the Retirement System’s second point, disclosure of *only* retiree names and pensions provides little, if any, information about the retiree’s personal and financial situation.

The Retirement System argues that the Superior Court erred by not recognizing that retirees “are more likely to be elderly and specifically targeted by fraudulent solicitations and scams,” citing to a *Wall Street Journal* article, “Confessions of A Scam Artist.” Retirement System Brief at 14-15. At most, this article, an interview with one so-called “scam artist,” shows

there are companies that question people in shopping malls and on the Internet, compile lists of those “who have the [right] personality trait,” and sell the lists to “scam artists.” The scam artists, in turn, use the lists to try to sell investment scams. Appellant’s Appendix at 29.

Tellingly, the Retirement System offered no evidence that would suggest any of the 500 retirees has the “right personality trait” to be exploited by scam artists. *Cf. The Associated Press v. State*, 153 N.H. 120, 137 (2005)(“... the State has offered no empirical evidence linking identity theft to court documents”).³

The final argument made by the Retirement System is the minimal public interest in disclosure of retiree names because the names do not “inform the public about what the NHRS is ‘up to,’” citing *Union Leader v. New Hampshire Housing Authority*, 142 N.H. 540, 554 (1997). Retirement System Brief at 16. However, the Superior Court correctly ruled that the Union Leader’s request for retiree names and pensions is controlled by *Mans* and *Professional Firefighters*. Order at 6-7.

In *Professional Firefighters*, the Court discussed, but rejected, essentially the same arguments that the Retirement System advances here. Applying the “three-step analysis” to determine whether disclosure would constitute an invasion of privacy, the Court, following *Mans*, ruled that disclosure of the names and salaries of all Local Government Center employees “would not constitute an invasion of privacy.” 159 N.H. at 708-709. And because the salaries were paid by “taxpayer money,” the Court stated:

Public access to specific salary information gives direct insight into the operations of the public body by enabling scrutiny of the wages paid for particular job titles. Public scrutiny can expose corruption, incompetence, inefficiency,

³ The Retirement System asserts “that in today’s technology-friendly world, no address is required to trigger unwanted solicitations to an identified retiree who now has an annual benefit amount attached to his/her name.” Retirement System Brief at 14. Other than this mere assertion, nothing in the record demonstrates that individuals or companies are using the Internet to obtain addresses of New Hampshire residents to make home solicitations.

prejudice and favoritism. See *International Federation v. Superior Court*, 42 Cal.4th 319, 64 Cal.Rptr.3d 693, 165 P.3d 488, 495 (2007). Such scrutiny is necessary for the public to assess whether LGC, which has a conceded status as a governmental entity subject to the Right-to-Know Law, is being properly and efficiently managed and for educating the member municipalities regarding whether continued membership would be a wise expenditure of taxpayer money. In short, knowing how a public body is spending taxpayer money in conducting public business is essential to the transparency of government, the very purpose underlying the Right-to-Know Law.

Id. at 709. The same holds true in this case.

Access to the 500 retiree names and pensions informs public scrutiny in several ways. First, the public has more detailed information about pensions paid by the State retirement system, a system established and overseen by the legislature. By knowing who received the 500 highest pensions, the public is able to make an assessment of overall “fairness” of the system and whether state and local public bodies are able to recruit and retain competent people. Any change to the system, whether through employer or employee contributions, benefit levels or the like, is the responsibility of *elected* representatives. Second, the names and amounts enable the public to make a more informed judgment about whether and how they have been served by retirees; whether their pensions are commensurate with their responsibilities and their job performance prior to retirement. This is particularly true of retirees who held positions at the local level and with whom the public likely had more interaction and, therefore, more knowledge.⁴

The only case the Retirement System cites in support of its position that the Superior Court erred in ordering disclosure of the 500 names and pensions is *National Ass’n of Retired Fed. Employees v. Horner*, 879 F. 2d 873 (D.C. Cir. 1989). That case, decided under the

⁴ In seeking access to the 500 names and pensions, the Union Leader reporter stated: “The disclosure of the information is in the public interest because it will contribute to the general public’s understanding of how the New Hampshire Retirement System works, its future financial obligations to its members and whether proposed reforms to the system are reasonable.” Appellant’s Appendix at 5.

Freedom of Information Act, is distinguishable for at least five reasons. First, the request was not just for the names of retired or disabled federal employees, but also for their addresses. The requested disclosure, without more, could result in “an unwanted barrage of mailings and personal solicitations.” *Id.* at 876. Second, the exemption at issue under FOIA protects “personal information ... even if it is *not* ... of and intimate nature.” *Id.* at 875 (emphasis added). In contrast, the Court in *Mans* and *Professional Firefighters* ruled “that salaries of public employees and schoolteachers are not intimate details the disclosure of which might harm the individual...” *Professional Firefighters*, 159 N.H. at 708. Third, since only federal employee names and addresses were requested, the court stated that “those records say nothing of significance about ‘what the[] Government is up to.’” *Horner*, 879 F. 2d at 879. The court did acknowledge, however, as the Retirement System has noted, that disclosure of “the percentage of the federal budget devoted to annuities, the amount of the benefit the average annuitant receives, or other aggregate data might be of public interest.” *Id.*; Retirement System Brief at 16. In *New Hampshire Civil Liberties Union v. City of Manchester*, 149 N.H. 437, 441 (2003), the Court recognized that, unlike a single record, a “group of records ... may reveal information about the decisions made by” a public body. Here, the 500 names and pensions make up the group of records. Fourth, those names and pensions, for the reasons discussed *infra* at 8, do tell the public what its legislators and local officials are up to. Finally, the Court does not always follow FOIA cases. As it stated in *Professional Firefighters*, 159 N.H. at 709-710: “We are unpersuaded by the [FOIA] cases LGC cites in its effort to shield the specific salary information of its employees.”

In sum, as in *Professional Firefighters*, the Retirement System failed “to meet its “heavy burden” of demonstrating that the 500 retiree names and pensions are exempt from disclosure under RSA 91-A:5,IV. 159 N.H. at 710.

Even if the legislature had not enacted RSA 91-A:4,I-a, the Right-to-Know law and *Mans* and *Professional Firefighters* require the Union Leader’s petition to be granted. Those cases were decided under RSA 91-A:4. As discussed, the Court held that disclosure of the names and salaries “would not constitute an invasion of privacy barring public disclosure under RSA 91-A:5,IV.” *Professional Firefighters*, 159 N.H. at 708. For good reason, the Superior Court ruled that *Mans* and *Professional Firefighters* are dispositive. Order at 7.

As the Court has made clear: “Generally, “[w]hen a trial court reaches the correct result, but on mistaken grounds, this court will sustain the decision if there are valid alternative grounds to support it.”” *In re Trailer and Plumbing Supplies*, 133 N.H. 432, 438 (1990)(citing, *Lemay v. Rouse*, 122 N.H. 349 (1982); accord, *Gosselin v. New Hampshire Retirement System*, 153 N.H. 696, 700 (2006)(trial court decision affirmed but on “different grounds”). *Mans* and *Professional Firefighters* are solidly-reasoned, persuasive “alternative grounds.”

CONCLUSION

For the reasons discussed herein, New England First Amendment Coalition respectfully requests the Court to affirm the Superior Court order, which squarely promotes openness in the conduct of the State’s retirement system.

Respectfully submitted,

New England First Amendment Coalition

By Its Attorneys:
ORR & RENO, P.A.

Dated: April 25, 2011

By William L. Chapman
William L. Chapman
One Eagle Square
PO Box 3550
Concord NH 03302-3550
603.223.9107
Bar No. 397
wchapman@orr-reno.com

CERTIFICATE OF SERVICE

I, William L. Chapman, hereby certify that on the 25th day of April 2011, copies of this brief have been sent by first class mail and by e-mail to Kathleen C. Sullivan and Edward M. Kaplan, counsel of record.

William L. Chapman
William L. Chapman

757689_1.DOC