

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

Docket No. 2026-0150

Steven Rand & a.

v.

State of New Hampshire

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE
ROCKINGHAM COUNTY SUPERIOR COURT

BRIEF FOR THE STATE OF NEW HAMPSHIRE

THE STATE OF NEW HAMPSHIRE

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(Twenty-minute oral argument requested)

TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	4
CONSTITUTIONAL AND STATUTORY PROVISIONS.....	9
QUESTIONS PRESENTED	10
PRELIMINARY STATEMENT	11
STATEMENT OF THE CASE	14
STATEMENT OF THE FACTS	16
A. The Operative Complaint	16
B. Trial Testimony	16
C. The Merits Order	24
D. State’s Motion for Reconsideration and the Court’s Order.....	29
STATEMENT OF THE LEGAL LANDSCAPE.....	31
A. The Formation of The New Hampshire Constitution.....	31
B. The New Hampshire Constitution	34
C. The System of Education in Early New Hampshire.....	35
D. This Court’s Early Discussions of Part II, Article 83.....	40
E. The Modern School Funding Jurisprudence.....	43
SUMMARY OF THE ARGUMENT	57
ARGUMENT.....	59
I. <i>CLAREMONT I</i> AND ITS PROGENY SHOULD BE MODIFIED OR OVERRULED, IN WHOLE OR IN PART.....	59
A. <i>Claremont I</i> ’s Holding Finds No Basis in the Text of the New Hampshire Constitution.....	61
B. <i>Claremont II</i> ’s Holding is Fundamentally Incompatible with the Text and History of the New Hampshire Constitution.....	69
C. This Court’s Education Funding Jurisprudence Fails a <i>Stare Decisis</i> Analysis and Should Be Abandoned.	77
D. <i>Claremont I</i> and Its Progeny Should At the Very Least Be Modified.	89

II. HOW THE STATE COSTS AND FUNDS AN “ADEQUATE EDUCATION” IS A NON-JUSTICIBLE POLITICAL QUESTION.	92
III. THE PLAINTIFFS LACK STANDING TO BRING ANY CLAIM UNDER PART II, ARTICLE 83 OF THE NEW HAMPSHIRE CONSTITUTION.....	103
IV. THE SUPERIOR COURT ERRED BOTH IN FINDING THAT THE PLAINTIFFS PRESENTED A COGNIZABLE PART II, ARTICLE 5 CLAIM OR THEORY AND THAT HOW A MUNICIPALITY SPENDS LOCAL TAX REVENUE CONVERTS THOSE LOCAL TAXES INTO A STATE TAX THAT VIOLATES PART II, ARTICLE 5.	106
V. EVEN IF A COGNIZABLE PART II, ARTICLE 5 CLAIM EXISTED, PLAINTIFFS FAILED TO SUE THE APPROPRIATE PARTIES, FAILED TO REQUEST THE APPROPRIATE REMEDY, AND FAILED TO PRODUCE ANY EVIDENCE TO SUPPORT THE NECESSARY FACTUAL ALLEGATIONS UNDERLYING THAT CLAIM.....	112
VI. THE TRIAL COURT ERRED IN EQUATING A SCHOOL DISTRICT’S FEDERAL AND STATE STATUTORY SPECIAL EDUCATION OBLIGATIONS WITH THE ADEQUATE EDUCATION MANDATE IMPOSED UNDER PART II, ARTICLE 83.	116
CONCLUSION	122
ORAL ARGUMENT REQUESTED	123
RULE 16(3)(i) CERTIFICATION	123
CERTIFICATE OF COMPLIANCE.....	125
CERTIFICATE OF SERVICE	125

TABLE OF AUTHORITIES

CASES:

<i>Baer v. N.H. Dept. of Educ.</i> , 160 N.H. 727 (2010).....	84, 104
<i>Baines v. N.H. Senate President</i> , 152 N.H. 124 (2005).....	10
<i>Ball v. Roman Catholic Bishop of Manchester</i> , 2025 N.H. 45 (2025)	77, 78
<i>Brannigan v. Usitalo</i> , 134 N.H. 50 (1991).....	78
<i>Brewster v. Hough</i> , 10 N.H. 138 (1839).....	40, 63
<i>Brown v. Secretary of State</i> , 176 N.H. 319 (2023).....	92
<i>Carrigan v. N.H. Dept. of Health & Human Servs.</i> , 174 N.H. 362 (2021)	85, 86, 95, 102
<i>Claremont Sch. District v. Governor</i> , 138 N.H. 183 (1993)	passim
<i>Claremont Sch. District v. Governor</i> , 142 N.H. 462 (1997)	passim
<i>Claremont Sch. District v. Governor</i> , 142 N.H. 737 (1998)	48
<i>Claremont Sch. District v. Governor</i> , 143 N.H. 154 (1998)	48
<i>Claremont Sch. District v. Governor</i> , 144 N.H. 210 (1999)	48
<i>Claremont Sch. District v. Governor</i> , 144 N.H. 590 (1999)	48, 84
<i>Claremont Sch. District v. Governor</i> , 147 N.H. 499 (2002)	49, 81, 82, 96
<i>Coalition for Adequacy & Fairness in Sch. Funding v. Chiles</i> , 680 So. 2d 400 (Fla. 1996).	101
<i>Coleman v. School Dist.</i> , 87 N.H. 465 (1936).....	39, 42, 66
<i>Contoocook Valley Sch. District v. State</i> , 174 N.H. 154 (2021)	49, 51, 52, 121
<i>Contoocook Valley Sch. District v. State</i> , 2025 N.H. 29	passim
<i>Duncan v. State</i> , 166 N.H. 630 (2014)	85, 104
<i>Endrew F. v. Douglas County School District</i> , 580 U.S. 386 (2017)	119, 120
<i>Farnum’s Petition</i> , 51 N.H. 376 (1871)	40, 41, 79
<i>Fogg v. Board of Education</i> , 76 N.H. 296 (1912).....	passim
<i>Holt v. Antrim</i> , 64 N.H. 284 (1886).....	91
<i>In re Davis</i> , 114 N.H. 242 (1974).....	42, 66
<i>In the Matter of Blaisdell</i> , 174 N.H. 187 (2021)	83
<i>Londonderry Sch. Dist. v. State</i> , 154 N.H. 153 (2006).....	passim
<i>Londonderry Sch. Dist. v. State</i> , 157 N.H. 734 (2008).....	49, 96
<i>Manchester Fed. Sav. & Loan Ass’n v. State Tax Comm’n</i> , 105 N.H. 17 (1963).....	111

<i>Merrimack Premium Outlets, LLC v. Town of Merrimack</i> , 2025 N.H. LEXIS 51 (Feb. 28, 2025)	112
<i>N.H. Health Care Ass’n v. Governor</i> , 161 N.H. 378 (2011)	93, 94
<i>Neb. Coalition for Educ. Equity & Adequacy v. Heineman</i> , 731 N.W.2d 164 (Neb. 2007).....	99, 100
<i>O’Brien v. Rockingham Cty.</i> , 80 N.H. 522 (1923)	89
<i>Ocasio v. Fed. Express Corp.</i> , 162 N.H. 436 (2011).....	77
<i>Of Phillips Exeter Acad. v. Exeter</i> , 90 N.H. 472 (1940)	63
<i>Opinion of the Justices</i> , 108 N.H. 268 (1967)	42, 66
<i>Opinion of the Justices (Reformed Pub. Sch. Fin. Sys.)</i> , 145 N.H. 474 (2000).....	49, 50
<i>Opinion of the Justices (Sch. Fin.)</i> , 142 N.H. 892 (1998)	48
<i>Opinion of the Justices (Tax Plan Referendum)</i> , 143 N.H. 429 (1999)	48
<i>Opinion of the Justices</i> , 102 N.H. 123 (1959)	42, 63
<i>Opinion of the Justices</i> , 99 N.H. 536 (1955)	64, 111
<i>Porter v. Coco</i> , 154 N.H. 353 (2006)	109
<i>Providence Mut. Fire Ins. Co. v. Scanlon</i> , 138 N.H. 301 (1994)	77
<i>Rand v. State</i> , 2025 N.H. 27	passim
<i>Richard v. Governor</i> , 2024 N.H. 53	103, 105
<i>Richard v. Speaker of the House of Representatives</i> , 175 N.H. 262 (2022)	10, 61, 93
<i>Ricker’s Petition</i> , 66 N.H. 207 (1890).....	62, 74
<i>Roe v. Healey</i> , 78 F.4th 11 (1st Cir. 2023)	121
<i>San Antonio Indep. Sch. Dist. v. Rodriguez</i> , 411 U.S. 1 (1973)	43
<i>Sirrell v. State</i> , 146 N.H. 364 (2001).....	106
<i>Sisters of Mercy v. Hooksett</i> , 93 N.H. 301 (1945).....	65
<i>Starr v. Governor</i> , 148 N.H. 72 (2002).	106
<i>State ex rel. Pearson v. Hayes</i> , 61 N.H. 264 (1881).....	73
<i>State v. Ball</i> , 124 N.H. 226 (1983)	34
<i>State v. Brown</i> , 138 N.H. 649 (1994)	10
<i>State v. Goffstown</i> , 100 N.H. 131 (1956).....	89
<i>State v. Jackson</i> , 71 N.H. 552 (1902)	41, 66
<i>State v. Quintero</i> , 162 N.H. 526 (2011).....	87
<i>Wooster v. Plymouth</i> , 62 N.H. 193 (1882)	34, 71, 72, 89

CONSTITUTIONAL PROVISIONS:

N.H. Const. pt. I, art. 1	31
N.H. Const. pt. I, art. 2	66
N.H. Const. pt. I, art. 5	66
N.H. Const. pt. I, art. 11	66
N.H. Const. pt. I, art. 12	99
N.H. Const. pt. I, art. 28	99
N.H. Const. pt. II, art. 5	passim
N.H. Const. pt. II, art. 6	110
N.H. Const. pt. II, art. 8	100
N.H. Const. pt. II, art. 8-a	100
N.H. Const. pt. II, art. 41	70
N.H. Const. pt. II, art. 56	94, 100
N.H. Const. pt. II, art. 83	passim

STATUTES:

State Statutes

Act of 1789, ch. 8, Laws of N.H. during the First Constitutional Period, 1784-1792, at 449 (1784)	36, 37, 76
Act of December 22, 1808, ch. 60, Laws of N.H. during the Second Constitutional Period, 1801-1811, at 771-72 (1808)	36
Act of December 22, 1808, ch. 61, Laws of N.H. during the Second Constitutional Period, 1811-1820, at 722 (1808)	36
Act of December 28, 1805, ch. 39, Laws of N.H. during the Second Constitutional Period, 1801-1811, at 467 (1805)	37, 76
Act of July 6, 1827, ch. 57, Laws of N.H. during the Second Constitutional Period, 1821-1828, at 661-65 (1827)	37, 76
RSA 31:4	114
RSA 72-B:11	113
RSA 76:3	108
RSA 76:8	108, 111, 112, 115
RSA 78-A:26	113
RSA 79:13	113
RSA 79-A:25	113

RSA 186-C:13	121
RSA 186-C:18	113
RSA 193-E:2-a	120
RSA 194:34 (1989).....	107
RSA 198:1-:7 (1989 & Supp. 1996).....	107
RSA 198:15-a - :15-hh. :15-r, :15-u - :15-w.....	113
RSA 198:19	113
RSA 198:38-:45.....	108
RSA 198:40-a	53, 113, 117
RSA 198:40-f.....	113
RSA 198:40-g.....	113
RSA 228:69	113
RSA 261:74-d	114
RSA 491:22, I.....	104
 RSA chapter 186-C.....	 120, 121
RSA chapter 188-E.....	113
RSA chapter 193-E.....	120

Federal Statutes

20 U.S.C. § 1400(d)(1)(A).....	119, 121
20 U.S.C. § 1401(9).....	119

Legislation

H.B. 1670, 2024 Sess. (N.H. 2024).....	121
H.B. 1815-FN, 2026 Sess. (N.H. 2026).....	12, 91

OTHER AUTHORITIES:

Alexander Hamilton et al., <i>The Federalist</i> (Barnes & Noble Books 2006)	32
Charles H. Bell, <u>History of the Town of Exeter, New Hampshire</u> (1888)	35, 36
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George Gray Bush, Ph.D., <u>History of Education in New Hampshire</u> (1898)	passim
James Fairbanks Colby, <i>Manual of the Constitution of the State of New Hampshire</i> (1902)	32, 38, 39
Jeremy Belknap, <u>The History of New Hampshire</u> , Volume III (1792)	35
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Nathaniel Bouton, <i>Documents and Records Relating to the State of New-Hampshire</i> , Vol. III (1874) (reprinting from the House Journal)	33
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Thomas Sheridan, <i>A Complete Dictionary of The English Language</i> , vol. II (3d. ed. 1790)	62, 65, 70

CONSTITUTIONAL AND STATUTORY PROVISIONS

Consistent with New Hampshire Supreme Court Rule 16(3)(c), the full text of the below constitutional and statutory provisions appear in Appendix, Volume IV.

New Hampshire Constitutional Provisions:

Part I, Articles 6 & 8.

Part II, Articles 2, 5, 41, 56, & 83.

Statutory Provisions:

N.H. RSA 186-C:18

RSA 193-E:1 – :5

RSA 198:40-a

RSA 198:40-d

RSA 198:40-f

RSA 198:40-g

RSA 198:41

RSA 198:42

Legislation:

House Bill 1563-FN-Local

House Bill 1815-FN

QUESTIONS PRESENTED

- I. Whether *Claremont School District v. Governor*, 138 N.H. 183 (1993) (*Claremont I*), and its progeny, should be overruled. (Preservation: *State v. Brown*, 138 N.H. 649, 652 (1994)).
- II. If the answer to Question I is no, whether *Claremont School District v. Governor*, 142 N.H. 462 (1997) (*Claremont II*), and its progeny, should be overruled. (Preservation: *State v. Brown*, 138 N.H. 649, 652 (1994)).
- III. Whether the question of how the State costs and funds an “adequate education” is a non-justiciable political question. (Preservation: *Richard v. Speaker of the House of Representatives*, 175 N.H. 262, 267 (2022); *Baines v. N.H. Senate President*, 152 N.H. 124, 128 (2005)).
- IV. Whether the plaintiffs proved standing with respect to their claims. (Preservation: State’s Appendix (“Apx.”) III 137-143, 281-289, 299-309.)
- V. Whether the plaintiffs remaining Part II, Article 5 claim or theory is legally viable. (Preservation: Apx.III 143, 281-289, 299-309.)
- VI. Whether the trial court erred in concluding that a municipal education property tax imposed by a municipality under RSA 76:8, III, is “converted” into a State tax if the municipality or school district spends that locally-raised education tax money on a State adequacy cost thereby rendering the tax unconstitutional under Part II, Article 5 of the State Constitution. (Preservation: Apx.III 281-289, 299-309.)
- VII. Whether the trial court erred in equating a federal Free Appropriate Education (FAPE), under the federal Individuals with Disabilities Education Act (IDEA), and RSA 186-C, with the adequate education mandate imposed under Part II, Article 83, and erred in using them to evaluate adequacy funding. (Preservation: Apx.III 161-175.)

PRELIMINARY STATEMENT

This case is not about whether New Hampshire students are receiving an adequate education. They are. New Hampshire students are, on average, scoring above the national average “in every single category” of the National Assessment of Educational Progress. T9 1234-1235.¹ This case is also not about whether there is enough money in the public education system to support an adequate education. There is. New Hampshire’s public education system ranks “seventh overall” in state and local money provided to public schools making New Hampshire “one of the top states in the nation in terms of revenue generated for public schools.” T9 1229. And New Hampshire’s public school system is ranked overall as one of the top five in the nation. *See, e.g.*, Adam McCann, States with the Best & Worst School Systems (2026), WalletHub (ranking New Hampshire’s school system the fourth best in the nation)²; U.S. News & World Report, Best States, Pre-K-12 (ranking New Hampshire fourth in the nation for Pre-K-12 education)³.

What this case is actually about is what proportion of public education funding comes from State versus local taxes. Such a question falls within the type of political questions that this Court has found to be non-justiciable in other contexts. Nonetheless, this case exists because this

¹ References within this brief are abbreviated as follows: “T1” – “T9” followed by a page number refer to the consecutively numbered nine-day bench trial transcripts; “Apx.I” – “Apx.IV” followed by a page number refer to the State’s four-volume appendix.

² <https://wallethub.com/edu/e/states-with-the-best-schools/5335> (last visited: July 21, 2026).

³ <https://www.usnews.com/news/best-states/rankings/education/prek-12> (last visited: Aug. 12, 2026).

Court's modern school funding jurisprudence has distorted Part II, Article 83 of the State Constitution beyond recognition, finding rights and mandates in it that do not exist, and fundamentally altering how the State and its political subdivisions may legally interact. The result today is a jurisprudence that allows any New Hampshire citizen or entity to challenge the constitutionality of any provision of a public education funding statute, not to better the education of any child, but to demand that the costs of educating New Hampshire's youth be distributed differently.

This Court should act to correct the constitutional errors that have led to this irrational state of affairs. It can do so in one of two ways. It could modify *Claremont I* and its progeny to make clear under them that the "State" includes all of its political subdivisions and that, so long as the "State" as a whole is guaranteeing sufficient funding exists in the public school system for students to receive an adequate education, Part II, Article 83 is fulfilled. That would resolve this case, restore normal constitutional order, and extricate the judiciary from the type of non-justiciable funding disputes this case presents. This result would be consistent with Part II, Article 83 and would reflect the reality, grounded in centuries of historical and legal practice, and most recently endorsed in House Bill 1815 (2026), Apx.IV 28-30, that the State including its political subdivisions share the responsibility for educating the State's students.

This Court could also correct the serious constitutional errors this case presents by overruling *Claremont I* and its progeny or by overruling *Claremont II* and its progeny. *Claremont I & II* and their progeny are wrong as a matter of constitutional text, structure, purpose, history, and tradition; they are poorly reasoned, and have led to the impractical and

unworkable state of affairs that exists today in our education funding law. The State advocates for, and endorses, all of the above approaches.

However, if this Court declines to modify or overrule its existing precedent in any respect, it should nonetheless hold: that the plaintiffs lack standing to maintain their remaining claims; that Part II, Article 83's costing and funding mandate presents a non-justiciable political question; that the plaintiffs' remaining Part II, Article 5 claim or theory is non-viable; that a local education property tax authorized by a municipal entity is not converted into a state tax simply because that municipal entity chooses to spend such revenue to cover an adequate education cost; and that the State is not required to fund the full measure of special education costs incurred by school districts at only the state-level. Upon entering these holdings, this Court should reverse and vacate the trial court's merits decision and remand to the superior court with instructions to close the case.

STATEMENT OF THE CASE

On June 28, 2022, the plaintiffs, Steven Rand, Randvest, Inc., Dr. Robert Gabrielli, the Gabrielli Family Ltd. Partnership, Jessica Wheeler Russell, and Adam Russell, individuals and entities owning real property in New Hampshire, sued the State of New Hampshire (the “State”) alleging that its education funding system violates Part II, Article 83 of the State Constitution and that the Statewide Education Property Tax (“SWEPT”) violates Part II, Article 5 of the State Constitution. Apx.III 3.

On August 26, 2022, the plaintiffs amended their complaint. Apx.III 28. The Coalition Communities subsequently intervened regarding plaintiffs’ SWEPT claim. *See Rand v. State*, 2025 N.H. 27 ¶¶1, 3 (2025) (“*Rand I*”). The parties cross-moved for summary judgment on plaintiffs’ SWEPT claim. *Id.* The superior court ruled in plaintiffs’ favor. *Id.* On appeal of that order, this Court reversed in part, affirmed in part, vacated in part, and remanded for further proceedings. *Id.* at ¶24.

The superior court held a nine-day bench trial on plaintiffs’ remaining adequacy claims. The parties filed post-trial briefs. Apx.III 89-280. On August 18, 2025, the superior court issued its merits order. Apx.I 4-60. It found that the plaintiffs had standing under a novel tax theory applicable only in the adequate education context—that, when the State is not meeting its adequate education funding obligation under Part II, Article 83, any local education property tax a municipality or school district chooses to impose is automatically converted into a State tax and thereby produces a Part II, Article 5 tax injury to the plaintiffs. However, instead of declaring plaintiffs’ local education property taxes unconstitutional and enjoining them, the trial court declared two subparts of the statutory

funding mechanism for an adequate education “constitutionally insufficient,” RSA 198:40-a, II(a) (2024) and RSA 198:40-a, II(d) (2024). Apx.I 59. As a result, plaintiffs’ alleged tax injury remains unremedied.

The State moved for reconsideration regarding the trial court’s novel standing analysis. Apx.III 281-299. It argued that this theory was incorrect as a matter of law, that the factual record was bereft of the type of evidence needed to prove such a theory, that this theory conflicted with this Court’s decision in *Rand I*, and that the declaration plaintiffs obtained would not remedy their alleged tax injuries. The superior court denied the motion. Apx.I 61-71. This appeal followed.

STATEMENT OF THE FACTS

A. The Operative Complaint

The plaintiffs’ operative complaint challenges the constitutionality of New Hampshire’s public education funding system. Apx.III 28-55. It sought a declaration from the trial court that: “The State does not currently guarantee funding sufficient to cover the cost of an adequate education. As a result, New Hampshire must rely on local school taxes to bridge the gap. These local school taxes violate Part II, Article 5 of the New Hampshire Constitution because they are not uniform in rate.” Apx.III 47, ¶80. The plaintiffs sought “permanent injunctive relief” to require New Hampshire “to discontinue its unconstitutional public education funding scheme” because, in part, “they suffer irreparable harm.” *Id.*, ¶81. The plaintiffs further sought an order “directing the State to adopt a revised cost determination, which accounts for the full cost of providing constitutional adequacy to all school districts and amounts to no less than the average state expenditure per pupil, with allowances for demographic and geographic diversity and that includes consideration of the costs of transportation, capital costs, and debt.” *Id.*, ¶82.

B. Trial Testimony

The superior court held a nine-day bench trial on this issue starting on September 30, 2024. During trial, the plaintiffs called various witnesses. Only one of those witnesses—Jessica Wheeler-Russell—was a plaintiff in the case. Although she served on the Merrimack Valley School Board, she testified only in her personal capacity. T1 29-30. She testified that one of her children had an individual education plan (“IEP”) and required services

that “cost a bit of money.” T1 29. She testified that she could not say with any likelihood whether an increase in state education funding would cause her local education property taxes to decrease. T1 32-36.

The plaintiffs also offered the testimony of two witnesses, Dr. John Freeman and Dr. Corrinne Cascadden, who were qualified as experts over the State’s objection. Dr. Freeman served, among other things, as the superintendent of schools in Pittsfield between 2018 and 2020. *Id.* at 39-40. Dr. Cascadden spent the bulk of her career in the Berlin school district and ultimately served as superintendent there. T2 510-512. Both witnesses testified at length about the school budgeting process, before concluding that they could not run their school districts on state funding alone back in 2018-2021. *See generally* T1 89-127; T2 408-412; T2 510-549, 655-660.

Dr. Freeman based his opinion largely on an “academic exercise” or “thought experiment,” as he later described it, that he conducted using the state funding Pittsfield received during the 2018/2019 budget year. T1 89-92; T2 379. Dr. Freeman testified that his exercise was essentially a subjective analysis in which he made “arbitrary decisions” based on his own personal understanding of what constitutes an adequate education. T1 89-92; T2 408-412. Dr. Freeman testified that he had not recreated his 2018/2019 Pittsfield analysis with more recent data. T2 379. Dr. Freeman admitted that his exercise was not published in any academic publication and was not peer-reviewed. *Id.* at 379-80.

Dr. Freeman testified that base adequacy should be the total amount necessary to operate a school. *Id.* at 380. He testified that the amount a school spends does not equal the cost necessary to operate a school in all circumstances, but he would say that it was for Pittsfield when he worked

there (he retired from Pittsfield in 2020). *Id.*; T1 106. He did not have the basis of knowledge to say the same for other schools. T2 380. Dr. Freeman testified that he did not have an opinion on what average class size should be in New Hampshire and admitted there is conflicting research on whether smaller or larger class sizes have effects on student output. *Id.* at 380-81. Dr. Freeman further testified that his thoughts on average class size are not informed by any scientific research. *Id.* at 381.

Dr. Freeman testified that he had no current knowledge of what funding Pittsfield receives or Pittsfield's current curriculum and did not conduct an analysis using other monetary amounts. T3 414-16. Dr. Freeman also admitted that base adequacy and differential aid amounts were not restricted by law to any particular use or category of students but entered the district's general fund and may be used for any purpose. *Id.* at 419-21. He admitted the same with respect to stabilization grants. *Id.* at 422. He further admitted that Pittsfield never tracked spending on students who fall into differential aid categories to determine costs particular to them, though it could do that. *Id.* at 423-24. Dr. Freeman also testified, among other things, to his belief that the State should pay for all of a school district's special education expenditures that are not otherwise paid through federal funding. T2 374.

Dr. Freeman had no knowledge of State hold harmless grants or extraordinary need grants, which the State provided after he retired. T3 461-62. Dr. Freeman testified that, aside from looking at the average teacher salary across the State, he had nothing else to add about how to calculate input for teacher salaries to reach the cost of an adequate education. *Id.* at 462. Dr. Freeman admitted that if all school districts

received more adequacy money, nothing would stop other school districts from raising teacher salaries higher, which would require more money to hire and retain teachers. *Id.* at 464.

In addition to her traditional work background, Dr. Cascadden testified that she served on the Commission for School Funding in 2020 and that, at the time of trial, she was a state representative serving on the House Education Committee. T3 at 512. Based on her background and experience, the plaintiffs sought to qualify Dr. Cascadden as an expert in the areas of school operations, school finance, and budgeting. *Id.* at 513. The State did not object to the extent that her testimony remained limited to those specific areas. *Id.*

Dr. Cascadden offered an opinion that “State adequacy aid, which includes base and differentiated aid, does not meet the requirements of a constitutionally adequate education for funding schools.” *Id.* at 513-14. She testified that, in her view, the phrase “adequate education” referred to “RSA 193-E:2-a, the 11 content areas, and the ED 306 rules and minimum standards for school approval that are . . . aligned to those specific content areas.” *Id.* at 514. She testified that she reached her opinion “through many years of budget development.” *Id.* She testified that “serving on the Commission for School Funding in 2020 . . . validated [her] opinion.” *Id.*

Dr. Cascadden testified about her experience in the Berlin school district, which ended in 2019, and her experience working to put together a Fiscal Year 2020 budget. *Id.* at 519-20, 527-65. She testified that the school administration initially requested a budget of approximately \$19.9 million, *id.* at 535, but that this request was reduced to approximately \$19.275 million, *id.* at 536. She testified that this reduction was achieved by closing

an elementary school and eliminating certain positions across the district. *Id.* at 538-41. She testified that the budget request was revised again down to approximately \$18.6 million, though she did not explain the bases for that reduction. *Id.* at 543.

Dr. Cascadden testified about the funding Berlin received during the 2020 fiscal year. T5 652-55. She testified that Berlin received over \$5.6 million in base adequacy and differentiated aid. *Id.* at 655. She testified that Berlin also received just under \$5.5 million in stabilization aid. *Id.* at 656. She testified that Berlin could not have cut the difference between its budget request and the total amount it received in adequacy and differentiated aid from the budget and still operated its school district. *Id.* at 658. She testified that the state funding for special education was not enough to cover the amount Berlin spent on special education during the 2020 fiscal year. *Id.* at 658-60.

On cross-examination, Dr. Cascadden testified that she was not aware of any school district in New Hampshire that was failing to provide an adequate education. *Id.* at 672. She stated that she had seen summaries of budgets from school districts she had not worked in but had never seen the full budget for any other school district. *Id.* She acknowledged that districts across New Hampshire vary in several ways, including in geographic size, enrollment and enrollment trends, socioeconomic makeup, special education needs, parental pressures, and community priorities. *Id.* at 672-74. She similarly acknowledged that districts across the State will also have different facility needs that depend on a number of district-specific factors. *Id.* at 675-76.

Dr. Cascadden conceded that she was not providing an opinion on the appropriate amount of capital expenditures that should be used to determine on a statewide basis how much is required to produce constitutional adequacy. *Id.* at 684-85. She testified that she did not have any way to determine on a statewide basis how much all districts should receive to achieve constitutional adequacy. *Id.* at 685. She testified that she was not able to do this because districts vary widely in their capital expenditures. *Id.* She also acknowledged that she was not an expert in how state and federal requirements related to special education interact or compare. *Id.* at 686-87. Dr. Cascadden also testified that, after the Fiscal Year 2020 budget process she related, the State made hold harmless grants and extraordinary aid grants available to school districts and increased the base adequacy amount, but she did not testify regarding these amounts. *Id.* 687-88.

The plaintiffs also offered the testimony of Annette Blake. Ms. Blake testified about her role as a school counselor in the Gilford school district and the Shaker Regional School District. *Id.* at 696-716. She testified about section 504 plans, including what they are and how they are used. *Id.* at 716-733. She testified that, in her opinion as a lay witness, the counseling services she provided were necessary for students to be able to learn in their general classes. *Id.* at 733. She acknowledged, however, that counseling services, including those provided through a section 504 plan, can be provided to students who do not fall within one of the differentiated aid categories outlined in RSA 198:40-a that comprise the cost of an adequate education. *Id.* at 741-743.

The plaintiffs also called Dr. Jennifer Dolloff. Dr. Dolloff spent her career in special education. T6 771-774. Dr. Dolloff testified at length about the special education process, including the development of IEPs, how they are implemented, and how special education is funded. *Id.* at 784-806. She also testified at length about federal special education requirements, including the federal mandate for a free and appropriate public education (FAPE). *Id.* at 806-810. Dr. Dolloff testified about the interplay of state law and federal law with respect to special education, including RSA chapter 186-C. *Id.* at 834-898. She ultimately testified that the services and materials identified in an IEP as necessary to provide FAPE were what was required for a special-education student to access a general education curriculum and, therefore, were required to provide a special education student an adequate education. *Id.* at 897-899. On cross-examination, she acknowledged, among other things, that the services and materials identified in an IEP were student-specific and could vary widely based on the individuals taking part in a student's IEP team, including the student's parents, and the availability of service providers in the area. *Id.* at 900-931.

Each side also called Mark Manganiello, the administrator of the Bureau of School Finance for the Department of Education. T4 576. During the plaintiffs' case-in-chief, Mr. Manganiello offered testimony about the DOE-25, a certified financial report that school districts submit to the Department of Education containing their expenditures. *Id.* at 577-612. During the State's case-in-chief, Mr. Manganiello offered testimony about how the Department of Education calculates the state funding that school districts receive— including funding under RSA 198:40-a and other

sources of funding, such as special education aid, extraordinary need grants, hold harmless grants, and funding through the statewide education property tax (SWEPT)—and how those sources of funding have changed over time. T8 1065-1127. Mr. Manganiello also testified about how school districts can and do categorize their expenditures using the Department of Education’s accounting handbook. *Id.* at 1129-1137.

The State offered testimony from two experts. The first was Dr. Jay Greene, who was qualified as an expert in school funding research and methodology. T7 959-969. Dr. Greene offered criticisms of the analysis Dr. Freeman conducted. *Id.* at 970-988. Dr. Greene testified that it was not appropriate to use state averages to determine the cost of an adequate education because invariably some schools operate for less than the state average. *Id.* at 970-977. He also testified that Dr. Freeman’s analysis was not replicable because it was based on specific information about Pittsfield in 2018 that Dr. Freeman did not document, and which, as Dr. Freeman himself testified, involved a number of arbitrary decisions. *Id.* at 980-981. He testified that Dr. Freeman’s analysis was not sufficiently wide-ranging because it only concerned a specific time and place. *Id.* at 981-982. He testified that Dr. Freeman’s analysis was not sufficiently transparent because the decision-making process was not documented or articulated. *Id.* at 982-983. He likewise testified that Dr. Freeman’s analysis was not sufficiently rigorous because it was an informal analysis that could be done in a few hours, not one that involved methodical compilation of necessary information from across the State that could support a statistical analysis. *Id.* at 983-987

The State also called Dr. James Shuls, who was qualified as an expert in education policy and education finance. T9 1210-1226. Dr. Shuls testified that New Hampshire ranks in the top ten in education funding nationally, despite receiving a relatively small amount of federal funding given its demographics. *Id.* at 1228-1229. Dr. Shuls testified that, when federal funds were removed, New Hampshire ranked seventh nationally in terms of education funding from state and local sources. *Id.* at 1229. He also testified that the revenues generated for schools grew at the second-fastest rate in the country between 2002 and 2020. *Id.* at 1231. He testified that New Hampshire students were on average scoring above the national average on every category of the National Assessment of Educational Progress, and that only three total states have a statistically significant higher scores than New Hampshire in any of the tested categories. *Id.* at 1234-1235. He also testified that, based on his research and experience, New Hampshire has made reasonable policy choices relative to allocation of its education funding across all schools, how it has targeted funding to students who need more resources, and how it raised revenue both locally and at the state level. *Id.* at 1242-1261.

C. The Merits Order

The superior court began its merits order by characterizing the claim before it, writing: “the plaintiffs—a group of New Hampshire property owners and taxpayers—claim that by underfunding the delivery of a constitutionally adequate education, the State forces school districts to make up the difference via local property taxes assessed at varying rates, in

violation of Part II, Article 5.” Apx.I 4. This was followed by a discussion of several preliminary issues.

First, after a brief discussion of the applicable case law, the court addressed the question of standing. *Id.* at 4-8. The court “agree[d] with the plaintiffs that their claims concern concrete, personal injuries.” *Id.* at 9. Specifically, the court reasoned that because the plaintiffs pay taxes in areas with “relatively high equalized local school tax rates” they suffer “unique and concrete harm” when state funds for an adequate education are insufficient and had “standing to pursue their Adequacy Funding-related taxation claim[.]” *Id.* at 8-10.

The second preliminary issue the court addressed was the standard of review and the burden of proof. *Id.* at 12-14. The court first explained that the parties’ positions were consistent with one another. *Id.* The parties agreed that the plaintiff bore an initial burden of establishing a clear and substantial conflict between the statute and the constitution but that, once this standard was met, the burden shifted to the State to justify the existing funding system under strict scrutiny. *Id.* The court questioned this standard’s applicability—which certainly applies to Part II, Article 83 claims—due to the court’s view that the “plaintiffs allege a violation of Part II, Article 5 arising out of an alleged violation of Part II, Article 83.” *Id.* After considering a few prior cases, the court suggested it would likely reach the conclusion that intermediate scrutiny applied. *Id.* In describing this “intermediate scrutiny” standard, the court wrote:

If the lesser standard of intermediate scrutiny is the appropriate standard to apply here, that would mean that the State bears the initial burden of demonstrating that any insufficiency in

Adequacy Funding levels, and the resulting violation of Part II, Article 5, is “substantially related to an important governmental interest.” ... As explained below, however, the State made no attempt to justify current Adequacy Funding levels at trial, opting instead to challenge the sufficiency of the plaintiffs’ evidence under the strict scrutiny standard of review. ... For that reason, if the Court were to apply intermediate scrutiny here, the plaintiffs would necessarily prevail.

Id. The court then concluded by determining it would “assume that strict scrutiny applies” based on a number of factors including the parties’ agreement that this was the appropriate standard. *Id.*

The last preliminary issue the court discussed was which “relevant funding sources” should be considered when determining the adequacy of state funding for education under Part II, Article 83. *Id.* at 15-17. The court concluded that “the education revenue streams outside of Adequacy Funding”—which the court defined as base adequacy aid plus differentiated aid—“are not relevant to the plaintiffs’ claim that insufficient Adequacy Funding results in systemic violations of Part II, Article 83.” *Id.* However, the court did recognize that these additional funding sources—such as federal funds and state grants like extraordinary need and hold harmless grants—are “relevant to the plaintiffs’ claim that those violations force New Hampshire school districts to rely on local property taxes, assessed at varying rates, to bridge the gap between Adequacy Funding levels and necessary costs of meeting Constitutional Adequacy.” *Id.*

Following these three preliminary issues, the court discussed the factual evidence. *Id.* at 17-39. This discussion is followed by an analysis

section where the court declared that it “must now determine whether the plaintiffs have put forth sufficient evidence to demonstrate a ‘clear and substantial conflict’ between current Adequacy Funding levels and the costs necessary to meet Constitutional Adequacy ‘in all or virtually all,’ of New Hampshire’s school districts.” *Id.* at 40. The court characterized the outdated evidence of Dr. Freeman’s and Dr. Cascadden’s budgeting experiences as a “bellwether” theory⁴ sufficient to test whether, in 2024, with new and increased state revenues provided to school districts that were not available when Dr. Freeman and Dr. Cascadden performed their budgeting, the State’s current adequacy funding levels were too low across the entire State. *Id.* at 41. The court found total Adequacy Funding levels were proven insufficient to meet constitutional adequacy. *Id.* at 40-46. It also found that the plaintiffs established the insufficiency of special education related differentiated aid. *Id.* at 46-49.

After reaching these conclusions about the sufficiency of the funding to meet “Constitutional Adequacy” under Part II, Article 83, the court jumped ahead to find a Part II, Article 5 violation. *Id.* at 49-50. The court offered no explanation for this finding. Instead, the court wrote:

In summary, the plaintiffs have proven a “clear and substantial conflict” between the costs necessary to meet Constitutional Adequacy and current Adequacy Funding and special education differentiated aid funding levels “in all, or virtually all,” of New Hampshire’s school districts. The plaintiffs have also proven that these funding insufficiencies force local school

⁴ Notably, no plaintiff in this case is from Pittsfield or Berlin, and no municipality or school district is a party to this case.

districts to rely on local school tax revenues to fund apportion of Constitutional Adequacy. This effectively converts a portion of local school taxes into a State tax that is assessed at varying rates throughout the State, in violation of Part II, Article 5.

Id. However, no factual findings exist in the court’s decision to support this second conclusion—that “the plaintiffs have also proven that these funding insufficiencies force local school districts to rely on local school tax revenues to fund a portion of Constitutional Adequacy.” *Id.* (emphasis added).

With no further discussion of the Part II, Article 5 issue, the court moved on to a discussion of remedies. The court granted several of the plaintiffs’ requests for declaratory relief, including:

RSA 198:40-a, II is unconstitutional because it fails to provide enough money to deliver an adequate education as defined in RSA 193:E-2(a).

The amount of differentiated aid provided in RSA 198:40-a, II is unconstitutional because it fails to provide enough money to cover the additional cost of services that are necessary for students with disabilities ... to access an adequate education as defined in RSA 193:E-2(a).

...

Because RSA 198:40-a is insufficient to cover the full cost of an adequate education, districts must rely on local school taxes to pay for the cost of an adequate education. These local school taxes, when deployed to fund a state responsibility, are state taxes and violate the

New Hampshire Constitution because they are not uniform in rate across the state.

Id. at 52-53. However, the court denied plaintiffs' request for injunctive relief, at least until such later time as plaintiffs return to the court having "form[ed] a belief that the legislature is not acting diligently" to correct the constitutional violations. *Id.* at 53-55.

D. State's Motion for Reconsideration and the Court's Order

The State filed a motion for reconsideration raising two points. Apx.III 281. First, the State argued that the court's ruling on standing failed to recognize the need for there to be a connection between the alleged injury, the substantive claims, and the remedies sought by a plaintiff. *Id.* Specifically, the plaintiffs alleged an injury in the form of having to pay an allegedly unconstitutional tax. *Id.* Such an injury would allow them to seek abatement of the allegedly unconstitutional tax or a declaratory judgment finding that the tax is unconstitutional. *Id.* However, they did not do this. Instead, they sought a declaration that RSA 198:40-a is unconstitutional under Part II, Article 83 without standing to bring such a claim. *Id.*

The State also argued that the court's decision erroneously assumed that, when a municipality raises a local education property tax and then spends that money on educational adequacy, the local tax is "converted" into a state tax. *Id.* The State explained how this was based on a misreading of *Claremont II* and inconsistent with the holding of *Rand*, 2025 N.H. 27. *Id.* Specifically, *Claremont II* stands for the proposition that taxes which the State *requires* to be raised for the purpose of funding adequacy are state taxes and must be proportionate and reasonable across the State. 142 N.H.

at 470 (concluding that the school tax “as presently structured” or “as presently assessed” is “unreasonable”). *Claremont II* does not stand for the proposition that a local education property tax, voluntarily imposed by a municipal entity and therefore authorized for a local purpose, can be converted into a state tax through the manner in which a municipality or school district ultimately chooses to spend the revenue it raises. Apx.III 299-309. The latter proposition is far beyond what *Claremont II* held and contrary to this Court’s decision in *Rand*, 2025 N.H. 27. *Id.*

Finally, the State noted that the factual record was insufficient to allow the court to assume that municipalities and/or school districts had no other choice than to use local education property taxes to cover alleged shortfalls in state adequacy aid. *Id.* The State contended that those entities receive a plethora of other state revenues including other types of state education funding and other unrestricted state revenues like meals and rooms tax revenue. *Id.* No testimony was adduced at trial establishing how much total state revenue the State in fact directs to municipalities and school districts that those entities could use to provide a constitutionally adequate education. *Id.*

After full briefing and oral argument, the superior court denied the motion to reconsider. Apx.I 61-71. In doing so, the court summarily declared that the plaintiffs had proven both “that Adequacy Funding levels are insufficient for this purpose” and “that total State funding for education is insufficient to meet the demands of Constitutional Adequacy, and thus some portion of the State’s education-related constitutional obligations is being funded through local property taxes.” *Id.* at 67.

STATEMENT OF THE LEGAL LANDSCAPE

In order to place the important legal issues the State raises on appeal in their proper context, a foundational understanding of the New Hampshire Constitution and of how the legal landscape in this area of the law has evolved over more than two centuries is required. Understanding, in particular, how our State formed and adopted its constitution through constitutional convention and the people assembled at town meetings highlights the nature of the social compact adopted, N.H. Const. Pt. I, Art. 1, and the importance of adhering to its original meaning and design.

A. The Formation of The New Hampshire Constitution

New Hampshire was “the first of the thirteen states to create a ‘constitution,’ . . . but the last to form a fundamental law under which a sovereign state could operate.” Lynne Warren Turner, The Ninth State, New Hampshire’s Formative Years at 13 (University of North Carolina Press 1983). Its efforts “involved six distinct ‘constitutions’ and no less than fourteen sessions of the conventions that assembled to create them.” *Id.* “No other state endured such travail.” *Id.*

On January 5, 1776, New Hampshire adopted its “first constitution.” *Id.* at 14. This constitution turned the convention elected to create it into the legislature and vested in it “virtually unlimited powers.” *Id.* It “concentrated power in the hands of a dangerously small clique,” an “upper legislative chamber called a council.” *Id.* at 15. This bicameral legislature appointed the judicial and executive officers for the state and counties, including the members of the committee of safety, which was “the only executive authority known to the state until 1784.” *Id.* The “inevitable

result” of this constitution “was a despotism, on the whole benevolent, in the hands of the landed gentry who controlled the legislature.” *Id.* Meshech Weare “was president of the council, chairman of the committee of safety, and chief justice of the superior court for the entire period of the Revolution.” *Id.* In him were combined the legislative, executive, and judicial powers, an accumulation described by James Madison in *Federalist* No. 47 as the “very definition of tyranny.” *The Federalist*, Alexander Hamilton, James Madison, and John Jay at 268 (Barnes & Noble Books 2006).

In 1781, a third constitutional convention was formed to create a “permanent Plan or system of Government.” James Fairbanks Colby, *Manual of the Constitution of the State of New Hampshire* at 89 (1902). This plan would be sent to every “town, Parish and District in this State for the approbation of the people” through “town meetings legally called for that purpose.” *Id.* at 90. If the first proposed system was rejected, “the same Convention” was “empowered to proceed and make such amendment and alterations from time to time,” provided that, “after such alterations, the same be sent out for the approbation of the People” in the same manner. *Id.*

The delegates of this convention eventually proposed a new constitution. Turner, *The Ninth State* at 22-23. “The weapons with which they proposed to unseat the [governing] oligarchy were two: the separation of powers, involving the creation of a strong executive and judiciary which could check the legislature, and an exclusion clause, which would prevent the same individuals from dominating all three branches.” *Id.* at 23. The delegates defended these principles, explaining, in part, that, if the legislative, executive, and judicial powers “should be all united the maker

of the law would be the interpreter thereof, and might make it speak what language best pleased him, to the total abolition of justice.” *Id.* This draft of the constitution ultimately failed, but the debated sentiments and continued work of the convention persisted. *Id.* at 23-27.

In March 1783, the people were called to town meeting to extend their temporary constitution as the Revolutionary War was ending, while also being urged to adopt a more free and permanent government. *Id.* at 27; see Nathaniel Bouton, Documents and Records Relating to the State of New-Hampshire, Vol. III, at 969-70 (1874) (reprinting from the House Journal) (“The Legislature while fully convinced of the Utility & necessity of continuing the present Government for the term and reasons aforesaid, are deeply impressed with a sense of the necessity and importance of having a free & permanent government established in this State, and cannot omit this opportunity to recommend to their constituents a more particular & serious attention to an object so essential to the Security and happiness of themselves and posterity”).

The convention therefore “hastened its work to conclusion, produced a third draft [of a constitution] in June, met again in October to learn . . . that this effort had been successful, [and] ordered that the new government should go into operation on June 2, 1784.” Turner, *The Ninth State*, at 27. This constitution had its own weaknesses and, in 1792, “many of the provisions that had been forced out of the first draft by the people were voted in again.” *Id.* at 28. “But for the time being the spirit of local individualism was too well entrenched to be overthrown by the advocates of strong government.” *Id.*

B. The New Hampshire Constitution

“The New Hampshire Constitution is the fundamental charter of our State.” *State v. Ball*, 124 N.H. 226, 231 (1983). It is divided into two parts. This division “was not made without a purpose, and the name of each part is not without significance.” *Wooster v. Plymouth*, 62 N.H. 193, 197 (1882). “The first is a ‘bill of rights:’ the second is a ‘form of government.’” *Id.* “The second is, in general, a grant of powers, made by the people to ‘magistrates and officers of government,’ who are declared (in Part I, art 8) to be the grantors’ ‘agents.’” *Id.* “The first contains a list of rights not surrendered by the people when they formed themselves into a state.” *Id.* “By the reservation of these,” the people “limited the powers they granted in the second part, and exempted themselves, to the stipulated extent, from the authority of the government they created.” *Id.*

The importance of education finds footing in both sections. As to the Bill of Rights, Part I, Article 6 provides in part:

As morality and piety, rightly grounded on high principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, therefore, the several parishes, bodies corporate, or religious societies shall at all times have the right of electing their own teachers, and of contracting with them for their support or maintenance, or both. ...

(emphasis added). This section, by reserving to the bodies corporate (*i.e.*, the cities, towns, and school districts) the “right of electing their own teachers, and of contracting with them for their support or maintenance, or both,” reflects a controlling policy choice to keep control of education at a local level.

Part II, Article 83 exists near the end of the Form of Government and provides in relevant part:

Knowledge and learning, generally diffused through a community being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country;

(emphasis added).

C. The System of Education in Early New Hampshire

Various sources chronicle the early colonial and state history of education in New Hampshire. *See, e.g.*, Jeremy Belknap, The History of New Hampshire, Volume III at 288-325 (1792); Nathaniel Bouton, The History of Education in New-Hampshire, A Discourse (1833); Charles H. Bell, History of the Town of Exeter, New Hampshire at 285-300 (1888); George Gray Bush, Ph.D., History of Education in New Hampshire at 9-14 (1898).

These sources generally reflect that “[t]he system of education that appeared in the statute books of New Hampshire, first established when the Piscataqua settlement had been within the jurisdiction of Massachusetts in 1647, required all towns of fifty families to support an elementary school

and those of one hundred” to set up a grammar school. Turner, *The Ninth State* at 94. “And this law, in substance, was continued in force in the province of New Hampshire after its separation from Massachusetts.” Bell, *History of the Town of Exeter, New Hampshire* at 285; *see also* Bouton, *The History of Education in New-Hampshire, A Discourse* at 11. Under this law, “[t]he selectmen were empowered to agree with such schoolmaster for salary, and to raise money by way of rate upon the inhabitants to pay the same.” *Id.* at 11-12. “The penalty upon towns for neglect was 20 pounds, to be paid ‘towards the support of schools within the Province, where there may be the most need.’” *Id.* at 12. “These laws continued in force till the adoption of the Constitution.” *Id.*

After enactment of the New Hampshire Constitution, the General Court passed an Act in 1789, “for the better regulation of schools within this State” that provided:

[T]he Select men of the Several towns & Parishes within this State be . . . empowered and required to assess annually the Inhabitants of their respective towns, according to their polls and ratable estates, in a sum to be computed at the rate of five pounds for every twenty shillings of their proportion for public taxes for the time being and so for a greater or lesser sum.

N.H. Laws 1784-1792, Chapter 8 at 449 (First Constitutional Period).⁵

After the selectmen collected these sums, they were to be “applied to the sole purpose of keeping an English Grammar School or Schools for

⁵ The exact amount to be raised was periodically adjusted over time. *See, e.g.*, N.H. Laws 1801-1811, Chapter 60 at 771-72 (Second Constitutional Period); N.H. Laws 1811-1820, Chapter 61 at 722 (Second Constitutional Period).

teaching reading, writing and arithmetic, within the towns and parishes for which the same shall be assessed;” *Id.* The General Court also declared that should the selectmen neglect to fulfil their duties to raise and appropriate funds for a local school, “such Select men shall forfeit and pay the full sum, which they shall be so found delinquent in assessing, seasonably collecting and duly appropriating.” *Id.*

In 1805, the General Court “empowered towns to divide into school districts and gave to each district a right to raise money by tax for the purposes of erecting, repairing, or purchasing a schoolhouse, and for securing all necessary utensils for the same.” Bush, *History of Education in New Hampshire* at 14; *see* N.H. Laws 1801-1811, Chapter 39 at 467 (Second Constitutional Period). This change “greatly enlarged the facilities for education by increasing the number of schools and leading to the erection of new and more convenient schoolhouses”; however, over time, it was abused “by multiplying districts to too great an extent.” Bush, *History of Education in New Hampshire* at 14. As such, in 1827, the General Court passed a more comprehensive act upon the subject of education that “retained whatever was valuable in the previous law,” including its local funding structure, and “added several new provisions.” *Id.* at 16; *see* N.H. Laws 1821-1828, Chapter 57 at 661-65 (Second Constitutional Period).

The new comprehensive law of 1827 “provided for the districting of towns, and enlarged and defined the powers of school districts and their officers.” Bush, *History of Education in New Hampshire* at 16. “It provided, also, for the support of the schools by distribution to each school district, by the selectmen, of a portion of the yearly assessment for this purpose.” *Id.* “It raised the qualifications of teachers, and required that

scholars should be well supplied with books at the expense of parents, masters, or guardians, and, in case they were not able, at the public expense.” *Id.*

In 1850, the State held its Fifth Constitutional Convention. The convention delegates proposed several changes with relation to the constitutional provisions addressing education. First, the Convention proposed amending Part I, Article 6 to remove “bodies corporate” from those with the right to elect and make provision at their own expense for schoolteachers. Colby, *Manual of the Constitution of the State of New Hampshire* at 196 (Bill of Rights amendment). Instead, this right would be given only to the “several religious societies” existing in the State. *Id.* The Convention also proposed moving the existing encouragement of literature clause from Part II into Part I’s Bill of Rights. *Id.* at 197; *Convention to Revise the Constitution* at 407 (Nov. 1850) (detailing amendments to Encouragement of Literature section). Finally, the Convention proposed adding an article to Part II which required the creation of a “free common school system” to be established and maintained by the Legislature “at the public expense” and placed it under the control of a State Superintendent. Colby, *Manual of the Constitution of the State of New Hampshire* at 207; *Convention to Revise the Constitution* at 407 (Nov. 1850). The funding for this common school system was to be collected “annually, in the several towns and places in this State, of a sum not less than one hundred and twenty-five dollars for every dollar of State taxes, apportioned to them respectively[.]” *Id.* Collectively, these amendments would have created a State-centric, State-controlled public school system.

These amendments were motivated at least in part by the perception that localities were not sufficiently investing in education. As Mr. Leonard of Dublin remarked:

[O]ur common schools are still far from being what they should be and might be. ... Among the hinderances to the welfare and best success of schools, are the want of more convenient and commodious school houses, of teachers better qualified, and of more interest on the part of parents. If, in order to supply existing wants and remedy existing defects more pecuniary means are needed, there should be a provision in the constitution authorizing and requiring the legislature to grant them.

Convention to Revise the Constitution at 53 (Nov. 1850) (emphasis added).

These proposed constitutional amendments, while passed by the Convention, were rejected by the voters. Colby, *Manual of the Constitution of the State of New Hampshire* at 214. In the wake of this rejection, Governor Dinsmoor delivered, in part, the following remarks to the Legislature in 1851 in his annual message: “It is apparent from this decisive expression of the popular will that the present Constitution is, in the main, entirely satisfactory to a large majority of the people; that the alterations demanded by them are few and obvious, and that they neither contemplated nor desired the extensive and radical changes proposed by the convention.” *Id.*

In the years that followed, the General Court made various statutory changes in the area of education. *See generally Coleman v. School Dist.*, 87 N.H. 465, 467-68 (1936). For example, in 1885, the “old district system of schools was abolished” and “each town was made a school district, ... and

all the schools of the district were placed under the direction of a board of education.” Bush, *History of Education in New Hampshire* at 35. As a result, “[n]ext to the parent and citizen in the work of education, the State now recognize[d] the town as the proper agency for maintaining schools.” *Id.*

D. This Court’s Early Discussions of Part II, Article 83

As early as 1839, this Court described our State Constitution as commending “the interests of education to the fostering care of the legislature.” *Brewster v. Hough*, 10 N.H. 138, 149 (1839). This Court observed that the interests that would be served if colleges and “other literary institutions” were exempt from taxation; however, this Court also recognized such a tax exemption remained a policy choice this Court could not provide. *Id.* In 1871, this Court observed:

[Part II, Article 83] in the constitutions of 1783 and 1792, in regard to the encouragement of literature, in connection with the early legislation on the subject (see acts of June 18, 1789, December 13, 1804, December 25, 1805), show conclusively, if any such evidence were needed, that the framers of the constitution, as well as their contemporaries in the legislature, regarded the subject of education as one of public concern, to be cherished, regulated, and controlled by the State; and the great multitude and variety of acts passed since show that no different view has ever been entertained.

Farnum’s Petition, 51 N.H. 376 at 378-79. This Court went on:

First, the constitution enjoins the duty, in very general and comprehensive terms, on magistrates and legislators as one of paramount public importance. Then the legislature, in the early acts referred to, enjoin it upon towns, parishes, &c., such corporations being the only organized public bodies then in

existence upon which their mandate could be laid, and which could be entrusted with the performance of the duty.

Id. at 379. This Court concluded that the school districts “are and always have been public corporate bodies, created by the legislature as a means and instrument in carrying out the public duty in reference to public instruction laid upon the legislature by the constitution.” *Id.* This Court further concluded that the inhabitants of school districts had no vested rights “in the existence or in any of the corporate functions of the district” that can be regarded as beyond legislative control. *Id.* In other words, this Court believed in 1871 that the local school system extant since New Hampshire’s founding, delegating down as it must to towns and school districts, was met the duty Part II, Article 83 imposes. It further believed that the inhabitants of those school districts had no vested right in any of the corporate functions of the district that could be asserted in opposition to this legislative control.

Throughout most of the 20th Century, this Court’s precedents cited Part II, Article 83 for two propositions: one related to authority and the other related to duty. First, this Court clearly considered Part II, Article 83 a constitutional charge that permits the legislature to establish rules and directives for the public related to the education which towns and/or school districts had to provide. For example, in 1902, this Court concluded that Part II, Article 83 empowered the legislature to pass and enforce compulsory school attendance requirements. *State v. Jackson*, 71 N.H. 552 (1902). In 1936, this Court considered the question of whether a local school board could declare individuals disqualified from serving as teachers despite the State Board of Education having determined them qualified.

Coleman v. School District, 87 N.H. 465 (1936). In considering this question, this Court opined that the scope of the legislature’s authority to set rules for public education “is virtually untrammelled and unhampered” and noted that “[t]he constitution[,] recognizing the subject of education as ‘one of paramount public importance,’ merely enjoins that it be ‘cherished, regulated and controlled by the State.” *Id.* Similarly, in 1959, this Court described Part II, Article 83 as “lay[ing] stress on the promotion of education by the Legislature.” *Opinion of the Justices*, 102 N.H. 123, 125 (1959); *see Opinion of Justices*, 108 N.H. 268, 275-76 (1967) (“The Legislature, and not the judiciary, is the arbiter of the wisdom, fairness or reasonableness of the means chosen to accomplish” the public purpose of ensuring an adequate education for pupils in this state “provided they do not violate some constitutional provision”).

The second proposition for which this Court has historically cited Part II, Article 83 relates to a general duty that all government officials owe to the State’s citizenry and that should not be subordinated to the needs of any one particular individual or group of individuals. *See, e.g., In re Davis*, 114 N.H. 242, 243 (1974) (“Our State constitution imposes upon government the duty of providing for the education of its citizens.”); *Opinion of Justices*, 108 N.H. 268, 275-76 (1967) (“Schools are means of protecting the State from the consequences of an ignorant and incompetent citizenship.”); *cf. Fogg v. Board of Education*, 76 N.H. 296, 298 (1912) (explaining that “the interest of the public in the intelligence of the people generally is paramount to the special interest or desire of a single individual”); *id.* at 299 (“The primary purpose of the maintenance of the common-school system is the promotion of the general intelligence of the

people constituting the body politic and thereby to increase the usefulness and efficiency of the citizens, upon which the government of society depends.”).

E. The Modern School Funding Jurisprudence

Beginning in 1993 with *Claremont School District v. Governor*, 138 N.H. 183 (1993) (*Claremont I*), this Court began issuing decisions with respect to education policy and funding divorced from our Constitution’s text, structure, purpose, and the history described above. These decisions have eliminated the broad, flexible discretion lawmakers and government officials had under Part II, Article 83 to cherish the interests of education in the manner they deem best. *Cf. San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 42-43 (1973) (“The very complexity of the problems of financing and managing a statewide public school system suggests that there will be more than one constitutionally permissible method of solving them, and that, within the limits of rationality, the legislature’s efforts to tackle the problems should be entitled to respect.”). Instead, *Claremont I* and its progeny have made specific, initial education policy choices found nowhere in the constitutional text and have directed the co-equal branches of government to follow them.

1. *Claremont I* creates a textually incorrect constitutional directive for the State to support public schools by “providing” a “constitutionally adequate education.”

In 1993, this Court issued *Claremont I*. The decision arose from an appeal of a superior court decision granting the State’s Motion to Dismiss. Apx.II 3-21. The *Claremont I* plaintiffs maintained that specific language

within Part II, Article 83 “created a duty upon the governor and the legislature to equitably spread educational opportunities and to equitably and adequately fund public education.” *Id.* The superior court disagreed, explaining that the “Encouragement of Literature Clause contains no language regarding equity, uniformity, or even adequacy of education.” *Id.*

This Court reversed, holding that Part II, Article 83 “imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools of New Hampshire and to guarantee adequate funding.” *Claremont I*, 138 N.H. at 184. This Court held that the constitutional language “command[ed] ... that the State provide an education to all its citizens and that it support all public schools.” *Id.* at 187. Finally, this Court felt it necessary, “[h]aving identified that a duty exists,” to legislate into existence a corresponding right in the citizens of New Hampshire to enforce this new constitutional right to an adequate education it had created. In doing so, this Court declared “that in New Hampshire a free public education is at the very least an important, substantive right.” *Id.* at 192. This statement is in direct conflict with at least one prior pronouncement of this Court. *See Fogg*, 76 N.H. at 299 (“Free schooling furnished by the state is not so much a right granted to pupils as a duty imposed upon them for the public good.”).

2. *Claremont II* converts a textually incorrect constitutional directive for the State to provide a “constitutionally adequate education” into an obligation for the State to fund a “constitutionally

adequate education” in public schools using revenue raised at only the state-level.

Four years after *Claremont I*, this Court decided *Claremont II*. *Claremont School District v. Governor*, 142 N.H. 462 (1997) (*Claremont II*). *Claremont II* arose from a lengthy, well-reasoned superior court decision finding that the plaintiffs had failed to prove a violation of Part II, Articles 5 and 83. Apx.II 25-216.⁶ This Court reversed striking down the state funding mechanism as unconstitutional under Part II, Article 5, and declining to reach the other substantive questions raised on appeal. *Claremont II*, 142 N.H. at 466.

The *Claremont II* plaintiffs also requested that this Court “declare a *State funded* constitutionally adequate public education a fundamental right.” *Id.* at 472 (emphasis added). Though it had no relevance to the dispositive Part II, Article 5 question resolved on appeal and could be described today as nothing more than dicta, this Court obliged. *Id.* at 473. In doing so, this Court’s decision is written as if the request simply sought clarification that the right recognized in *Claremont I*, and declared therein to be “at the very least” “an important, substantive right,” was in fact a fundamental right. *Id.* at 472-73. As such, the Court failed to recognize, much less justify, the transformation of what had been an important right to a “free public education” in *Claremont I*, into a fundamental right to a “state funded” public education.

⁶ It is worth noting that no decision of this Court has ever found that the students of this State are not receiving an adequate education, and no such findings exist in this case either.

As to the Part II, Article 5 question directly before the Court, *Claremont II* held that “the property tax levied to fund education is, by virtue of the State’s duty to provide a constitutionally adequate public education,” a state tax. *Id.* at 466. This Court reasoned that, in determining if a tax is local, the relevant inquiry is simply “its purpose” and “the purpose of the school tax” at issue in that case was found to be “overwhelmingly a State purpose[.]” *Id.* at 468-69. The Court then declared: “To the extent that the property tax is used in the future to fund the provision of an adequate education, the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State.” *Id.* at 471. In making this declaration, this Court declined to confront the fact that its holding was fundamentally inconsistent with what the Court had said just a few years earlier, that “it is clearly within the power of the [State] to delegate some of the implementation of the duty to local governments” through the placement of “local control and fiscal support ... on local governments[.]” *Claremont I*, 138 N.H. at 191 (emphasis added).

The decision in *Claremont II* is also notable for what it does not say. As discussed above, the Court did not address, much less explain, the ways in which *Claremont II* fundamentally deviates from and is inconsistent with *Claremont I*. But *Claremont II* also fails to engage with the text of Part II, Article 83 in any meaningful way. Its quotations of the constitutional text are confined to single words or short phrases used in isolation from their relevant context and thus divorced from their meaning. As a result, the decision fails to wrestle with the broader implications of the Court’s decision.

For instance, if the constitutional language does impose a duty on legislators and magistrates to fund all public schools with state tax dollars, then what is to be made of the fact that the constitution also directs “legislators and magistrates ... to cherish the interest of ... all seminaries” and to “encourage” all “public and private” institutions? N.H. Const. Part II, Art. 83. Are those institutions of learning not entitled to the same type of state subsidy? Or what of the obligation to “inculcate” the State’s children in “the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections”? *Id.*

Unlike the majority, Justice Horton was not silent on these questions. He expressly identified them in his dissent and correctly described the holding of *Claremont I* as follows:

We have held that our constitution invests in the legislature and the magistrates of this State the duty to provide a *constitutionally* adequate education and to *guarantee* the funding thereof. ... We also held that the implementation of this duty could be delegated.

Claremont II, 142 N.H. at 477-78. Justice Horton then did what the majority did not: he returned to the constitutional text. *Id.* at 478-82. He attempted to parse the difference between a constitutional directive to “cherish” and a directive to “encourage,” and he made a distinction between a child’s right to receive a constitutionally adequate education and the proper funding structure for that education. *Id.* As to the first right of children to receive a constitutionally adequate education, he concluded that the education being provided by public schools in New Hampshire was

constitutionally adequate. *Id.* at 478-480. As to the constitutionality of the taxation system, Justice Horton observed that the majority's opinion "ignore[ed] the fact that governmental duty can be delegated to its subdivisions[.]" *Id.* Because governmental duties may be delegated, Justice Horton was:

driven to a holding that the constitutional education nut is properly delegated and the purpose, for taxation purposes, is demonstrably local. ... Funds raised by taxation are used for political purposes within the district, for the district's use, and expended by the district to achieve educational standards set by the State and the district, for the sole benefit of the district. ... Given the legislature's proper delegation, its clear designation of the taxing district, the discerned purpose of the tax, and its obvious proportionality within the taxing district, I would hold that the trial court was correct in deciding, in the context of this case, that the part II, article 5 tests of reasonability and proportionality have been met by the current tax system.

Id.

In the decade following *Claremont I*, numerous opinions (collectively, the "*Claremont Decisions*") all relating back to *Claremont I & II* would issue from this Court. *See, e.g., Claremont II*, 142 N.H. 462; *Claremont Sch. District v. Governor*, 142 N.H. 737 (1998); *Opinion of the Justices (Sch. Fin.)*, 142 N.H. 892 (1998); *Claremont Sch. District v. Governor*, 143 N.H. 154 (1998); *Opinion of the Justices (Tax Plan Referendum)*, 143 N.H. 429 (1999); *Claremont Sch. District v. Governor*, 144 N.H. 210 (1999); *Claremont Sch. District v. Governor*, 144 N.H. 590 (1999); *Opinion of the Justices (Reformed Pub. Sch. Fin. Sys.)*, 145 N.H.

474 (2000); *Claremont Sch. District v. Governor (Accountability)*, 147 N.H. 499 (2002).

3. *Londonderry I*: The incorrect constitutional directive to support public schools by providing an adequate education and paying for it with only state dollars becomes an obligation to: (1) “define an adequate education,” (2) “determine the cost,” (3) “fund it with constitutional taxes,” and (4) “ensure it is delivered through accountability.”

After the *Claremont* Decisions, this Court began describing the judicially created “duty to provide an adequate education” as containing “four mandates[.]” *Londonderry v. State*, 154 N.H. 153, 155-56 (2006) (“*Londonderry I*”); see also *Londonderry Sch. Dist. v. State*, 157 N.H. 734, 738 (2008) (“*Londonderry II*”) (C.J. Broderick dissenting) (outlining these same four obligations with citation to *Claremont II*); *Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154, 156-57 (2021) (“*ConVal I*”) (same). These mandates were: “define an adequate education, determine the cost, fund it with constitutional taxes, and ensure its delivery through accountability[.]” *ConVal I*, 174 N.H. at 156-57.

In *Opinion of the Justices (Reformed Public School Financing System)*, this Court explained that, when considering whether the State was complying with these mandates, courts must begin with the Legislature’s definition of an adequate education, writing:

It is not possible to determine the level of funding required to provide the children of this State with a constitutionally adequate education until its essential elements have been identified and defined. The legislature and the Governor have broad latitude to fashion the specifics. Once

this critical task has been completed, it is for the legislature to adopt a funding mechanism to ensure that a constitutionally adequate education is provided.

Opinion of the Justices (Reformed Public School Financing System), 145 N.H. 474, 476, (2000).

In *Londonderry I*, this Court added substance to the definition mandate by making clear that the definition would serve as the objective standard against which the State's costing and funding obligations would be measured. 154 N.H. at 162. This Court explained that "the definition of a constitutionally adequate education is essential to all other issues, including the cost of a constitutionally adequate education and the method by which to raise the necessary funds." *Id.* The definition needed to be more specific than a list of the general skills or knowledge that a child will acquire through such an education; it had to specify the substantive educational program provided to students. *Id.* This Court also made clear that it is not sufficient to set up a statewide education system that requires local schools to provide a specific educational program that exceeds constitutional adequacy. *Id.* The Legislature, this Court said, is constitutionally mandated to isolate what is constitutional adequacy and what exceeds adequacy so that the cost of constitutional adequacy can be calculated; however, the Court did not explain how this could, or should, be done. *Id.* This Court explained that "without a substantive definition of constitutional adequacy, it will remain impossible for ... courts ... to know where the State's obligations to fund the cost of a constitutionally adequate education begin and end." *Id.*

Following *Londonderry I*, the Legislature spent substantial time, resources, and effort modifying the definition of an adequate education, as well as costing and funding it through the political process. *ConVal I*, 174 N.H. at 157-59. This system remained in place and largely unchallenged for approximately a decade after its implementation.

4. *ConVal I & ConVal II*: The incorrect constitutional directive to support public schools by paying for a legislatively-defined adequate education becomes a state obligation to provide enough money to operate an entire school district without any local funds regardless of the legislative definition.

The most recent education funding case this Court considered was *ConVal*. *ConVal* resulted in two appellate decisions: *ConVal I*, 174 N.H. 154, and *ConVal II*, 2025 N.H. 29.

ConVal I came before this Court in 2020/2021 after the lower court had “granted the plaintiffs’ motion for summary judgment on the grounds that RSA 198:40-a, II(a) is unconstitutional as applied to them, because it utilizes insufficient teacher-student ratios and ‘includes transportation costs intentionally insufficient to provide transportation to high school students.’” 174 N.H. at 160. This Court found the lower court erred in basing this conclusion upon legislative committee calculations rather than based solely on the sufficiency of the final adequacy funding provided for in RSA 198:40-a, II(a). *Id.* at 163-66. This Court also concluded that the determination of whether funding is sufficient to fund what the State has legislatively defined as a constitutionally adequate education is a “mixed question of law and fact” not properly subject to ruling at the motion to dismiss stage where there are any disputed issues of material fact. *Id.* at

166-67. The Court explained that this mixed question is created because “it is ‘impossible’ to address the plaintiffs’ costing argument without first determining what is required to deliver an adequate education as defined in the statute.” *Id.* at 166.

Following this first appeal, the litigation proceeded through a three-week bench trial. *ConVal II*, 2025 N.H. at ¶10. The trial court then issued an order granting “the plaintiffs’ request for a declaratory judgment that RSA 198:40-a, II(a) is facially unconstitutional,” and the State appealed this decision. *Id.* at ¶10-13. On appeal, this Court began with an articulation of the state of the law, writing:

Over thirty years ago in Claremont I, ... we held that Part II, Article 83 of the State Constitution “imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding.” ... To comply with the constitutional duty recognized in Claremont I, the State must “define an adequate education, determine the cost, fund it with constitutional taxes, and ensure its delivery through accountability.”

ConVal II, 2025 N.H. at ¶3. Based upon this case law, this Court defined the issue presently before it as “whether the State has fulfilled its constitutional obligation, imposed by the Encouragement of Literature Clause, to determine the cost of, and sufficiently fund, the opportunity for a constitutionally adequate education for each educable child in New Hampshire.” *Id.* at ¶1. The issue of the sufficiency of the State’s statutory definition, as contained in RSA 193-E:2-a, was not before the Court;

neither was the sufficiency of State’s system of ensuring accountability nor the constitutionality of its taxing system.

This Court began by considering and rejecting a number of claims of error the State raised, including an argument that it was improper to consider the adequacy of the funding provided under RSA 198:40-a, II(a) without also considering the differential aid funding provided under RSA 198:40-a, II(b)-(d), given that the statute twice made clear that the entirety of the funding provided under subsection II was intended to fund the legislative definition of an adequate education. *See* RSA 198:40-a, I (2025) (“the annual cost of providing the opportunity for an adequate education as defined in RSA 193-E:2-a shall be as specified in paragraph II”); RSA 198:40-a, III (2025) (“[t]he sum total calculated under paragraph II shall be the cost of an adequate education”).

This Court then proceeded to consider the merits of plaintiffs’ facial constitutional challenge to RSA 198:40-a, II(a). *Id.* at ¶¶18-40. In doing so, this Court endorsed the trial court’s factual conclusion that a broad range of services not contained in the statutory definition must be funded as part of constitutional adequacy, including facilities operation and maintenance, transportation, principals, administrative assistants, custodians, and nurses. *Id.* at ¶43. While this Court’s opinion does not frame the issue in this way, it effectively adopts the lower court’s conclusion that constitutional adequacy funding must include sufficient state funding to allow a locality to operate an adequate school district without the use of any local funds. Apx.II 231. Although the statutory definition of an adequate education was not challenged as being constitutionally underinclusive, this Court did not use it as the objective standard against which to measure the State’s costing

and funding obligation as it had previously told the Legislature it would. See *Londonderry I*, 154 N.H. at 162.

This Court's reasoning in *ConVal II* is also fundamentally at odds with the clear statement this Court made in *Claremont I*: "That local control and fiscal support has been placed in greater or lesser measure through our history on local governments does not dilute the validity of the conclusion that the duty to support the public schools lies with the State" as "it is clearly within the power of the State to delegate some of the implementation of the duty to local governments[.]" 138 N.H. at 191. It is also at odds with this Court's assumption in *Londonderry I* that constitutional adequacy is logically something less than the entirety of operating a school consistent with the rules and regulations established by the Department of Education. 154 N.H. at 161-62. As the *Londonderry I* court aptly observed, if all of the Department of Education's rules, regulations, and curriculum framework were combined with statutes to define constitutional adequacy, "there would be no need for any local education taxes as the State would be required to pay for implementing the entire statutory scheme." *Id.*

Building yet further upon this conclusion that state adequacy funding must be sufficient to operate the entirety of a school system, this Court in *ConVal II* then concluded that, given the State's decision to fund adequacy through a statewide per-pupil amount, "[t]he amount of base adequacy aid must therefore be sufficient to provide the opportunity for an adequate education in each and every school district in the state." *Id.* at ¶45. This Court wrote: "We therefore reject the implication that the trial court was compelled to determine the cost of providing an adequate education in a

manner that could result in constitutionally insufficient funding in some school districts.” *Id.* In other words, one subcomponent of one statutory funding mechanism must, on its own, pay for virtually the entire adequacy obligation. That standardized amount must be set high enough so no school district receives less than adequacy, even if that means certain school districts will receive much more than they need for adequacy, and even if the Legislature has in place targeted educational aid grants, RSA 198:38-:45, designed to prevent this type of mass overspending while still funding adequacy properly across the State.

Finally, this Court affirmed the lower court’s declaration that “a conservative minimum threshold of \$7,356.01” is the “base adequacy aid funding” level that must be exceeded for a funding scheme to be constitutional, even though the lower court suggested that this figure itself was likely too low to satisfy its conception of the State’s funding obligation. *Id.* at ¶67.

Justice Countway and Justice Donovan largely dissented from the above opinions of this Court. They would have instead concluded that the lower court erred when it: “(1) allowed the plaintiffs to prevail upon their facial constitutional challenge to only one subparagraph of RSA 198:40-a (Supp. 2024); and (2) established a conservative minimum threshold amount that base adequacy aid must exceed, thereby invading the legislature’s policy-making function.” *Id.* at ¶79. They would have concluded that the first of these errors so pervaded the facial constitutional analysis as to require reversal. *Id.* ¶88. They also would have construed and applied the statutory definition of an adequate education to determine if RSA 198:40-a, II(a) was constitutional. *Id.* ¶¶89-91 & fn.9.

Retired superior court Chief Justice Nadeau and retired superior court justice Abramson also dissented in part. *Id.* ¶¶96-136. They would have affirmed the trial court’s immediate payment directive even though such an immediate payment directive would have plainly violated the separation of powers and various structural safeguards that our State Constitution imposes on the operation of state government, including the appropriation and spending of taxpayer dollars.

SUMMARY OF THE ARGUMENT

This Court's modern education funding jurisprudence, dating back to *Claremont I*, has spawned a near-endless cycle of school funding litigation. The predominant focus of that litigation has not been on whether New Hampshire's public-school students are receiving an adequate education or whether the system has enough funding to provide an adequate education. Indeed, both of these things today are uncontested. Instead, the litigation has essentially devolved into a never-ending debate over where to draw the line between State and local funding for public education. This debate is entirely divorced from any holding in *Claremont I*. Worse still, it has embroiled the state judiciary, including this Court, in the very types of fiscal and policy deliberations that in any other context would be non-justiciable.

This appeal presents an opportunity to course correct. At a minimum, this Court should modify *Claremont I* and its progeny to make clear that, for the purposes of Part II, Article 83, the "State" includes its political subdivisions such as municipalities and school districts, which finds overwhelming support in the historical legal record. It is in keeping with how other public duties are administered and funded. It would preserve the core holding in *Claremont I* regarding the provision of an adequate education while restoring basic constitutional order to the education funding system. And it would relieve the judiciary from having to attempt to adjudicate education fiscal and policy questions that are quintessentially beyond the judicial power.

That said, this Court should overrule *Claremont I* and its progeny in their entirety. This entire line of jurisprudence is wrong as a matter of

constitutional law. It is contrary to the text of Part II, Article 83 and the structure of the State Constitution. It finds no support in the historical record or in the more than two centuries of this Court's jurisprudence that preceded *Claremont I & II*. The traditional *stare decisis* factors, to the extent they apply at all, offer no compelling basis to retain this errant and erratic line of jurisprudence.

If the Court nonetheless declines to modify or overrule its modern education funding precedents, it should still reverse the trial court's decision in this case. None of the plaintiffs established standing to maintain their Part II, Article 83 claim, and the type of claim the plaintiffs brought presents a quintessential non-justiciable political question. This Court's prior decision in this case, *Rand I*, along with a long line of supporting jurisprudence, also confirms that the plaintiffs' purported Part II, Article 5 claim fails as a matter of law. And there is no support in this Court's education funding decisions, nor in state or federal law, for the notion that the state government is required to fund all of the costs incurred by local school districts related to special education. While these issues all flow from the endemic problems with this Court's modern education funding jurisprudence, each provides a standalone reason to reverse.

ARGUMENT

I. *CLAREMONT I* AND ITS PROGENY SHOULD BE MODIFIED OR OVERRULED, IN WHOLE OR IN PART.

Claremont I and its progeny should be modified or overruled in whole or in part in order to: (1) make clear that, in the education context, the “State” means and includes its political subdivisions including its municipalities and school districts; and (2) make clear that, so long as the “State” as a whole is putting sufficient money into the public school system such that students are receiving a constitutionally adequate education, no Part II, Article 83 claim is cognizable or viable. Such a result would restore the balance between the coequal branches of government, render this Court’s jurisprudence surrounding school funding workable, and place the focus of any future school funding litigation where it should be, on ensuring the children of this State—its future voting populous—are being adequately educated. Several reasonable paths could be taken to reach this result.

This Court’s modern school funding jurisprudence began with *Claremont I*. As will be explained below, this Court’s holding in *Claremont I* finds no basis in the Constitution, was wrongly decided, and should be overruled. However, were this Court to disagree, it should nevertheless overrule *Claremont II*. *Claremont II* started down an unsustainable path by creating an errant, artificial distinction between the “State” and its local political subdivisions that was wholly inconsistent with the text and history of the New Hampshire Constitution and this Court’s existing precedent. This fundamental error has since created a line of jurisprudence that is unworkable and impractical, lacks discoverable and manageable standards,

and constitutes an anomalous outlier that conflicts with well-settled principles of law.

Alternatively, this Court could modify its modern education funding jurisprudence to return to the well-established principle of law in force since New Hampshire's founding that the political subdivisions of the State are the State and that their authority to govern is as an agent of the State. In doing so, this Court could find that the core Part II, Article 83 duty runs to those local entities as well and does not foreclose the State from delegating education funding responsibilities to them. Finally, this Court should find that, so long as the State, inclusive of its political subdivisions, is putting sufficient money into the public education system to ensure public school students are receiving a constitutionally adequate education, the Part II, Article 83 duty is fulfilled.

A. *Claremont I*'s Holding Finds No Basis in the Text of the New Hampshire Constitution

In *Claremont I*, this Court held that Part II, Article 83 imposes a duty on the State to “provide a constitutionally adequate education to every educable child in the public schools” and “to guarantee adequate funding.” 138 N.H. at 184. In so holding, this Court further “emphasized” a “corresponding right of the citizens to its enforcement” that is “at the very least an important, substantive right” and that “[a]ny citizen has standing to enforce.” 138 N.H. at 191-92. These holdings find no support in the text of the New Hampshire Constitution, particularly when understood in the context in which that text was written. See *Richard v. Speaker of the House of Representatives*, 175 N.H. 262, 269 (2022) (“The language used by the people in the great paramount law which controls the legislature as well as the people, is to be always understood and explained in the sense in which it was used at the time when the constitution and the laws were adopted.”).

Part II, Article 83 exists in the second part of our constitution, the Form of Government section. Its first two clauses acknowledge that the general diffusion of knowledge and learning through the State is essential to preserve a free government and that spreading the opportunities and advantages of education through the State is highly conducive to promoting this end. It then declares it to be “the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of . . . , all seminaries and public schools”; it does not declare it to be the duty of the legislators and magistrates “to cherish . . . all . . . public schools,” as the *Claremont I* Court stated. The correct reading of the provision makes clear

that the “duty,” which is assigned to individual political actors, is a higher-level duty to cherish the interest of all public schools.

Turning to the plain meaning of the actual words used in Part II, Article 83, a “duty” is “[t]hat to which a man is by any natural or legal obligation bound.” Thomas Sheridan, *A Complete Dictionary of The English Language*, Vol. I, at 418 (3d ed. 1790). A “legislator” is “[a] lawgiver, one who makes laws for any community.” Thomas Sheridan, *A Complete Dictionary of The English Language*, Vol. II, at 20 (3d ed. 1790). A “magistrate” is “[a] man publicly invested with authority, a governour.” *Id.* at 39. The words “legislator” and “magistrate” are broad terms which include all lawmakers and public officers, including local lawmakers and public officers. *See Ricker’s Petition*, 66 N.H. 207, 231 (1890) (“A selectman is a public officer.”). “To Cherish” means to “support, to shelter, to nurse up,” Thomas Sheridan, *A Complete Dictionary of The English Language*, Vol. I, at 268 (3d ed. 1790)⁷, or “to nourish or promote the growth of a thing; to help; to encourage; to protect, shelter, and nourish,” Rev. James Barclay, *A Complete and Universal English Dictionary* at 203 (1792)⁸. “Interest” means “[c]oncern, advantage, good.” Sheridan, *A Complete Dictionary of The English Language*, Vol. I, at 620.

Thus, in 1783 when the townspeople gathered at town meetings to adopt or reject our State Constitution, Part II, Article 83 would have been

⁷Available at:

https://play.google.com/books/reader?id=pBFJAAAACAAJ&pg=GBS.PP6&printsec=frontcover&source=gbs_atb_hover

⁸ Available at:

https://play.google.com/books/reader?id=yeUIAAAAQAAJ&pg=GBS.PP2&printsec=frontcover&source=gbs_atb_hover

commonly understood to impose a legal obligation on all individual lawmakers and public officials, at the State and local levels, to nourish, promote, or support the concerns, advantages, or good of all seminaries and public schools. *See Trs. Of Phillips Exeter Acad. v. Exeter*, 90 N.H. 472 (1940) (construing Part II, Article 83 to read “to cherish the interest of . . . all seminaries and public schools”); *see also Opinion of the Justices*, 102 N.H. at 125 (“Our Constitution lays stress on the promotion of education by the Legislature”); *Brewster*, 10 N.H. at 149 (“The constitution commends the interests of education to the fostering care of the legislature . . .”).

Even if *Claremont I* was correct in construing Part II, Article 83 to impose on the legislators and magistrates a duty “to cherish . . . all . . . public schools,” and “cherish” in that context meant only “support,” in or around 1783, the word “support” meant “to sustain, bear, or prop up.” Barclay, *A Complete and Universal English Dictionary* at 930. This definition in no way dictates a particular mode, manner, level, or kind of support.

Consequently, in 1783, Part II, Article 83 would not have been reasonably understood to require the State or the General Court as collective entities to provide all children in the public schools with an “adequate education,” to define an “adequate education,” to cost and fund that “adequate education” with only state money raised across a state taxing district, and to deliver that “adequate education” with accountability. Nor would it have been reasonably understood to confer a parallel right on the citizens of this State to privately enforce those “adequate education” mandates through a lawsuit against the State. Simply put, the constitutional language on its face makes no reference to educational quality, defining an

“adequate education,” required state-level funding, or a parallel private right of citizens to enforce the duty it creates.

Nonetheless, the *Claremont I* Court looked at the phrase “shall be the duty ... to cherish” and declared that it “commands, in no uncertain terms, that the State *provide* an education to all its citizens and that it support all public schools.” 138 N.H. at 187 (emphasis added). Part II, Article 83 does not use the word “provide” in the language under scrutiny, and “provide” is a much narrower and more direct and obligatory term than the word “cherish” or “support.” The *Claremont I* Court then used this alleged “command” to conclude that the State Constitution “imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding.” *Id.* at 184, 187. While it may be true that “to cherish” can mean “to support,” it is an irrational leap from this general language to assert that the State must provide a constitutionally adequate education and must guarantee adequate public funding. This is particularly so when the interests of the things to be cherished expressly include all “public schools” and “seminaries,” as only one of these types of institutions was historically understood to be inherently public. *See Opinion of the Justices*, 99 N.H. 536, 538 (1955) (explaining that the duty “to cherish the interests of literature and the sciences, and all seminaries and public schools” *permits* as an exercise of the protective power legislative aid to be provided to private educational institutions and stating that “[h]istorical examples of legislative aid to private educational institutions are not lacking”).

A “seminary” was understood at the time the Constitution was adopted to be any “place of education from whence scholars are

transplanted into life.” Sheridan, *A Complete Dictionary of The English Language*, Vol. 2, at 523. As this Court has explained, “[t]here is ample proof that ‘seminary’ was used in 1784 in the general sense,” *Sisters of Mercy v. Hooksett*, 93 N.H. 301, 304 (1945), and includes institutions like Dartmouth College and Phillips Exeter Academy, *id.* At the time of the founding, as today, institutions of secondary and higher education come in the form of both public and private institutions. *See generally id.* at 304-07; Bush, *History of Education in New Hampshire* at 129-34 (containing a list of all the private and public high schools in New Hampshire established between approximately 1783 and 1890 and referring to the private schools as “academies, seminaries, and select schools” while referring to the public schools as “schools of a higher grade”). Given that the State Constitution directs the legislators and magistrates to cherish the interests of (or just cherish) all “seminaries” and “public schools,” it cannot be that to cherish them or their interests means compulsory funding of all these institutions with some amount of state money.

It is likewise irrational to conclude that the general language used in Part II, Article 83 creates an individual right held by all children to receive an education, adequate or otherwise. *Cf. Fogg v. Board of Education*, 76 N.H. 296, 301 (1912) (explaining that the general interest of the public in the education of its youth should not be “subordinated to the interest of a single individual” because the “fundamental purpose of the public-school system is the protection and improvement of the state as a political entity”). Citizens of this State have many rights guaranteed by the State Constitution, including rights to enjoy and defend life and liberty, to acquire property, to practice their religion freely, and to vote and run for

office. *See* N.H. Const. Pt. I, Art. 2, 5, & 11. These rights are secured through Part I of the Constitution and its Bill of Rights, and typically not through Part II of the Constitution. The people rejected adding the language in Part II, Article 83 to the Bill of Rights in 1851. Consequently, Part II, Article 83 helps implement a form of government that prioritizes the general education of its citizenry for the protection and improvement of the State as a whole. It does not prescribe a specific qualitative standard of education that the State must provide, nor does it dictate how the State must fund education.

The inability to justify the holding of *Claremont I* based on the language of Part II, Article 83 is further confirmed by objectively considering what it is that Part II, Article 83 *does* require. As had been recognized before *Claremont I*, Part II, Article 83 grants legislators broad authority to impose educational obligations and standards. *See State v. Jackson*, 71 N.H. 552 (1902); *Coleman v. School District*, 87 N.H. 465 (1936). It also imposes a general duty to regulate in the interest of education to spread learning across the community in a way that supports democracy. *Fogg*, 76 N.H. at 299 (1912); *Opinion of the Justices*, 108 N.H. 268, 275-76 (1967); *In re Davis*, 114 N.H. 242, 243 (1974). As the framers of our constitution explained, the general diffusion of “[k]nowledge and learning” “through a community” is “essential to the preservation of a free government” and the “spreading the opportunities and advantages of education through the various parts of the country” is “highly conducive to

promote this end.” N.H. Const. Pt. II, Art. 83.⁹ To achieve this end, lawmakers and magistrates are directed in general terms “to cherish the interests of literature and the sciences, and all seminaries and public schools[.]” *Id.*

However, those who worked to frame and develop the Constitution over numerous years chose not to go further and prescribe the way public officials should so cherish, as doing so may well have jeopardized their ability to get the towns to adopt a constitution in 1783. Rather, those constitutional architects left it to individual lawmakers and public officers to decide among the plethora of possible ways to fulfill that important duty. This decision was reaffirmed in 1850 when, as discussed above, a proposal was made at the Fifth Constitutional Convention to move Part II, Article 83 to the Bill of Rights and insert into the Form of Government provisions expressly requiring the establishment and maintenance of a free common school system, at public expense, with a specific level of local monetary contribution to support it, overseen by a state-level superintendent. The voters of this State rejected that arrangement.

As such, the original text of Part II, Article 83 at issue has remained in effect, unchanged, since 1783. It provides only that it “shall be the duty of the legislators and magistrates” to “cherish the interest of literature and the sciences, and all seminaries and public schools[.]” While some may

⁹ In 1784, a “community” meant “the commonwealth” or “the body politick.” Sheridan, *A Complete Dictionary of The English Language*, Vol. I, at 298. Similarly, the word “country” was not commonly understood to mean a nation but was a more general term meaning “a tract of land,” “a region,” “rural parts,” or “the place of one’s birth, the native soil.” *Id.* at 336.

view it as good policy for the State to pass legislation requiring the State to provide an adequate education to every educable child in the public schools, to guarantee adequate funding for that purpose, and to create a corresponding right in the law to the enforce these things, the New Hampshire Constitution does not mandate these policies or otherwise create such a right.

B. *Claremont II*'s Holding is Fundamentally Incompatible with the Text and History of the New Hampshire Constitution

Even though *Claremont I*'s judicially-created duty and corresponding enforcement right appear nowhere in the text of the State Constitution, *Claremont II* took this judicial invention even further, holding that the duty to fiscally support a constitutionally adequate education is a State duty that may not be delegated to public entities like municipalities and town or school districts that the State creates for this express purpose. The *Claremont II* Court separated the State from these state-created public entities and held that the State's constitutional duty could only be funded with state money raised across a state taxing district. *Claremont II*, 142 N.H. at 471 (explaining that "[w]hile the State may delegate its obligation to provide a constitutionally adequate public education to local school districts," it may not delegate its financial support obligation). The Court asserted that, through Part II, Article 83, "the people assigned the duty to support the schools to the State and not to the towns." *Id.* This holding is incompatible with the text of Part II, Article 83, with the structure of New Hampshire's Constitution, and with the historical context in which the State Constitution was enacted.

1. Part II, Article 83 imposes its general duty on individual legislators and magistrates generally and not specifically on the state or solely on state-level officers.

In *Claremont I* and *II*, the Court assigned the duty it identified in Part II, Article 83 to "the State." That phrase appears nowhere in Part II, Article 83. Rather, insofar as Part II, Article 83 assigns duties at all, it does

so to individual political actors, “the legislators and magistrates[.]” In other words, any duty under Part II, Article 83 is assigned to those lawmakers and public officers who exercise government authority in the name of the people, not to “the State” as an entity separate from the political subdivisions it creates, empowers, and controls.

The terms “legislator” and “magistrate” are broad terms unlike governor, senator, representative, or commissioner. In the late 1700s, a “legislator” would have been understood as “[a] lawgiver, one who makes laws for any community[.]” and a “magistrate” would have been understood as “[a] man publicly invested with authority, a governour.” Sheridan, *A Complete Dictionary of The English Language*, Vol. II, at 20 & 39. The text of New Hampshire’s Constitution refers to magistrates in several places, including describing the governor as the “supreme executive magistrate[.]” N.H. Const. Part II, Art. 41. The framers’ choice to place the modifiers “supreme” and “executive” before “magistrate” in Part I, Article 41 confirms that they understood there to be other inferior executive magistrates, as well as other magistrates outside of the executive branch.

The framers also referred to magistrates in Part I, Article 8 of the Constitution where they wrote:

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.

In other words, those publicly-elected or publicly-appointed officials (those persons publicly invested with authority) who exercise power in the name of the sovereign people are magistrates of government. Magistrates thus

include both state-level elected and appointed officials as well as locally elected and appointed officials such as town selectmen.

As such, the foundational assumption upon which *Claremont II* is based—that the duty Part II, Article 83 imposes is uniquely a state-level government duty only—is antagonistic to the language used in our constitution which imposes the duty on *all* legislators and magistrates. Furthermore, the ultimate holding of *Claremont II*—that the State cannot delegate authority to pay for educational adequacy to localities—is antagonistic to the nature of municipal government as an extension of the State.

“[T]he purpose of the creation of municipal corporations by the state is to exercise a part of its powers of government.” *Wooster*, 62 N.H. at 208. “The law regards municipal corporations as agents and instruments of the state for the exercise of a portion of its governmental functions in a certain district.” *Id.* “The municipal government is really but a branch of the state.” *Id.*; *see id.* at 209 (“Towns are component parts of the state, and aggregately taken are the state.” (internal quotations omitted)). “The legislature can create liabilities for public corporations, and appropriate their public money to the satisfaction of claims which have no legal obligation and are founded only in justice.” *Id.* at 214. The legislature may also “impose[] on municipalities, whether they wish or not, the burden of maintaining highways, and incurring various other expenditures for public purposes,” *id.* at 215, assuming doing so is consistent with Part I, Article 28-a of the State Constitution.

This has included, since the State’s founding, the burden of establishing and supporting appropriate schools and teachers to educate

their inhabitants. As this Court declared in 1882, political subdivisions historically had no protection against the delegation of expenses from the legislature to the locality, including for “the support of all schools, paupers, criminals, and highways.” *Id.* at 216-17. “How much the state will employ municipalities as delegates ... in local administration and the division of public expenses,” this Court has already declared, “is a legislative question.” *Id.* The legislature has recently made the fundamental policy choice regarding how it and its local governmental entities will interact for the purpose of providing an adequate education through an integrated public education system of shared responsibility. Apx.IV 28-30.

2. Local control of public schools, to be exercised through hiring and funding of teachers, is expressly enshrined in the constitutional text.

The holding of *Claremont II*, in addition to being inconsistent with the plain text of Part II, Article 83, is also antagonistic to, if not in direct violation of, Part I, Article 6. That provision reserves to municipal entities the right of electing their own teachers and “contracting with them for their support or maintenance, or both.” Under *Claremont II* and its progeny, particularly as interpreted by the trial court’s merits ruling in this case, a municipality or school district cannot raise money and spend it to hire, support, and maintain its own adequate teachers without rendering its local education property tax unconstitutional; only the State can pay for those adequate teachers. Not only is there nothing in the State Constitution that compels this conclusion, but Part I, Article 6 expressly contemplates otherwise.

The right of local municipalities and school districts, *i.e.*, bodies-corporate, to control the education of their own children was consistent with basic principles of America's system of decentralized local self-government and that spirit of local self-governance and individualism that existed in 1783 when the towns adopted the State Constitution. As Chief Justice Doe wrote in 1881:

Since the want of government was supplied by the settlers at Exeter, Dover, and Portsmouth, the system of decentralization has accompanied the occupation of our territory. Local self-government (including much administration of law, and an extensive use of the law-making powers of taxation and police), introduced not only before the organization of both the state and province of New Hampshire, but also before the extension of Massachusetts jurisdiction to the Piscataqua, and continuing in uninterrupted operation more than two hundred and forty years, has been constitutionally established by recognition and usage. Preceding all other New Hampshire legislation, and firmly fixed in the foundation of our institutions as an executed intention of the people, the local exercise of the power of making local law is an application of the principle of self-government that retains the control of local affairs in the community most interested in them.

State ex rel. Pearson v. Hayes, 61 N.H. 264, 322 (1881). This Court explained how the inhabitants of municipalities exercised their Part I, Article 6 rights early on:

From an early day in the history of the province until 1819, the town minister was chosen by the majority of voters in town meeting. His salary was paid from the

town treasury. His employment as teacher in a meeting-house, built and controlled by the town for public use, was public. In a certain sense, it was official, like that of a teacher of a public school.

Ricker's Petition, 66 N.H. at 230. Part I, Article 6 has since been amended, but retains to the bodies corporate “at all times the right of electing their own teachers, and of contracting with them for their support or maintenance, or both.”

3. The framers did not intend to declare the established system of school funding unconstitutional.

Claremont II declares that the people of New Hampshire have a fundamental right “to a State funded constitutionally adequate public education” and that, as such, all money raised to fund the provision of a constitutionally adequate education must be raised through a tax which “is equal in valuation and uniform in rate throughout the State.” 142 N.H. at 471-73. This holding, without recognition or explanation, declares unconstitutional the primary and predominant way public schools had been funded in this State before, at the time of, and since the adoption of the New Hampshire Constitution—through a local tax assessed and collected by the selectmen on and from the inhabitants of each town or school district.

Public schools at the time of the State’s founding were local institutions. As John Adams explained in a correspondence he penned in 1782, “Massachusetts Bay, Connecticut, New Hampshire, and Rhode Island, are divided” into towns and the inhabitants who live in the towns

“are formed by law into corporations, or bodies politic, and are invested with certain powers and privileges[.]” Apx.II 221-30. Adams went on:

There are schools in every town, established by an express law of the colony. Every town containing sixty families, is obliged, under a penalty, to maintain constantly a school and schoolmaster, who shall teach his scholars reading, writing, arithmetic, and the rudiments of the Latin and Greek languages. All the children of the inhabitants, the rich as well as the poor, have a right to go to these public schools.

Id. This correspondence is notable because John Adams played a significant role in drafting the language similar to that contained in Part II, Article 83 for the Massachusetts Constitution and, even though the Massachusetts Constitution had been adopted by the time of this writing, Adams makes no mention in this correspondence that such a way of ensuring the provision of education was unconstitutional, defective, or even ill-advised. To the contrary, he lauds it as one “of the four principal sources . . . which have produced the American revolution” and that he “hope[s], will be sacredly preserved as the foundations of the liberty, happiness and prosperity of the people.” *Id.*

Like the colonial law, in the early years of this State the General Court passed a law that required “the Select men of the Several towns & Parishes within this State” to “assess annually the Inhabitants of their respective towns” moneys that were then to be “applied to the sole purpose of keeping an English Grammar School or Schools for teaching reading, writing and arithmetic, within the towns and parishes for which the same shall be assessed;” N.H. Laws 1784-1792, Chapter 8 at 449 (First

Constitutional Period). While the details of the legislation changed over time, it remained the responsibility of the local municipality to both operate and fund a school. *See* Bush, *History of Education in New Hampshire* at 14-16, 35-36 (1898); N.H. Laws 1801-1811, Chapter 39 at 467 (Second Constitutional Period); N.H. Laws 1821-1828, Chapter 57 at 661-65 (Second Constitutional Period).

Thus, when our State Constitution was adopted, “public schools” were town-created, town-controlled, town-funded, and town-operated institutions that pre-existed the formation of the State. It defies logic to think that the voters, in adopting either Part II, Article 83, or Part II, Article 5, intended to declare (or even thought they were declaring) the entire existing school system—which they maintained thereafter—unconstitutional.

C. This Court’s Education Funding Jurisprudence Fails a *Stare Decisis* Analysis and Should Be Abandoned.

“The doctrine of *stare decisis* demands respect in a society governed by the rule of law, for when governing legal standards are open to revision in every case, deciding cases becomes a mere exercise of judicial will with arbitrary and unpredictable results.” *Ball v. Roman Catholic Bishop of Manchester*, 2025 NH 45, ¶18. When reconsidering an established precedent, the question is not whether the current court would decide differently *de novo*, “but whether the ruling has come to be seen so clearly as error that its enforcement was for that very reason doomed.” *Id.* “Particularly when, as in this case, the error is of constitutional dimension, . . . the policies in favor of departing from precedent far outweigh those in favor of following *stare decisis*.” *Ocasio v. Fed. Express Corp.*, 162 N.H. 436, 455 (2011) (Brock, C.J., retired, dissenting). Thus, “[w]here a decision has proven unworkable or badly reasoned,” this Court “will not hesitate to revisit it.” *Providence Mut. Fire Ins. Co. v. Scanlon*, 138 N.H. 301, 304 (1994).

As has been outlined above, the foundational decisions underlying this Court’s school funding jurisprudence—*Claremont I & II*—were clearly decided in error and are badly reasoned. Their holdings find no foundation in the text of the Constitution nor in the historical context in which the Constitution was adopted. And their development over time has only rendered their original errors more egregious. Continued enforcement of these error-filled precedential decisions is “for that very reason doomed.” *Ball*, 2025 NH 45, ¶18.

Because the *stare decisis* doctrine is “not binding on a constitutional question,” *Brannigan v. Usitalo*, 134 N.H. 50, 53 (1991), the fact that *Claremont I & II* were wrongly decided is reason enough to jettison them. This conclusion is only confirmed, however, when considering the four non-dispositive *stare decisis* factors. These factors are: (1) whether “the rule has proven to be intolerable simply by defying practical workability;” (2) whether “the rule is subject to a kind of reliance that would lend a special hardship to the consequence of overruling;” (3) whether “related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine; and” (4) whether “facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application.” *Ball*, 2025 NH at ¶19. When these four factors are applied to this Court’s education funding jurisprudence—established in the line of cases beginning with *Claremont I & II*, proceeding through *Londonderry I & II*, and on to *ConVal I & II*—the need to modify or overrule this jurisprudence is clear.

1. This Court’s education funding jurisprudence defies practical workability.

After more than thirty years of decisions, this Court’s education funding jurisprudence continues to defy practical workability, and its continued application is therefore intolerable. An analysis of the line of cases, as contained in Section E of the Legal Landscape portion of this brief above, illuminates no discernable, practical rule capable of being understood or applied by the coordinate branches of government so they can regulate education predictably and reliably. As a result, the Court’s

decisions have placed the coordinate branches of government in constant and serious conflict with each other.

For example, this Court has repeatedly directed the Legislature to define an adequate education with a greater level of specificity. Once the Legislature believed it had done this, this Court declared the definition constitutionally insufficient and directed it to pass a definition that could serve as an objective standard against which the State's costing and funding obligations could be tested. *See Londonderry I*, 154 N.H. at 162. The Legislature obliged. This Court then ignored that definition and instead measured the funding of adequacy against some subjective factual determination about what inputs and other parameters a trial court believed were necessary to operate a functioning school system through a process not designed to make education policy or manage its funding. *See ConVal II*, 2025 N.H. 29. This unpredictable jurisprudence places the legislative and executive branches in an untenable position where they are perpetually attempting to satisfy an ever-changing set of standards and can never know in advance what policy options are inside and outside constitutional bounds.

Furthermore, this precedent has created a system in which municipalities, school districts, and private citizens have been able to weaponize the judiciary, demanding that judges continually fashion and re-fashion education policy to serve their political ends and to second-guess core legislative fiscal policy judgments, even though longstanding precedent places the very type of legislative decisions under attack beyond those entities' and persons' ability to challenge. *See Farnum's Petition*, 51 N.H. at 379 ("The authority of the legislature in the premises being

supreme, any such vested rights in the [school] district as a body, or in the inhabitants composing it as individuals, would be inconsistent with that authority in the legislature, and hence cannot exist.”).

The jurisprudence today now asks courts to make decisions well outside of their constitutional mandate, placing judges in the untenable position of micromanaging discrete fiscal policy questions like whether and to what extent the State should pay for buses, school buildings, nurses, or principals, and what adequate versions of those items and services cost, or what class sizes should be accommodated. This results in a never-ending cycle of judicial declarations that the State’s education system is constitutionally infirm despite there being no real question that public education is cherished as every student in New Hampshire is receiving a constitutionally adequate education and the people’s elected government is ensuring adequate funding to its schools from a plethora of Federal, State, and local sources.

The costing mandate also appears to serve no meaningful function other than to put the judiciary in the impermissible role of subjecting the legislature to judicial supervision and second-guessing legislative policy decisions. In no other area of the law is the legislature required to show how it costs what it funds to meet any provision of the State Constitution.

The funding mandate is also irrelevant. It simply states a truism, *i.e.*, that the State may not fund any part of state government with an unconstitutional funding source. This mandate, however, continues to threaten to distort this Court’s well-settled Part II, Article 5 tax jurisprudence, as *Rand I* and the core standing and Part II, Article 5 issues implicated in this appeal demonstrate. Specifically, the trial court has read

this Court’s education funding jurisprudence to cause a local education property tax voluntarily authorized by a locality, to be converted into a State tax based on how a municipality or school district chooses to spend the revenue, thereby rendering the local education property tax unconstitutional. Part II, Article 5 applies to the legal structure of imposed taxes; it does not place any limitation on how a government entity may spend lawfully raised tax revenue. Yet, this Court’s education funding jurisprudence encourages lower courts to continually bend and distort well-settled constitutional principles to try to make its various discordant mandates work.

Finally, this Court added the accountability mandate to Part II, Article 83 in 2002. It found that “[t]here is no accountability when the rules on their face tolerate noncompliance with the duty to provide a constitutionally adequate education.” *Claremont Sch. Dist. v. Governor*, 147 N.H. 499, 513 (2002). “While the State may delegate this duty, it must do so in a manner that does not abdicate the constitutional duty it owes to the people.” *Id.* “An output-based accountability system that merely encourages local school districts to meet educational standards does not fulfill the State’s constitutional duty under Part II, Article 83.” *Id.* at 517. “When the State chooses to use an output-based tool to measure whether school districts are providing a constitutionally adequate education, that tool must be meaningfully applied.” *Id.* Two justices dissented believing that the “existing statutes, regulations and rules provide for sufficient accountability to withstand a facial constitutional challenge.” *Id.* at 521. They further explained that “[w]hile it certainly makes sense for the State to adopt ‘standards of accountability,’ in [their] view the court should not

order or oversee such action. Nor should the court sit in continuous judgment over educational policy decisions made by the legislature and the Governor, which may very well be a consequence of today's decision." *Id.* at 524.

The accountability mandate suffers from the same constitutional and practical defects as the other mandates. It is not the judiciary's role in our form of government to make education policy for the State or constantly sit in superintendence of the State's educational system and pass upon the wisdom of the educational policy choices made by our elected officials. That puts the judiciary in the inherently political role of making education policy on a case-by-case basis without the protection the political process affords through regular elections to undo or modify those policy judgments.

Consequently, *Claremont I* and its progeny have spawned a manifestly unworkable jurisprudence that is intolerable in practice. This Court should modify or overrule them. It could do this by simply modifying *Claremont I* and its progeny to make clear in the Part II, Article 83 context that the "State" includes its municipalities and school districts and that, so long as the "State" as a whole is guaranteeing sufficient funding exists in the public school system for students to receive an adequate education, no Part II, Article 83 claim is cognizant or viable. This Court could also overrule *Claremont I* and its progeny or *Claremont II* and its progeny. In doing so, this Court could go back either to this Court's pre-*Claremont I* interpretation of Part II, Article 83, or endorse Justice Horton's dissent in *Claremont II*. These approaches all correct the central flaw that has distorted our State's education funding landscape for decades—a constitutional reading that necessitates an unsustainable overlap in authority

and judgment by the legislative branch and the judicial branch that will only continue to produce an unworkable vacillation of legal and policy outcomes. This Court has the opportunity to restore a constitutional order, consistent with constitutional text, history, and legal theory, that reestablishes the longstanding shared responsibility between the State and its municipal entities for providing education to our State's children and should do so.

2. This Court's school funding jurisprudence is not subject to the kind of reliance that would lend a special hardship to the consequence of overruling.

“Reliance interests are most often implicated when a rule is operative in the commercial law context where advance planning of great precision is most obviously a necessity.” *In the Matter of Blaisdell*, 174 N.H. 187, 190 (2021). Education funding is a governmental context, not a commercial context. The entities that need to be able to understand, rely on, and apply this Court's education funding jurisprudence are the other branches of government (the legislators and magistrates). But, as discussed above, this Court's education funding jurisprudence has been so internally inconsistent and amorphous that the lawmakers and magistrates, despite repeated attempts, have been persistently unable to understand and implement this Court's holdings. As a result, this jurisprudence has not engendered any special reliance. Quite the opposite has occurred in that the legislative and executive branches of government have been wholly unable to rely upon this Court's jurisprudence when making choices relating to education policy in this state, and every judicial declaration that some portion of the education funding system is unconstitutional creates

immediate uncertainty and concern about whether municipalities and school districts can continue to function in the short term or whether the other important priorities of State government can be funded. As a result, this jurisprudence is inherently destabilizing in a manner that no reliance interests can sensibly form around it.

3. Related principles of law have developed in such a way as to make this Court’s education funding jurisprudence an anomalous outlier that now conflicts with well-settled legal principles.

Claremont I and its progeny have developed in such a way as to make these decisions, and the law they have created, anomalous outliers that now conflict with well-settled legal principles including in the areas of standing, separation of powers, justiciability, sovereign immunity, and State and municipal relations.

Claremont I purported to create a constitutional right to an adequate education that “[a]ny citizen has standing to enforce.” However, *Claremont School District v. Governor*, 144 N.H. 590, 593 (1999), recognized that such a constitutional claim could only be brought under RSA 491:22, the declaratory judgment statute, to avoid sovereign immunity. Then, in *Baer v. N.H. Dept. of Educ.*, 160 N.H. 727, 731 (2010), this Court was forced to hold that *Claremont I*’s standing language “did not create an exception to the statutory requirements of RSA 491:22.” This Court explained that “[t]he petitioners must still allege a present legal or equitable right, which they have failed to do,” *Baer*, 160 N.H. at 731, simply by showing that they are taxpayers, “without an injury or an impairment of rights.” *Id.*

This Court in *Duncan v. State*, 166 N.H. 630 (2014), addressed “the constitutionality of allowing a taxpayer to sue without having to show that any personal right of his is impaired or prejudiced.” It held that a statutory amendment to RSA 491:22, I, was unconstitutional because it conferred standing upon taxpayers without requiring them to demonstrate that any of their “personal rights were impaired or prejudiced.” *Id.* at 645.

In response to *Duncan*, the people passed a constitutional amendment to Part I, Article 8 of the State Constitution permitting taxpayer standing in limited circumstances. This Court interpreted and applied that constitutional amendment in *Carrigan v. N.H. Dept. of Health & Human Servs.*, 174 N.H. 362, 373 (2021), concluding that a plaintiff does not have taxpayer standing to challenge the “overall spending policies of one of our coequal branches of government.” It explained that “[c]ourts are ill-equipped to wade into policy debates as to whether governmental bodies are sufficiently funded or whether appropriated funds are being wisely spent to meet an agency’s objectives.” *Id.* at 373. This Court therefore held that, “although taxpayer standing is specifically conferred by our constitution, we do not read Part I, Article 8 to confer standing on a plaintiff who challenges governmental spending policies.” *Id.*

This Court went further in *Carrigan* to recognize “the conflict that ruling in favor of the plaintiff’s standing would present with Part I, Article 37,” our separation of powers provision, and went on to discuss the justiciability doctrine. *Id.* at 373-74. This Court explained that “[a] controversy is nonjusticiable when, among other possibilities, it presents a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a

kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government." *Id.* at 374 (internal quotations omitted). This Court found that "[c]alling upon the judiciary to adjudicate, as the plaintiff requests, a challenge to the prudence of the State's overall approach to child welfare implicates each concern discussed above." *Id.* This Court further made clear that "[s]crutinizing the entire realm of a governmental body's spending activity . . . to determine what aspects of its spending decisions, if any, are causing injury exceeds the bounds of our role and infringes on executive or legislative prerogatives." *Id.*

This Court concluded: "In short, the authority to determine how public funds are generally appropriated and spent rests, respectively, with the legislative and executive branches. Although we may determine whether any particular act or approval of spending is lawful, we cannot provide advice to our coequal branches of government regarding the prudence of their spending decisions." *Id.*

Claremont I and its progeny call on this Court to do precisely what its decision in *Carrigan* says it cannot do—scrutinize the legislature's entire spending activity on education to determine whether it needs to spend more money, what it must spend that money on, and how much of that money the State must contribute. This profound disconnect between this Court's education funding jurisprudence and its jurisprudence in all other areas reveals that *Claremont I* and its progeny are clearly anomalous outliers not entitled to *stare decisis* deference. That this Court's modern education funding jurisprudence so clearly disregards the core constitutional concepts and liberties that doctrines like standing,

justiciability, separation of powers, and sovereign immunity safeguard only further highlights that it cannot be reconciled with the governmental structure embodied in our State Constitution.

Claremont II and its progeny have further distorted State and political subdivision relations to such a degree as to allow political education funding disputes to be resolved through the court system, despite a long line of jurisprudence from this Court making clear that: political subdivisions like municipalities and school districts are agents of the State; and the State through its legislative process may delegate implementation and funding responsibilities down to them. Modifying or overruling *Claremont I* and its progeny to restore this longstanding legal balance, on its own, would go a long way to making this area of law workable.

4. Other *stare decisis* factors also counsel in favor of overruling *Claremont I* and its progeny.

Other *stare decisis* factors identified by former Chief Justice Lynn in his concurrence in *State v. Quintero*, 162 N.H. 526 (2011), also justify overruling *Claremont I* and its progeny. For example, the fact that *Claremont I* and its progeny rested on constitutional grounds, rather than statutory grounds, is a fair consideration, because the legislature cannot alter what this Court has done. If what this Court has done is wrong, this Court has an obligation to overrule and fix it.

Another factor worthy of consideration is whether the precedent has been joined by a strong majority of the court. Rarely after *Claremont I* have any of this Court's education funding decisions commanded a strong majority of this Court. *Claremont II* drew a significant dissent (Horton, J.). *Claremont Sch. Dist. v. Governor*, 144 N.H. 210 (1999), drew a significant

dissent (Horton, J.). *Claremont Sch. Dist. v. Governor (Accountability)*, 147 N.H. 499 (2002), drew a significant dissent (Nadeau and Dalianis, JJ.). *Londonderry I*, 154 N.H. 153 (2006), was a fractured opinion (Duggan, J. concurring specially in part and dissenting in part) and (Galway, J., concurring specially in part and dissenting in part). *Londonderry II* drew two dissents (Broderick, C.J., dissenting) and (Duggan, J., dissenting). Finally, *ConVal II*, drew a narrow and fractured majority, and the merits majority was not comprised of a majority of justices appointed to the supreme court. Rather, the lead merits dissent in *ConVal II* enjoyed more support from the justices of the supreme court than the lead merits majority decision. These decisions cannot be characterized as a commanding a strong majority of our supreme court particularly in this State where such fractured opinions are rare.

Finally, as demonstrated at length above, *Claremont I* and its progeny are poorly reasoned. They depart from the constitutional text, structure, and purpose of Part II, Article 83, and the historical context and tradition in which our State constitutional was adopted. They are internally inconsistent and impose standards that are functionally impossible to meet. And they place the judicial branch in the position of fashioning, implementing, and trying to fund education policy, rather than the political branches to which such authority is constitutionally committed.

Accordingly, for all of the above reasons, this Court should overrule *Claremont I* and its progeny.

D. *Claremont I* and Its Progeny Should At the Very Least Be Modified.

If this Court is disinclined to overrule its cases, it should at the very least modify its modern education funding jurisprudence to recognize the fundamental principle of law that municipalities and school districts exist as political subdivisions of the State and their authority to govern is as an agent of the State. *See Wooster*, 62 N.H. at 208 (“[T]he purpose of the creation of municipal corporations by the state is to exercise a part of its powers of government.”); *O’Brien v. Rockingham Cty.*, 80 N.H. 522, 523 (1923) (“The doctrine, that the purpose of the creation of municipal corporations by the state is to exercise a part of its powers of government, is universally recognized. Counties are subdivisions of the state, in which some of the powers of the state government are exercised by local functionaries for local purposes. Counties are nothing more than certain portions of territory into which the state is divided for the more convenient exercise of the powers of government. The form together one political body in which the sovereignty resides.”); *State v. Goffstown*, 100 N.H. 131, 133 (1956) (“Towns have only the powers which the State grants them. . . . [T]here has been consistent and unvarying support of the principle of complete legislative control over local government.” (citations and quotation marks omitted)).

This Court in *Claremont I* relied upon this established principle of law in reaching its decision in the first instance, finding it “clearly within the power of the State to delegate” to local governments control over and fiscal support for their respective schools. 138 N.H. at 191. However, despite the *Claremont I* Court’s reliance on this established case law,

subsequent case law inexplicably disregarded this basic principle, and now distorts the relationship between the State and its political subdivisions. These cases have left education funding unique as an area of law where the “State” is unable to delegate to its own subdivisions in concert with its own action. Looking at other aspects of Part II, Article 83, it is absurd to think that subdivisions could not be delegated the ability to “inculcate ... public and private charity” or to encourage “the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history....” This education funding line of cases focuses the judiciary on attempting to solve the political questions involved with education funding disputes instead of on whether knowledge and learning are being generally diffused through New Hampshire.

This Court should therefore modify its modern education funding jurisprudence to once again recognize the fundamental principle of law that the political subdivisions of the State are the State and that their authority to govern is as an agent of the State. This fundamental principle is embedded in New Hampshire’s statutory framework surrounding school funding, which the General Court recently amended and expanded to reaffirm as follows:

...local governmental entities, including school districts, are created by the state, receive their authority to act and operate from the state, and are therefore indivisible from the state for the purposes of providing an adequate education. In this system, the state and local governmental entities function collectively to ensure that an adequate version of the academic program defined in RSA 193-E:2-a is provided to New Hampshire pupils.

House Bill 1815 (2026), Apx.IV 28-30. To once again recognize the application of this fundamental principle of law within the school funding context, this Court should find that the core Part II, Article 83 duty runs to those political subdivisions as well and does not foreclose the State from delegating local education-related responsibilities to them. *See Holt v. Antrim*, 64 N.H. 284, 286 (1886) (“Local education is a local purpose for which legislative power may be delegated to towns.”). Finally, this Court should find that, so long as the State inclusive of its political subdivisions is putting sufficient money into the public education system to ensure students are receiving an adequate education, the Part II, Article 83 duty is fulfilled. Such a modification would resolve this case and allow policymakers to refocus education policy on what matters—delivering New Hampshire’s children an adequate education.

II. HOW THE STATE COSTS AND FUNDS AN “ADEQUATE EDUCATION” IS A NON-JUSTICIBLE POLITICAL QUESTION.

This Court’s modern school-funding jurisprudence, from *Claremont I* through *ConVal II*, should be overruled for the reasons discussed above. If the Court nonetheless declines to overrule this line of precedent in whole or in part, it should conclude that the question of how the legislature chooses to cost and fund an adequate education is a non-justiciable political question. The progression of this Court’s school-funding decisions—and, in particular, the metamorphosis of the atextual duty recognized in *Claremont I* into the four policy mandates recognized in *Londonderry I* and then altered and imposed in *ConVal II*—demonstrates that determining how to fund public education for New Hampshire’s citizens is a task replete with policy decisions squarely within the province of the political branches that falls beyond the bounds of the judicial function.

“Courts lack jurisdiction to decide political questions.” *Brown v. Secretary of State*, 176 N.H. 319, 328 (2023). “Whether a controversy is non-justiciable because it involves a political question presents a question of law, which [this Court] review[s] *de novo*.” *Id.* “The justiciability of a political question derives from the principle of separation of powers, as set forth in Part I, Article 37 of the State Constitution.” *Id.* at 327-28. “The justiciability doctrine prevents judicial violation of the separation of powers by limiting judicial review of certain matters that lie within the province of the other two branches of government.” *Id.* at 328. “If a question is not justiciable, it is not [this Court’s] to review.” *Id.*

Non-justiciable political question cases have at least some of the following characteristics:

- (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department;
- (2) a lack of judicially discoverable and manageable standards for resolving it;
- (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion;
- (4) the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government;
- (5) an unusual need for unquestioning adherence to a political decision already made; or
- (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Richard v. Speaker of the House of Representatives, 175 N.H. 262, 267-68 (2022). A case asking whether the State has appropriately costed and is appropriately funding education has most of these characteristics.

A. The State Constitution Textually Commits To The Individual Legislators And Executive Branch Officials Of This State The Costing And Funding Of Education Policy.

“Part II, Article 2 of the State Constitution vests the legislature with the ‘supreme legislative power,’ which specifically comprises the power to make laws, . . . assess taxes, and make appropriations.” *N.H. Health Care Ass’n v. Governor*, 161 N.H. 378, 386 (2011). The Governor, in turn, is “responsible for governmental expenditures,” but under Part II, Article 56

“may expend public funds only to the extent, and for such purposes, as they may have been appropriated by the legislature.” *Id.*; see N.H. Const. Pt. II, Art. 56 (“No moneys shall be issued out of the treasury of the state and disposed of . . . but by warrant under the hand of the governor . . . agreeably to the acts and resolves of the general court.”).

This Court has recognized the legislature’s primacy in costing and funding public education even as it has expanded and altered the duty imposed in *Claremont I*. In *Claremont II*, for example, this Court stressed that judges are “not appointed to establish educational policy, nor to determine the proper way to finance its implementation.” 142 N.H. at 476. The Court further stressed that “[d]ecisions concerning the raising and disposition of public revenues are particularly a legislative function and the legislature has wide latitude in choosing the means by which public education is supported.” 142 N.H. at 476. In *Londonderry I*, this Court reiterated that it shared the concern, expressed in a separate opinion, that “this court or any court not take over the legislature’s rule in shaping educational and fiscal policy.” 154 N.H. at 163. And in *ConVal II*, this Court stated once again that “[i]t is the province of the legislature to appropriate public funds, which the Governor then has the authority to expend in accord with that appropriation.” 2025 N.H. 29 at ¶78. The Court noted that “in the school funding realm, it is the responsibility of the legislative and executive branches—not [this Court]—to establish educational policy and determine the proper way to finance its implementation.” *Id.* at ¶72 (citations and quotation marks omitted). The Court characterized the legislature’s constitutional authority to appropriate funds and the executive’s constitutional authority to expend funds

consistent with those appropriations as “the essential powers of the legislative and executive branches.” *Id.*

Nothing in Part II, Article 83 disrupts this careful balance of powers. Even if this Court maintains *Claremont I*’s holding that Part II, Article 83 imposes some obligation with respect to public education beyond what pre-*Claremont I* precedent already established, it imposes that obligation on “legislators and magistrates.” As explained in Section I.B.1 above, those words would have been commonly understood at the time Part II, Article 83 was enacted to include state and local lawmakers and government officials. Thus, even if Part II, Article 83 could be read to impose some duty with respect to costing and funding public education—and it cannot for the reasons already stated—that duty is textually committed to the legislative and executive branches, including local government officials, consistent with “the essential powers” of those branches. *ConVal II*, 2025 N.H. at ¶78.

“Scrutinizing the entire realm of a governmental body’s spending activity”—in this case, the State inclusive of its municipalities and school districts—“to determine what aspects of its spending decisions, if any, are causing injury exceeds the bounds of [the judicial] role and infringes on executive or legislative prerogatives.” *Carrigan*, 174 N.H. at 374. As this Court has put it, “the authority to determine how public funds are generally appropriated and spent rests, respectively, with the legislative and executive branches,” not with this Court. *Id.*

B. No Judicially Discoverable Or Manageable Standards Exist For Resolving Education Costing And Funding Controversies.

The State has explained in Section I.C.1 above how this Court's modern education funding jurisprudence defies practical workability. For essentially these same reasons, no judicially discoverable or manageable standards have emerged for resolving education costing and funding controversies since *Claremont I*. For more than three decades, this Court and the legislature have been in a protracted game of call-and-response whereby this Court tells the legislature it is failing to meet its obligations under Part II, Article 83, the legislature takes steps to address this Court's concerns, and this Court rejects the legislature's efforts. *See, e.g., ConVal II*, 177 N.H. at 418-431; *Londonderry I*, 154 N.H. at 157-63; *Claremont School District v. Governor*, 147 N.H. 499, 508-14 (2002); *Claremont II*, 142 N.H. 471-42. This pattern would be troubling enough if the Court imposed clear and consistent expectations across its various decisions. Instead, what started as a broadly stated duty in *Claremont I* morphed in *Claremont II* into some kind of a fundamental right that the state government alone is responsible for funding with only state-level dollars, then morphed *again* in *Londonderry I* into four policy mandates with emphasis on a clear, specific legal definition that could be construed and used objectively to identify what the State will pay for, and then morphed *again* in *ConVal II* into an adjudicative, fact-intensive, case-specific inquiry that functionally permits judges to disregard the legal definition and dictate education-policy statewide on a case-by-case basis.

“Neither the courts nor the process of litigation is designed to address the types of complex policy issues that typically arise in adequacy cases” Eric A Hanushek & Alfred A. Lindseth, Schoolhouses, Courthouses, and Statehouses, Solving the Funding-Achievement Puzzle in America’s Public Schools at 139 (Princeton University Press 2009).

“[C]ourts are not policymaking bodies, and neither their makeup nor the processes they follow lend themselves to the task of making policy.” *Id.*

“Courts also are limited in their access to information.” *Id.* “Legislators, on the other hand, have access to a wide range of information from many different sources with different points of view.” *Id.* at 140. “Nor is the litigation process conducive to formulating policy.” *Id.* Judges rely on direct and cross examination to discover the truth and determine credibility in order to resolve contested issues of fact; this approach is not intended to be used to formulate nuanced education policies that could take on an infinite number of different legitimate forms. *Id.*

“[E]ducation is [also] not the public’s only concern or the only item on the legislative agenda.” *Id.* at 143. The legislature through the legislative process must weigh and balance all of the public’s competing concerns particularly in constrained economic times. *Id.* at 143-44. A judicial forum therefore becomes the favored forum of education advocates because “the discussion there is confined to a single issue: education.” *Id.* at 144. Thus, while “[t]hose who favor more funding for schools may consider litigation a useful pragmatic device,” its use in this context “violates the political processes that have been built into the federal and state constitutions.” *Id.*

As a consequence of all of these shortcomings, this Court’s education funding jurisprudence is internally inconsistent, unworkable, and

ill-advised. Worse yet, the practical result is that the political branches are left unable to discern the scope of an adequate education (or even what it is), much less what they must do to properly cost, fund, and ensure it with accountability. Litigants are likewise left without guidance as to the scope of a Part II, Article 83 claim, how such a claim is pleaded and proven, and (as reflected in this case) the intersection between that type of claim and one brought under Part II, Article 5. And individual superior court judges are empowered to second-guess the education-policy decisions made by the political branches and impose their own requirements statewide without any guidance in the text of the State Constitution or in this Court's decisional law that would allow for a consistent, predictable decision-making process, and without the necessary information make rational education funding decisions that are sensibly balanced against other competing public interests.

Consequently, no judicially manageable or discoverable standards have been identified for the resolution of education costing and funding disputes and none will be because the creation and funding of education policy is quintessentially a political question capable of being answered in many different constitutional ways.

C. It Is Impossible To Adjudicate Education Funding Disputes Without Making An Initial Policy Determination Of The Kind Clearly Reserved To Legislative Judgment.

In order to decide whether the General Court has properly funded an adequate education, a court must make a host of initial legislative policy determinations. Specifically, a court must determine what items and services fall within an adequate education and, once that determination is

made, a court must determine what kind and amount of these items or services are adequate. These initial determinations are laden with general and specific legislative policy decisions that a court must make in order to actually adjudicate an education costing and funding dispute.

As the Nebraska Supreme Court has concluded, “the relationship between school funding and educational quality requires a policy determination that is clearly for the legislative branch.” *Neb. Coalition for Educ. Equity & Adequacy v. Heineman*, 731 N.W.2d 164, 181 (Neb. 2007). “[T]here are a multitude of policy decisions that go into state funding decisions, including consideration of federal mandates, the school district’s local efforts and ability to support its schools, and the State’s ability to provide funding.” *Id.* This Court “is simply not the proper forum for resolving broad and complicated policy decisions or balancing competing political interests.” *Id.*

D. It Is Impossible For This Court To Decide Whether The State Is Properly Funding An Adequate Education Without Disregarding The Legislature’s Exclusive Power To Make And Fund State Policy.

The General Court is the only branch of government that holds the appropriation power. Fiscal policy decisions are clearly reserved to the General Court under the New Hampshire Constitution. *See* N.H. Const. Pt. I, Art. 12 (“But no part of a man’s property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this State controllable by any other laws than those to which they, or their representative body, have given their consent.”); N.H. Const. Pt. I, Art. 28 (“No subsidy, charge, tax,

impost, or duty, shall be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their Representatives in the Legislature, or authority derived from that body.”); N.H. Const. Pt. II, Art. 8 (“All money bills shall originate in the House of Representatives; but the Senate may propose, or concur with amendments, as on other bills.”); N.H. Const. Pt. II, Art. 8-a (“All sections of all budget bills before the general court shall contain only the operating and capital expenses for the executive, legislative and judicial branches of government.”); N.H. Const. Pt. II, Art. 56 (“No moneys shall be issued out of the treasury of this state, and disposed of, (except such sums as may be appropriated for the redemption of bills of credit, or treasurer’s notes, or for the payment of interest arising thereon) but by warrant under the hand of the Governor for the time being, by and with the advice and consent of the council, for the necessary support and defense of this state, and for the necessary protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the General Court.”).

As this Court’s precedents now demonstrate, *see ConVal II*, 2025 NH ¶¶67-75, this Court cannot adjudicate an “adequate education” funding dispute without invading the General Court’s exclusive realm of appropriation authority and deciding what spending issues hold priority over other spending issues. *Neb. Coalition for Educ. Equity & Adequacy v. Heineman*, 731 N.W.2d at 181. Agreeing with the rationale of its trial court, the Florida Supreme Court has explained the issue as follows:

To decide such an abstract question of ‘adequate’ funding, the courts would necessarily be required to subjectively evaluate the Legislature’s value judgments as to the spending priorities to be assigned to the state’s

many needs, education being one among them. In short, the Court would have to usurp and oversee the appropriations power, either directly or indirectly, in order to grant the relief sought by Plaintiffs. While Plaintiffs assert that they do not ask the Court to compel the Legislature to appropriate any specific sum, but merely to declare that the present funding level is constitutionally inadequate, what they seek would nevertheless require the Court to pass upon those legislative value judgments which translate into appropriations decisions. And, if the Court were to declare present funding levels 'inadequate,' presumably the Plaintiffs would expect the Court to evaluate, and either affirm or set aside, future appropriations decisions, unless the Plaintiffs are seeking merely an advisory opinion from the Court.

Coalition for Adequacy & Fairness in Sch. Funding v. Chiles, 680 So. 2d 400, 406-07 (Fla. 1996).

In sum, adjudicating whether state education funding levels are sufficient to support an adequate education is the very type of abstract political question that the judiciary is not equipped to reach and resolve. It would require this Court to weigh in on the fiscal relationship between the State, its various agencies, its municipalities, and its school districts to determine whether present funding amounts are sufficient or are being negligently or improperly used. It would require this Court to invade the policymaking and appropriation powers of the General Court and to second guess the General Court's funding decisions generally across different policy areas and more specifically with respect what kinds and amounts of certain education items and services constitute adequacy and should be funded. In *Carrigan*, this Court made clear that such disputes constitute

non-justiciable political questions, 174 N.H. at 374, and education funding disputes should be treated no differently.

Accordingly, this Court should find that the costing and funding of an adequate education present non-justiciable political questions, vacate the trial court's decision below, and remand with instructions for the trial court to dismiss this matter for lack of subject matter jurisdiction.

III. THE PLAINTIFFS LACK STANDING TO BRING ANY CLAIM UNDER PART II, ARTICLE 83 OF THE NEW HAMPSHIRE CONSTITUTION.

It is a basic principle of civil litigation that, to be entitled to receive a ruling on the merits of a claim, a plaintiff must first establish standing as to that claim. *See Richard v. Governor*, 2024 N.H. 53, ¶¶ 9-24 (analyzing whether plaintiff had standing as to each claim and finding standing to advance two claims and a lack of standing as to the remaining four claims). This standing requirement is not a mere legal formality but instead ensures the fundamental underpinning to our governmental system, and its separation of powers between the three coequal branches of government, is protected. *Id.* at ¶ 7 (“The doctrine of standing limits the judicial role, consistent with a system of separated powers, to addressing those matters that are traditionally thought to be capable of resolution through the judicial process.”).

To establish standing in a New Hampshire state court to receive a declaration, a plaintiff is generally required to demonstrate that he or she has “personal legal or equitable rights that are adverse to [the defendant], with regard to an actual, not hypothetical, dispute, which is capable of judicial redress.” *Id.* ¶8. “When evaluating whether a party has standing to sue, [the Supreme Court] focus[es] on whether the party suffered a legal injury against which the law was designed to protect.” *Id.* The plaintiffs have not met these standards with relation to claimed violations of Part II, Article 83 of the New Hampshire Constitution.

In filing this litigation, the plaintiffs sought a declaratory judgment as well as a related permanent injunction and order. Apx.III 47. The

requested declaratory judgment was in three parts. The plaintiffs requested the court declare: (1) “[t]he State does not currently guarantee funding sufficient to cover the cost of an adequate education”; (2) “[a]s a result, New Hampshire must rely on local school taxes to bridge the gap”; and (3) “[t]hese local school taxes violate Part II, Article 5 of the New Hampshire Constitution because they are not uniform in rate.” *Id.* These three declarations amount to a claimed violation of Part II, Article 83, a claimed violation of Part II, Article 5, and a factual assertion purporting to connect the two claims. The plaintiffs lack standing to request the first declaration—that the State is failing to guarantee sufficient adequacy funding in violation of Part II, Article 83.¹⁰

All declaratory judgement actions¹¹ arise under RSA 491:22, I, which allows “[a]ny person claiming a present legal or equitable right” to “maintain a petition against any person claiming adversely to such right ... to determine the question as between the parties[.]” To meet this standard, the plaintiffs must prove a concrete, personal injury as distinguished from a generalized grievance suffered by all taxpayers or members of the public. *Duncan*, 166 N.H. at 645-46. “Neither an abstract interest in ensuring that the State Constitution is observed nor an injury indistinguishable from a

¹⁰ The other two requests for declaratory relief will be addressed in the next two sections wherein it will be explained that the Part II, Article 5 claim is not viable and the requested factual declaration is wholly lacking in any evidentiary basis.

¹¹ RSA 491:22’s requirement that a plaintiff establish a present legal or equitable right is fully applicable to school funding cases. See *Baer v. N.H. Dept. of Educ.*, 160 N.H. 727, 731 (2010) superseded by statute as stated in *Duncan v. State*, 166 N.H. 630 (2014) (“*Claremont* did not create an exception to the statutory requirements of RSA 491:22. The petitioners must still allege a present legal or equitable right, which they have failed to do here.”).

generalized wrong allegedly suffered by the public at large is sufficient to constitute a personal, concrete interest.” *Richard v. Governor*, 2024 N.H. 53, ¶ 8. “Rather, the party must show that the party’s own rights have been or will be directly affected.” *Id.*

The plaintiffs have failed to establish that their own rights have been or will be adversely affected by inadequate school funding. The plaintiffs do not claim that a child of theirs is not receiving an adequate education. The plaintiffs are also themselves not school districts or municipalities arguably entitled to receive state adequate education funds for their benefit. Consequently, the plaintiffs lack any present legal or equitable right sufficient to allow them to seek a court declaration that “[t]he State does not currently guarantee funding sufficient to cover the cost of an adequate education.” Apx.III 47. Their complaint that the State is not providing sufficient state funding to meet its adequate education obligation is based upon nothing more than an abstract, hypothetical interest that does not rise above the level of a generalized grievance and the superior court erred in granting “plaintiffs’ request for declaratory relief deeming” the adequacy funding and the special education differential aid amounts contained within “RSA 198:40-a unconstitutional[.]” Apx.I 59.

IV. THE SUPERIOR COURT ERRED BOTH IN FINDING THAT THE PLAINTIFFS PRESENTED A COGNIZABLE PART II, ARTICLE 5 CLAIM OR THEORY AND THAT HOW A MUNICIPALITY SPENDS LOCAL TAX REVENUE CONVERTS THOSE LOCAL TAXES INTO A STATE TAX THAT VIOLATES PART II, ARTICLE 5.

As discussed above, plaintiffs requested a declaratory judgment that the imposition of “local school taxes” violate “Part II, Article 5 of the New Hampshire Constitution because” municipalities are allegedly being required to use such local school tax dollars to pay for educational adequacy. Apx.III 47. This claim fails as a matter of law.

Among other things, Part II, Article 5 of the State Constitution vests the General Court with general lawmaking power including the power “to impose and levy proportional and reasonable assessments, rates, and taxes, upon all of the inhabitants of, and residents within, said state.” *Starr v. Governor*, 148 N.H. 72, 74 (2002). This Court has interpreted Part II, Article 5 to require the General Court to structure taxes so they are “proportionate and reasonable[,] equal in valuation and uniform in rate, and just.” *Id.* (cleaned up). “In order for a tax to be proportional, all property in the taxing district must be valued alike and taxed at the same rate.” *Sirrell v. State*, 146 N.H. 364, 370 (2001).

RSA 76:8, III, authorizes municipalities to impose a local property tax to help fund its schools; it does not compel municipalities to impose such a tax on its inhabitants. In this case, there is no dispute that all of the municipally-imposed property taxes at issue are proportionate and reasonable, equal in valuation and uniform in rate, and just, across the local taxing district to which they apply. They therefore meet Part II, Article 5’s

structural limitations on their face. The plaintiffs' claim, however, is that these otherwise constitutionally-structured local education property taxes are transformed into impermissible state taxes because municipalities and/or school are forced to spend the revenue these local taxes raise on state adequacy costs.

The plaintiffs claimed below that *Claremont II* supports their novel Part II, Article 5 claim or theory, but it does not because RSA 76:8, III, functions materially differently than the tax at issue in *Claremont II*. *Claremont II* considered a school funding system created by RSA 194:34 (1989) pursuant to which the funds necessary to meet the State's adequate education obligations under Part II, Article 83 had to be raised solely through town district-imposed property taxes. *See* 142 N.H. at 467 (1997) ("To comply with the State's requirements, school districts must raise money for their schools with revenue collected from real estate taxes. RSA 194:34 (1989); RSA 198:1-:7 (1989 & Supp. 1996)). RSA 194:34 (1989) provided: "It shall be the duty of said town district to raise and appropriate each year thereafter sufficient money, in addition to the school money which the town in which it is situated may raise, to properly maintain such high school, or schools, as may be established under RSA 194:33." In considering a claim that this taxing system violated Part II, Article 5, this Court concluded that, because Part II, Article 83 imposes a duty on the State to fund a constitutionally adequate education, the State is the taxing district for purposes of raising money to fulfill that duty. *Claremont II*, 142 N.H. at 469-70. This Court thus held that the State's imposition of the town and town district property tax scheme to finance that State obligation completely amounted to a state tax that was not equal in valuation and

uniform in rate across the State as the taxing district and therefore violated Part II, Article 5. *Id.* at 471.

Since *Claremont II*, the State has fundamentally changed its education funding system and now the tax used to fund the State's constitutional adequacy obligation is the SWEPT. RSA 76:3 & RSA 76:8, I-II. This Court has already held that the SWEPT is assessed at a uniform rate across the State, *Rand v. State*, 2025 N.H. 27, ¶ 16, and that how SWEPT revenue is spent after it is lawfully imposed and collected does not implicate Part II, Article 5, *id.* ¶ 14. The adequate education grant statutes contain additional targeted revenues that the State gives to municipalities to provide an adequate education. *See* RSA 198:38-:45.

These state revenues do not include local education taxes municipalities choose to raise pursuant to RSA 76:8, III. Instead, RSA 76:8, III stands as a separate authorization that allows municipalities to raise such local education property taxes to fund school district expenditures as their local communities deem appropriate. RSA 76:8, III imposes no duties or requirements on a municipality to raise such a local education property tax. This is the kind of local education property tax, with a municipal-level taxing district, expressly recognized as appropriate by this Court in *Claremont II*. *See* 142 N.H. at 475 (“Our decision does not prevent the legislature from authorizing local school districts to dedicate additional resources to their schools . . .”).

Thus, where *Claremont II* concerned a compulsory local education tax regime designed to meet the State's adequate education funding obligation entirely through locally imposed taxes, this case concerns a state-level education tax and grant regime designed to meet the State's

adequate education funding obligation, and a separate, permissive statutory authorization that allows municipalities to raise additional revenue for their school districts if they choose.

The plaintiffs' attempt to nonetheless convert a Part II, Article 83 claim into a Part II, Article 5 claim fails for several reasons. First, those municipalities that have imposed local education property taxes on plaintiffs' property are not parties to this lawsuit and would be necessary parties to any Part II, Article 5 claim challenging their local education property taxes as unconstitutional. *See Porter v. Coco*, 154 N.H. 353, 357 (2006) ("The necessary parties to any proceeding, . . . are those . . . who have an interest in the subject-matter of the suit and whose rights may be concluded by the judgment."). Consequently, no factual record has been made or developed concerning why those local education property taxes have been imposed, how that locally-raised tax money has been spent, and whether what that tax money has been spent on is actually a state adequacy cost. There is therefore a manifestly insufficient record to sustain a claim that non-uniform local taxes are being spent to fund an adequate education, and a lack of the parties necessary to maintain such a claim.

Second, municipalities and school districts are their own corporate entities. In the absence of a state law directing them to act in a particular way, they are free to choose to raise, direct, and spend money on education consistent with statutory authorizations. Nothing in the State Constitution forbids a municipality from deciding through its own electorate and deliberative process to assess a local education property tax and to spend those locally-raised revenues, in whole or in part, on a state adequate education cost. Such a local policy decision may be beneficial to a

community for a particular reason or may cover an unforeseen or unanticipated cost in the short term. The plaintiffs' position, and the superior court's ruling, eliminates that freedom and flexibility by adopting a rule that will render every municipally-imposed education property tax unconstitutional if a municipality chooses to spend any portion of the raised revenue to cover a state adequacy cost. Thus, municipalities could not spend such locally raised money to cover an unanticipated state adequacy cost. The foreseeable adverse consequences of such a ruling are evident and will redound to the detriment of the education system, a consequence Part II, Article 83 was undoubtedly not adopted to create.

Third, no judicially manageable or cognizable standards exist for adjudicating such a novel tax conversion theory. Indeed, it is not difficult to see the perpetual mischief such a rule of constitutional law invites. Any municipal taxpayer dissatisfied with his local education property tax could sue or file a tax abatement asserting that all or some of the locally raised education tax money is being used to cover what in his or her opinion is a state adequacy cost. The taxpayer could then assert that the local education tax is unconstitutional and seek a refund. In this context, whether a particular expenditure is needed to meet constitutional adequacy or not is basically a matter of subjective opinion. There is no objective standard against which to measure educational adequacy, and what one municipality, individual, or judge may consider adequate another municipality, individual, or judge may not.

Fourth, Part II, Article 5 governs how taxes must be legally structured; it does not govern how lawfully raised tax dollars may be spent. These points were raised and litigated in *Rand I*. Part II, Article 6 governs

how lawfully raised tax revenue may be spent and, under that analysis, so long as the local tax dollars raised are being spent for a legitimate public use such as education there is no constitutional violation. *See Manchester Fed. Sav. & Loan Ass'n v. State Tax Comm'n*, 105 N.H. 17, 21 (1963) (“Neither the plaintiffs nor any taxpayer can complain that the distribution of a valid tax after its collection must be allocated to a specific purpose so long as it is devoted to a public use.”); *Opinion of the Justices*, 99 N.H. 536, 538 (1955) (“The furtherance of education is universally regarded as a public purpose ...”). It would be odd to hold that municipalities could not lawfully raise and spend local education property tax revenue on education if, in the eyes of one or more local taxpayers, the municipality is spending that revenue on a state adequate education cost.

For all of these reasons, the plaintiffs’ Part II, Article 5 claim or theory is not viable as a matter of law. That claim or theory therefore cannot form the foundation of their standing in this case, and a municipal tax authorized under RSA 76:8, III, is not converted into a state tax that violates Part II, Article 5 every time a municipality or its school district chooses to spend the revenue on a state adequacy cost.

V. EVEN IF A COGNIZABLE PART II, ARTICLE 5 CLAIM EXISTED, PLAINTIFFS FAILED TO SUE THE APPROPRIATE PARTIES, FAILED TO REQUEST THE APPROPRIATE REMEDY, AND FAILED TO PRODUCE ANY EVIDENCE TO SUPPORT THE NECESSARY FACTUAL ALLEGATIONS UNDERLYING THAT CLAIM.

Even if the plaintiffs' Part II, Article 5 claim were cognizable, they have still failed to join the appropriate parties (*i.e.*, the municipalities and/or school districts) from whom they could receive appropriate remedies. The plaintiffs have also failed to produce the factual record necessary to support such a claim.

RSA 76:8, III authorizes "municipalities" to "assess local property taxes" when the municipality determines such a tax is necessary to fund school district appropriations not funded through another source. Given that the municipality is the entity statutorily authorized to assess the tax,¹² it is the municipality against which the plaintiffs would need to seek relief for it is only against the municipality that the plaintiffs can obtain any meaningful Part II, Article 5 remedy in the form of an abatement or declaration and injunction against future assessments and collections. *See Merrimack Premium Outlets, LLC v. Town of Merrimack*, 2025 N.H. LEXIS 51, *8-10 (Feb. 28, 2025) (unpublished); *Claremont II*, 142 N.H. at 476-77 (explaining that the court will withhold for another tax year the

¹² The Department of Revenue Administration formally sets local municipal tax rates including local education tax rates. RSA 21-J:35. But it does so only after the municipality and/or school district votes to approve the funding and reports those votes. RSA 21-J:34. A municipality's authority to raise a local education property exists in RSA 76:8, III.

usual remedy of preventing further collection of a tax declared unconstitutional).

Additionally, the plaintiffs' Part II, Article 5 claim depends entirely upon the factual assumption that, in the event of insufficient adequacy funds coming from the State, municipalities are *required* to make up the difference through the raising of a local education tax. This assumption is without factual support in the record. The plaintiffs introduced no evidence supporting a finding that, if the State is providing insufficient funding under one or more subparts of RSA 198:40-a to meet its adequate education funding obligation as to those subparts, any shortfall under those subparts is being covered by local education property taxes and not by other sources of state revenue directed to municipalities and/or school districts.

School districts receive other sources of state money under other state statutes for education such as extraordinary need grants, RSA 198:40-f; fiscal capacity disparity aid, RSA 198:40-g (eff. July 1, 2026); state aid under RSA 186-C:18; reimbursement under RSA chapter 188-E; building aid under RSA 198:15-a - :15-hh. :15-r, :15-u - :15-w; and may receive cooperative school district aid, RSA 198:18, or area school aid, RSA 198:19.

Outside of the school context, municipalities also receive a substantial meals and rooms tax distribution from the State that they may use for any public purpose. RSA 78-A:26, III-IV. They receive distributions under RSA 72-B:11 [Excavation Tax], RSA 79:13 [Normal Yield Tax], RSA 79-A:25 [Land Use Change Tax], and RSA 228:69, I(a) [Railroad Fund Distributions]. They receive surplus revenue generated by

the imposition of state authorized motor vehicle registration fees. RSA 261:74-d.

Municipalities could direct all of this state revenue provided to them for their general use to their school districts to cover state constitutional adequacy costs (and may well have a constitutional duty to do so under *ConVal II*'s reading of Part II, Article 83 before spending it on anything else). *See* RSA 31:4 ("Towns may at any legal meeting grant and vote such sums of money as they judge necessary for any purpose for which a municipality may act if such appropriation is not prohibited by the laws or by the constitution of this state.").

Municipalities might, however, choose to use their unrestricted state revenue for other municipal purposes like police or fire services and choose to raise local education property taxes to cover school expenditures instead of transferring unrestricted state revenue to their school districts for that purpose. Doing this may even be the most logical choice as it may eliminate an extra step of shifting unrestricted state revenue from the municipality to the school district.

The plaintiffs marshalled no evidence in this case establishing that a shortfall in the base adequacy amount or special education differential aid amount must automatically be made up for through a local education property tax in any single municipality, let alone a sufficiently large number of them to obtain the type of facial declaratory relief they received. The plaintiffs called no municipal representatives at trial. They further adduced no evidence regarding how all of the state education revenue and unrestricted state revenue provided to municipalities and/or school districts is used nor did they show that those total state revenue amounts fail to

cover the cost of an adequate education in any municipality and/or school district in the State. In fact, the plaintiffs failed even to isolate and prove what the state adequacy cost is for any one school district, let alone all school districts in the State.

The evidentiary record is therefore manifestly insufficient for the superior court to have concluded in 2024 that all or nearly all municipalities and/or school districts in this State are forced to impose a local education property tax under RSA 76:8, III, in order to cover the State's adequacy obligation. Accordingly, plaintiffs' remaining Part II, Article 5 claim or theory, on which the entirety of their standing rests, fails not just as a matter of law, as explained earlier, but also as a matter of fact.

VI. THE TRIAL COURT ERRED IN EQUATING A SCHOOL DISTRICT'S FEDERAL AND STATE STATUTORY SPECIAL EDUCATION OBLIGATIONS WITH THE ADEQUATE EDUCATION MANDATE IMPOSED UNDER PART II, ARTICLE 83.

The trial court's order found the plaintiffs had carried their burden of establishing the constitutional "insufficiency of current funding levels for special education differentiated aid." Apx.I 46-47. In support of this conclusion, the court wrote:

As noted above, Dr. Dolloff credibly testified about a variety of potential special education cost drivers, the prices of which schools cannot always control. Moreover, based on her broad knowledge concerning a variety of New Hampshire schools, Dr. Dolloff credibly opined that the cost of evaluating (or reevaluating) a student who may qualify for special education services is at least \$5,000. As set forth above, because schools must repeat that process at least every three years, New Hampshire school districts spend an average of \$1,666.67 per student, per year, just on evaluating (or reevaluating) students who qualify for special education services, leaving an average of only \$433.33 per year to fund special education services for each eligible student. ... Drawing on Dr. Dolloff's credible testimony as well as common sense, the Court readily concludes that this amount is insufficient for New Hampshire school districts to provide eligible students with an education that meets Constitutional Adequacy.

Id.

This conclusion is in error and directly conflicts with this Court's binding precedent from *Londonderry I*. In that case, this Court made clear that, absent express language from the legislature, a court cannot equate statutory and administrative rules and regulations regarding obligations of school districts with the delivery of a constitutionally adequate education. *Londonderry I*, 154 N.H. at 161-62. The Court observed that if adequacy is defined by all statutory obligations "there would be no need for any local education taxes as the State would be required to pay for implementing the *entire* statutory scheme." *Id.* What the State has to pay for under *Londonderry I* is only whatever the State identifies as comprising a constitutionally adequate education, not everything a school district must do to comply with state and federal law. *Id.*

Contrary to this precedent, the trial court here concluded that the State was not complying with its obligations under Part II, Article 83 because the differential aid amount in RSA 198:40-a, II(d) related to special education would not cover all costs of complying with students' IEPs. Assuming this Court does not overrule the modern education funding jurisprudence as argued above, it should at least reverse the trial court's decision as in violation of the binding precedent set by *Londonderry I*.

While *Londonderry I* is dispositive of this question, the trial court's holding is also antagonistic to the fundamental reasoning of *Claremont I*, would prove impractical in application, and would shift the duty to define constitutional adequacy not just to the courts but to the federal government.

In *Claremont I*, the Court stated that "[P]art II, article 83 imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee

adequate funding.” 138 N.H. at 184. But the Court also made clear that “[t]he right to an adequate education mandated by the constitution is not based on the exclusive needs of a particular individual, but rather is a right held by the public to enforce the State’s duty.” *Id.* Indeed, “[t]he primary purpose of the maintenance of the common-school system is the promotion of the general intelligence of the people constituting the body politic and thereby to increase the usefulness and efficiency of the citizens, upon which the government of society depends.” *Fogg*, 76 N.H. at 299.

Holding that Part II, Article 83’s constitutional adequacy mandate requires the State to fund all costs associated with each child’s specific IEP is fundamentally inconsistent with this Court’s assertion that constitutional adequacy of education in this State is not about “the exclusive needs of a particular individual.” *Claremont I*, 138 N.H. at 184.

Special education costs are also inevitably extremely varied over time and across children. As such, requiring the legislature to create a statewide funding system which perfectly accounts for all of these costs through a biannual budgeting process is functionally impossible. This Court has been clear that Part I, Article 83’s obligations do not create such functional impossibility. As discussed above, the right to an adequate education under this Court’s jurisprudence is a statewide general right held by the public focused on the educational system as a whole and does not secure the unique rights of any particular individual. *See Claremont I*, 138 N.H. at 192. As such, the legislative definition of adequacy and the associated funding scheme is to be designed so that “school districts, parents, and courts, not to mention the legislative and executive branches themselves,” are able “to know where the State’s obligations to fund the

cost of a constitutionally adequate education begin and end.” *Londonderry I*, 154 N.H. at 161. “Any definition of constitutional adequacy crafted by the political branches must be sufficiently clear to permit common understanding and allow for an objective determination of costs.” *Id.* at 162. The definition of a state adequate education is therefore not tethered to any individual student’s “unique” needs, 20 U.S.C. § 1400(d)(1)(A), and, practically, cannot be tied to the specific and unique needs of individuals that may fluctuate from year to year.

Requiring state adequacy funding to be sufficient to cover all special education costs would also shift the duty to define constitutional adequacy, which this Court has repeatedly said is a duty of the state legislature, to the federal government. This shift is wholly inappropriate as a matter of basic federalism. It also creates a system where statutes passed by another sovereign for the express purpose of ensuring individual rights are used to define the State’s obligations under a state constitutional provision designed to serve the purpose of ensuring a collective public right. Suffice it to say that nothing in the State Constitution contemplates that the framers intended to relinquish this measure of control over the State’s education and fiscal policy to the federal government.

At its core, the IDEA ensures that the federal right of all children to a free appropriate public education (“FAPE”) includes “special education and related services” for children with disabilities. 20 U.S.C. § 1401(9). In order to provide a FAPE to special education children, schools must “offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County School District*, 580 U.S. 386, 399 (2017). The precise makeup of a FAPE depends

on each child's individual circumstances, and "the IDEA cannot and does not promise any particular [educational] outcome." *Id.* at 397–99, 402–04 (citations omitted). The U.S. Supreme Court has held that a child has received a FAPE "if the child's IEP sets out an educational program that is reasonably calculated to enable the child to receive educational benefits." *Id.* at 394 (quotation omitted). "For children receiving instruction in the regular classroom, this would generally require an IEP reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Id.* For some students, however, regular advancement through a curriculum may not be possible, and in those situations an IEP must still be "appropriately ambitious" and allow such students "the chance to meet challenging objectives." *Id.* at 402.

The express parameters of these requirements, as well as the intentions behind them, are not only broader than the state definition of a constitutionally adequate education in RSA 193-E:2-a but they find their origin in a wholly different and perhaps even inconsistent goal. The IDEA is about ensuring every child has their unique needs met irrespective of the cost, whereas Part II, Article 83 (as interpreted by this Court's precedent) is about ensuring education is spread across the population at a sufficient density as to produce an educated electorate.

It is certainly true that the state legislature could incorporate some or all state and federal special education requirements into a definition of adequacy. *See Londonderry I*, 154 N.H. at 161-62. The definition of a constitutionally adequate education passed by the legislature and found in RSA chapter 193-E, however, makes no mention of federal or state special education laws such as RSA chapter 186-C and the IDEA (Individuals with

Disabilities Education Act).¹³ Without any clear language, it cannot be said that the legislature incorporated these requirements. *See ConVal I*, 174 N.H. at 165 (“The legislature’s intent to incorporate by reference must be clear.”). Indeed, to the extent the legislature has provided clear language with respect to special-education funding, it is in RSA chapter 186-C, which provides that “[a]ll expenses incurred by a school district in administering the relation to the children with disabilities in need of special education and related expenses shall be paid by the school district where the child resides.” RSA 186-C:13, I. This is a clear indication that the Legislature does not understand the IDEA or RSA chapter 186-C to have any bearing on the definition of constitutional adequacy.¹⁴

¹³ The IDEA is a non-discrimination statute meant to provide individual students with disabilities (and their parents) specific support aimed at addressing the individual student's “unique” needs. *See* 20 U.S.C. § 1400(d)(1)(A). The IDEA “provides federal funds to assist states in educating children with disabilities and conditions such funding upon a State’s compliance with extensive goals and procedures.” *Roe v. Healey*, 78 F.4th 11, 15 (1st Cir. 2023) (cleaned up).

¹⁴ Legislation proposed in the New Hampshire House of Representatives—2024 House Bill 1670—would have amended the “purpose” provision of RSA chapter 186-C to provide that: “The provision of a free appropriate public education under this chapter shall be considered a part of the state’s duty to provide every child with a constitutionally adequate education.” This amendment never passed the House.

CONCLUSION

This Court should modify or overrule *Claremont I* and its progeny to align this Court's Part II, Article 83 jurisprudence with the constitutional text, the history and tradition against which Part II, Article 83 was adopted, logic, and the law. This can be done by modifying *Claremont I* and its progeny to make clear that the "State" includes all of its political subdivisions and that, so long as the "State" as a whole is putting sufficient funding into the public school system for students to receive an adequate education, no Part II, Article 83 claim is cognizant or viable. That would resolve this case, restore a normal constitutional order, and extricate the judiciary from the type of non-justiciable policy disputes this case presents.

This objective can also be achieved by overruling *Claremont I* and its progeny. As thoroughly explained in this brief, *Claremont I* and its progeny are wrong as a matter of constitutional text, structure, purpose, history and tradition, are poorly reasoned, and, as a result, have led to the impractical and unworkable state of affairs that exists today in our education funding law. Without a clear directive from this Court that they have been overruled, these cases present the risk of devolving back into a standardless and unworkable jurisprudence that violates the separation of powers through future judicial development.

If this Court declines to modify or overrule its existing precedent in any respect, it should nonetheless hold: that the plaintiffs lack standing to maintain their remaining claims; that Part II, Article 83's costing and funding mandate presents a non-justiciable political question; that plaintiffs' remaining Part II, Article 5 claim or theory is non-viable; that a local education property tax authorized by a municipal entity is not

converted into a state tax simply because that municipal entity chooses to spend such revenue to cover an adequate education cost; and that the State is not required to fund the full measure of special education costs incurred by school districts. Upon entering these holdings, this Court should reverse and vacate the trial court's merits decision and remand to the superior court with instructions to close the case.

ORAL ARGUMENT REQUESTED

The State requests a twenty-minute oral argument. Oral argument will be offered by the Solicitor General.

RULE 16(3)(I) CERTIFICATION

The State certifies that each decision appealed from has been submitted in State's Appendix Volume I.

Respectfully submitted,

STATE OF NEW HAMPSHIRE

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CERTIFICATE OF COMPLIANCE

I, Samuel R.V. Garland, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains less than the 30,000 words permitted by this Court's July 30th Order. Counsel relied upon the word count of the computer program used to prepare this brief.

Date: August 14, 2026

/s/ Samuel R.V. Garland
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CERTIFICATE OF SERVICE

I, Samuel R.V. Garlands, hereby certify that I am filing this brief electronically and that a copy is being served on all other parties or their counsel, in accordance with the rules of the Supreme Court, as follows: I am serving registered e-filers through the court's electronic filing system; I am serving or have served all other parties by mailing or hand-delivering a copy to them.

Date: August 14, 2026

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