STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY **SUPERIOR COURT**

Lynn & Thomas J. Murray Jr.,

Petitioners,

v.

TOWN OF WINDHAM, NEW HAMPSHIRE; WINDHAM BOARD OF SELECTMEN / ASSESSORS; NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION; COMMISSIONER OF THE NEW HAMPSHIRE DEPARTMENT OF REVENUE ADMINISTRATION; and STATE OF NEW HAMPSHIRE,

Respondents.

PETITION FOR DECLARATORY JUDGMENT, TAX ABATEMENT, REFUND OR CREDIT, STATUTORY INTEREST, INJUNCTIVE RELIEF AS NECESSARY, AND CONSTITUTIONAL RELIEF

RSA 491:22; RSA 76:16; RSA 76:17; RSA 76:17-a; RSA 76:11-a; RSA 76:3; RSA 76:8; RSA 21-J:35; RSA 193-E:2; RSA 193-E:2-a; RSA 198:40-a; N.H. Superior Court Rules 16, 46, 48, and 49; N.H. Const. Part I, Articles 1, 2, 6, 8, 10, 12, 14, 15, 20, and 37; Part II, Articles 5, 6, 83, and 100.

NOW COME the Petitioners, Lynn and Thomas J. Murray Jr., and respectfully petition this Honorable Court for declaratory judgment, tax abatement, refund or credit, statutory interest, injunctive relief as necessary, and constitutional relief. In support thereof, Petitioners state as follows:

QUESTIONS PRESENTED

1. Whether Part II, Article 5 permits the General Court to impose or defend education taxes that are contrary to, or repugnant to, other provisions of the New Hampshire Constitution.

2. Whether Part II, Article 83 grants independent education-taxing authority, or instead merely directs the Legislature to "cherish" education without supplying a taxing power.

3. Whether the State may define education as a statewide constitutional obligation and then require taxpayers in different municipalities to fund that State-defined obligation through materially different local education tax rates.

4. Whether the constitutional and legislative record, including the 1819 Act expressly providing that the inhabitants of each town could vote money for their own schools and school houses to be assessed on polls and estates in that town; the rejected 1850 proposal for free common schools "at the public expense"; the 1876–1877 limitation on tax money; the 1903 express grant of regulatory power; and the 1968 deletion from Article 6, confirms that no compulsory statewide State education-taxing authority was ever granted by implication.

5. Whether Claremont should be limited, reconsidered, or preserved for Supreme Court review where its Article 83 analysis was not reconciled with Article 5's express limitation, Article 37 separation of powers, Article 100's amendment process, or the historical record now presented, a record that includes materials not available to the Court when Claremont was decided.

I. INTRODUCTION AND THEORY OF THE CASE

This case is not about whether education is important, nor about whether the Legislature may tax generally. It asks a narrower constitutional question: whether Part II, Article 5 permits the Legislature to impose education taxes when those taxes are contrary to, or repugnant to, other provisions of the New Hampshire Constitution. Petitioners respectfully submit that it does not.

Part II, Article 5 is the gateway to every taxing statute in New Hampshire. It grants the General Court authority to make laws and impose taxes only on the express condition that "the same be not repugnant or contrary to this constitution." That conditional language is not surplusage; it is the Constitution's own limitation on legislative power. New Hampshire has long held that the Constitution, not legislative enactment, is supreme, and that an act exceeding constitutional limits is void. See Merrill v. Sherburne, 1 N.H. 199 (1818); State v. LaFrance, 124 N.H. 171 (1983).

That constitutional hierarchy controls here. Even assuming Article 83 creates an enforceable educational duty, Article 83 contains no taxing language and therefore no education-taxing authority. Article 5 cannot be used to manufacture from Article 83 a taxing power that conflicts with Part I, Articles 6, 12, and 37, or that bypasses the amendment process of Part II, Article 100. The historical record confirms that distinction. In 1819, when the Legislature addressed religion, schools, and taxation in a single enactment, it expressly defined the taxing body, taxable class, purpose, and tax base: religious societies could tax the property of their members, while the inhabitants of each town could vote sums for their own schools and school houses, to be assessed upon polls and estates in that town. Article 83, by contrast, contains no taxing language at all.

Petitioners challenge two education levies on their property tax bill: the Statewide Education Property Tax ("SWEPT") and the Local Education Tax. Petitioners do not ask this Court to overrule the Claremont decisions; this Court is bound by them. Petitioners ask only that Claremont not be extended to validate education taxes that independently violate Article 5, and that the constitutional questions be preserved for review by the New Hampshire Supreme Court, the forum where those questions are, as of 2026, already being raised.

II. PARTIES, JURISDICTION, AND VENUE

1. Petitioners Lynn and Thomas J. Murray Jr. are New Hampshire taxpayers and owners of taxable real property located at 29 Westshore Rd, Windham, New Hampshire.

2. Petitioners are liable for the property tax assessed against that property and have paid the challenged tax bill to avoid interest, lien, collection, penalty, tax-deed, or other statutory consequences, while preserving all constitutional objections and abatement rights.

3. Respondent Town of Windham is a municipal corporation located in Rockingham County, New Hampshire.

4. Respondent Windham Board of Selectmen / Assessors is responsible for acting on abatement applications and for administering local assessment functions.

5. Respondent New Hampshire Department of Revenue Administration is the State agency that sets, administers, equalizes, and supervises education property tax rates, including SWEPT. See RSA 21-J:35 (setting of tax rates by the commissioner); RSA 21-J:3, XIII (annual equalization of valuations); RSA 76:3; RSA 76:8.

6. Respondent Commissioner of the New Hampshire Department of Revenue Administration is responsible for setting the SWEPT rate and related education-tax administration. See RSA 76:3; RSA 76:8; RSA 21-J:35.

7. Respondent State of New Hampshire is named because the challenged taxes arise from the State's education-funding structure, State education statutes, State tax administration, and the State's asserted constitutional education obligation.

8. This Court has jurisdiction under RSA 491:22 because Petitioners claim present legal and equitable rights and Respondents claim adversely to those rights. Petitioners' injury is concrete and present: they were assessed, billed, and have paid the challenged education taxes on their own property, and thus allege the impairment of a present legal or equitable right arising out of the application of the challenged tax statutes, not a generalized or hypothetical grievance. As the Supreme Court has recognized, there is nothing hypothetical about the statewide education property tax or the manner in which it operates. See Sirrell v. State, 146 N.H. 364, 368 (2001).

9. Petitioners satisfy the standing standard that parties have personal legal or equitable rights adverse to one another, in an actual, not hypothetical, dispute capable of judicial redress. See Duncan v. State, 166 N.H. 630, 642-43 (2014). This case is the opposite of Duncan: the Duncan petitioners challenged an education tax-credit program that did not tax them and could show no personal injury, whereas Petitioners are directly assessed and have themselves paid the challenged SWEPT and Local Education Tax on their own property. That is a concrete, particularized injury-in-fact, and abatement, refund or credit, and declaratory relief would redress it.

10. In addition, and as a secondary basis, Part I, Article 8 (as amended in 2018) provides that any individual taxpayer eligible to vote may petition the superior court to declare whether the State or the political subdivision in which the taxpayer resides has spent, or approved spending, public funds in violation of a law or constitutional provision, without demonstrating that the taxpayer's personal rights were impaired. Petitioners are eligible-voter taxpayers of the Town of Windham and the State and plead this taxpayer standing as an additional ground; their primary basis for standing, however, is their direct injury as taxpayers assessed and paying the challenged taxes.

11. This Court also has jurisdiction under RSA 76:17 because Petitioners are aggrieved by the Town's failure or refusal to abate the challenged taxes.

12. Venue is proper in Rockingham County Superior Court because the property is located in Windham and the assessment was imposed there.

13. The controversy is ripe because Petitioners have been assessed, billed, and have paid the challenged taxes while preserving their objections. Because a statute's constitutionality is drawn in question, a copy of this petition is being served on the Attorney General, who is entitled to be heard.

III. PROCEDURAL BACKGROUND

14. The Town of Windham issued a 2025 property tax bill to Petitioners. The bill itemized separate tax components, including municipal, county, State education/SWEPT, and local education tax components. See RSA 76:11-a.

15. Petitioners timely filed an abatement application with the Town pursuant to RSA 76:16, including constitutional grounds challenging both SWEPT and the Local Education Tax.

16. Petitioners expressly requested that the education components be treated as distinct levies for purposes of abatement, judicial review, and constitutional analysis.

17. Petitioners challenged the taxes on constitutional grounds, including lack of constitutional authority, lack of consent, disproportionality, non-uniformity, unlawful taking or application of property, judicial usurpation, and separation of powers.

18. The Town did not grant the requested abatement and did not issue a lawful written decision addressing the constitutional claims by the July 1, 2026 statutory deadline. See RSA 76:16, II.

19. The Town's failure to act constitutes a denial or refusal to abate. Petitioners are aggrieved, and this petition is timely under RSA 76:17 and RSA 491:22.

20. Because the challenged taxes have been paid, Petitioners principally seek declaratory judgment, abatement, refund or credit, statutory interest under RSA 76:17-a, and injunctive relief only as necessary to prevent continued or future enforcement consequences.

IV. CONSTITUTIONAL SUPREMACY AND THE LIMITS OF LEGISLATIVE POWER

21. The New Hampshire Constitution is a limited grant of power from the people to government. All power resides originally in, and is derived from, the people. N.H. Const. pt. I, art. 8.

22. The rule of law in New Hampshire "does not mean the supremacy of the laws enacted by the legislature, but the supremacy of the Federal and State Constitutions." State v. LaFrance, 124 N.H. 171 (1983). The Constitution "was created by the people, who are sovereign, and it, being an expression of their will, is the fundamental and supreme law of

the State." Id. Therefore, "[n]o branch of State government can lawfully perform any act which violates the State Constitution." Id.

23. Merrill v. Sherburne established the same rule at the outset of New Hampshire constitutional law. The Constitution "is, in fact, and must be regarded by the judges, as a fundamental law," and where a statute is irreconcilable with it, "the intention of the people ought to be preferred to the intention of their agents." Merrill v. Sherburne, 1 N.H. 199, 201 (1818). An unconstitutional legislative act is therefore void.

24. LaFrance states the consequence: a legislative act that violates the Constitution is void because the Legislature, when it steps beyond its bounds, acts without authority. LaFrance, 124 N.H. at 178.

25. These principles apply with full force to taxation. Taxation takes or applies private property for public use. Part I, Article 12 requires lawful authority and the consent of the people or their representative body; Part II, Article 5 supplies only a limited and conditional taxing authority. The representative body cannot consent to a tax that the Constitution does not authorize.

26. This case therefore begins and ends with constitutional supremacy. If SWEPT or the Local Education Tax conflicts with the Constitution read as an integrated whole, neither can be saved by statute, label, administrative practice, or judicially created doctrine.

Constitutional Obligation Versus Legislative Act

27. A constitutional provision and a legislative act differ in kind. A constitutional obligation or power is part of the fundamental law: it derives from the people and may be adopted or amended only through the process of Part II, Article 100. A statute, by contrast, is enacted

by the General Court in the exercise of power the Constitution grants, sits below the Constitution, may be amended or repealed by any later legislature, and is valid only so long as it is “not repugnant or contrary to this constitution.” N.H. Const. pt. II, art. 5. An act that exceeds those limits is void. Merrill v. Sherburne, 1 N.H. 199 (1818); State v. LaFrance, 124 N.H. 171, 178 (1983).

28. It follows that a statute cannot create, or repeal, a constitutional obligation, and that a constitutional obligation cannot be supplied by statute or by long legislative practice. The Constitution grants and limits; statutes merely exercise the granted power within those limits.

29. That distinction is decisive here. The State defines the substantive content of an “adequate education” by statute, see RSA 193-E:2 and RSA 193-E:2-a; sets its per-pupil cost by statute, see RSA 198:40-a; and funds it through statutory taxes, including SWEPT, see RSA 76:3. Yet the duty to fund adequacy is asserted as a constitutional obligation drawn from Article 83. See Claremont Sch. Dist. v. Governor (Accountability), 147 N.H. 499, 505 (2002); Londonderry Sch. Dist. SAU #12 v. State, 154 N.H. 153, 155-56 (2006). If Article 83’s text imposes no fundable, judicially enforceable taxing duty, then no statute, and no statutory definition or costing of adequacy, can supply the constitutional obligation the courts now enforce.

30. Nor does the long history of local school taxes prove a constitutional command. Authorizing towns to tax for their own schools has always been the legislature exercising its Article 5 discretion, not the Constitution compelling it. Had education funding been a fixed constitutional obligation, it would not have been left to variable statute that any legislature may raise, reduce, or restructure. That it has always been governed by

changeable statute is itself evidence that it is a legislative policy choice, not a constitutional mandate.

31. The 1850 Constitutional Convention understood precisely this distinction. To make common-school funding a binding, fundable obligation "at the public expense," the Convention did not proceed by statute and did not treat the existing text as already accomplishing it; it proposed an express constitutional amendment, and the people rejected it. A fundable education-taxing duty was therefore never adopted as a constitutional obligation by the people; it was later constructed by judicial interpretation of Article 83.

32. The 1819 Toleration Act must be kept in its proper lane. It is a legislative act, see Laws of New Hampshire, vol. 8, ch. 69, pp. 820–822 ("Free Toleration Act"), approved July 1, 1819, and it is evidence of how the taxing power was historically understood and exercised, locally, through expressly defined taxing bodies and taxable classes, with religious support made dependent upon membership and consent and school support left to taxation voted by the inhabitants of each town, not a constitutional limit or grant in its own right. A statute illustrates the exercise of constitutional power; it does not measure or supply it.

V. PART II, ARTICLE 5 IS A CONDITIONAL DELEGATION, NOT A BLANK CHECK

33. Part II, Article 5 authorizes the General Court to make reasonable laws and to impose proportional and reasonable assessments, rates, and taxes, but only "provided the same be not repugnant or contrary to this constitution." The grant and the condition are inseparable.

34. The Supreme Court has described this very limitation as Article 5's "one powerful proviso, that 'the same be not repugnant or contrary to this constitution,'" and has explained that "our voters and founding fathers intended to create a government which would be checked

by a higher law." That higher law is the State Constitution. State v. LaFrance, 124 N.H. 171 (1983). LaFrance illustrated the proviso with a tax, pointing to the minimum business profits tax struck down under Part I, Article 12 and Part II, Articles 5 and 6. See Johnson & Porter Realty Co. v. Comm'r of Rev. Admin., 122 N.H. 696, 698 (1982). Article 5's proviso is therefore not a formality; it is the constitutional check the Court has enforced to void an unconstitutional tax.

35. Article 5 thus requires two distinct inquiries for any tax. First, is the tax proportional, reasonable, equal in valuation, and uniform in rate? See Opinion of the Justices, 117 N.H. 749, 755 (1977) (Article 5 requires that all taxes be proportionate and reasonable, equal in valuation and uniform in rate); State v. Express Co., 60 N.H. 219, 243 (1880) (if a tax is for general state purposes, the rate must be the same throughout the State). Second, is the tax contrary to, or repugnant to, any other provision of the Constitution? A tax that fails either inquiry fails Article 5.

36. Both inquiries follow from the nature of Article 5 as a delegated and conditional power. "[E]very act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void." Merrill v. Sherburne, 1 N.H. 199, 216 (1818). And applying the second inquiry is a core judicial function: Merrill recognized that a "prominent reason for creating the judicial" department "distinct from the legislative department, was, that the former might determine when laws were thus 'repugnant,' and so operate as a check upon the latter, and as a safeguard to the people." Id. at 210. Testing whether a tax is repugnant to the Constitution is therefore the courts' established role, not an intrusion on the Legislature.

37. Petitioners do not dispute that Article 5 is the general taxing clause. The point is that Article 5 authorizes taxation only within constitutional limits. Article 5 does not override Article 6's historic local structure; it does not override Article 12's consent requirement; it does not override Article 37's separation-of-powers command; it does not convert Article 83's word "cherish" into a taxing clause; and it does not bypass Article 100's amendment process.

38. The proper subjects and purposes of taxation under Article 5 are the lawful "public charges of government." See N.H. Const. pt. II, art. 6 (taxation "upon polls, estates, and other classes of property" for "the public charges of government"). A levy that funds an obligation the Constitution does not authorize the State to compel is not a lawful public charge within Article 5.

39. Article 5 therefore prevents the State from using the general taxing power to create or defend an education-taxing scheme that the people did not adopt and that conflicts with the rest of the Constitution.

40. Power to tax versus duty to fund. Petitioners do not dispute that the General Court has the power to tax and that it may tax for education; education is a lawful public purpose, and the Legislature has always been able to raise money for schools by statute under Article 5. Petitioners challenge not the power to tax for education, but the compulsion to fund, through a statewide, State-defined tax, a constitutional duty of adequacy the people never adopted. The distinction is between a discretionary legislative power (which exists and is not challenged) and a mandatory constitutional duty (which was proposed in 1850, rejected by the people, and never adopted through Article 100). The challenged taxes are attacked only insofar as they enforce that duty, never as an exercise of the general taxing power.

VI. THE CONSTITUTIONAL TIMELINE CONFIRMS THE ARTICLE 5 LIMITATION

The Constitution must be read as a single instrument adopted and amended by the people over time. The relevant sequence is:

1784, Original Constitution. Article 83 directs legislators and magistrates to "cherish" education and other civic goods. It contains no tax, rate, funding, or full-funding language.

1818, Merrill v. Sherburne. The Constitution is fundamental law; an unconstitutional legislative act is void.

1819, Free Toleration Act. In a single enactment, the Legislature expressly distinguished religious taxation from school taxation. Religious associations could tax only "the polls and rateable estate of the members of such associations," while "the inhabitants of each town" could vote sums for "the support of schools, school houses" and other town charges, to be assessed upon "the polls and estates in said town." The enactment reflects local school funding by town vote and local assessment, not a compulsory statewide education-taxing structure.

1850, Constitutional Convention (chaired by Franklin Pierce). The Convention drafted an express amendment to replace Article 83 with a funded "free common schools at the public expense" mandate and a State superintendent. The express proposal was submitted and was not ratified. (Discussed in Part VIII below.)

1876–77, Constitutional Convention and ratification. The only Article 83 tax language adopted was a limitation, barring tax money from religious schools or institutions, not an affirmative grant of State education-taxing power. (Discussed in Part IX below.)

1903, Amendment to Article 83 adding express power-granting language as to corporations and monopolies, showing that the Constitution uses express terms when the people intend to grant power.

1968, Amendment to Part I, Article 6 removing the historic "towns, parishes, bodies corporate, [and] religious societies" language authorizing local support of teachers of piety, religion, and morality. That removal was a religious-equality measure; it neither granted nor was needed to grant any State education-taxing power.

1983, State v. LaFrance. No branch may act contrary to the Constitution; an act beyond constitutional bounds is void.

1993–97, Claremont I and II. An education duty was recognized under Article 83 without reconciling that interpretation with Article 5's express limitation, the Article 6 history, Article 37, or Article 100, and without the benefit of the 1850 Convention Journal, which was not published until 2005–2006.

2025–26, Rand and ConVal. In Rand v. State, 177 N.H. 383 (2025), the Supreme Court upheld SWEPT under Article 5; in Contoocook Valley Sch. Dist. v. State, 2025 N.H. 29 (2025), it addressed the State's duty to cost and fund adequacy. And, for the first time, the State has asked the Supreme Court to reconsider the Claremont precedents, placing the validity of those precedents squarely before the Court.

41. The timeline confirms what Article 5 already says: the Legislature's taxing power is conditional. It may not use a general taxing clause to create a specific education-taxing structure contrary to the Constitution as adopted and amended.

The Legislature's Own Early Rule of Constitutional Interpretation

42. The same official volume reproduces an 1820 legislative report explaining the interpretive significance of early constitutional practice, describing a construction adopted shortly after ratification and long followed as especially probative because made by those with the best means of knowing the instrument's true intent: "It must be recollected that this contemporaneous construction of the constitution was made by those, who had the best possible means of knowing what was its true intent." The report emphasized a construction "given to the constitution immediately after its adoption" and "acted upon without opposition." Although the report concerned the federal Constitution and a different issue, Petitioners do not cite it as authority on education taxation; they cite it for the narrower point that New Hampshire's own Legislature, in 1820, regarded contemporaneous construction and early settled practice as powerful evidence of constitutional meaning. Accord Grinnell v. State, 121 N.H. 823, 826 (1981); Warburton v. Thomas, 136 N.H. 383, 387 (1992).

VII. ARTICLE 83 IS NOT A TAXING PROVISION

43. Part II, Article 83 directs legislators and magistrates to "cherish" knowledge, learning, literature, the sciences, seminaries, public schools, and numerous other civic goods. To "cherish" means to encourage, foster, support, or promote. It does not mean to tax, to fully fund, or to create a judicially enforceable statewide taxing mandate.

44. If "cherish" created taxing authority for public schools, the same word would create taxing authority for literature, agriculture, the arts, commerce, trade, charity, and the many other goods Article 83 lists. That cannot be the constitutional rule.

45. Article 83's silence on taxation is meaningful. Taxing authority must come from Article 5, subject to Article 5's own limitation, and Claremont II itself located the taxing and uniformity analysis in Part II, Article 5 while resting the education duty on Article 83, confirming that Article 83 is not the source of a taxing power. See Claremont II, 142 N.H. 462.

46. Even if Article 83 creates an educational duty, it cannot supply taxing authority that conflicts with Articles 6, 12, 37, and 100.

VIII. THE 1850 CONVENTION RECORD DISPROVES ANY IMPLIED EDUCATION-TAXING POWER

47. The Constitution's words must be given the same meaning they had to the electorate on the date the vote was cast, placing the Court as nearly as possible in the situation of the parties at the time the instrument was made. See Grinnell v. State, 121 N.H. 823, 826 (1981); Warburton v. Thomas, 136 N.H. 383, 387 (1992); Claremont I, 138 N.H. 183, 186 (1993) (adopting the same rule and holding that "[a]n obvious starting point in interpreting part II, article 83 is to determine what the particular words used meant in 1784"). Under that interpretive rule (the Court's own), the single most direct historical evidence of the original public meaning of Article 83 is what the people's own convention did when it actually tried to create a funded public-education mandate. In 1850, a Constitutional Convention, presided over by Franklin Pierce, later President of the United States, took up exactly that task.

48. The Convention's committee on Revising Business reported, and the Convention considered, an express amendment to replace Article 83. The proposed first article provided:

> *"The Legislature shall make provision for the establishment and maintenance of free common schools at the public expense and for the assessment and collection annually in the several towns parishes 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 to be applied exclusively to the support of such schools."*

49. The same proposal would have vested the supervision of public instruction in a State superintendent, chosen biennially by the qualified electors, whose powers, duties, and compensation would be "prescribed by law", the constitutional architecture of a State-administered, State-funded public-education system.

50. This is the decisive point. In 1850, the framers of constitutional revision believed that to impose an affirmative, funded duty to maintain "free common schools at the public expense," they had to add express constitutional language, including a specific assessment-and-collection formula. They did not assume Article 83's existing "cherish" language already accomplished that. If Article 83, as adopted in 1784, already imposed a compulsory, fundable duty to support free common schools at public expense, the 1850 express provision, with its detailed funding formula and its new State superintendent, would have been wholly unnecessary.

51. The people did not adopt the 1850 proposal. The 1850 Convention's work was, in the main, not ratified. A power that the people considered and declined to adopt cannot later be

supplied by judicial construction of the very clause the 1850 proposal was meant to supplement. The constitutional method for adding such a power is Part II, Article 100.

52. The 1850 record is also significant for a reason independent of its content. The Journal of the 1850 Convention was never printed at the time; the manuscript was relocated to the State Archives in 1980 and was not published until 2005–2006. It was therefore not part of the historical record before the Court when Claremont I and II were decided in 1993 and 1997. The original public meaning of Article 83 is now illuminated by a primary source the Claremont Court did not have.

53. The inference from 1850 is corroborated by every later step in the timeline: when the people wished to change the constitutional treatment of education or taxation, they proceeded by express amendment submitted to the voters (1877, 1903, 1968), not by reinterpreting "cherish." The consistent historical practice forecloses an implied, judicially supplied education-taxing power.

IX. THE 1876–1877 RECORD AND QUESTION 13 ARE A LIMITATION, NOT A GRANT

54. In 1876–1877, the people were asked to approve language prohibiting money raised by taxation from being applied to support the schools or institutions of any religious sect or denomination. The 1876 Convention adopted that language as a proviso to Article 83, and the voters approved it as Question 13.

55. The text matters. The Convention stated the amendment three times, in the committee-of-the-whole report, in the adopted schedule, and in the ballot question, each time reading "the schools or institutions of any religious sect or denomination." The amendment is, by its

terms, a negative limitation on the use of tax money. It is not, and cannot be inverted into, an affirmative grant of State education-taxing power, a statewide education property tax, compulsory local education taxation, or a judicially enforceable funding mandate.

56. The current official printing of Article 83 renders the proviso “schools *of* institutions,” which does not parse and departs from the “schools *or* institutions” language the Convention adopted and the voters approved. The Secretary of State has acknowledged that the “or/of” discrepancy is most likely a typographical error. A typographical error in a later compilation cannot amend the Constitution or create taxing authority. The ratified text controls. (See Exhibit I.)

X. THE 1903 AMENDMENT SHOWS ARTICLE 83 USES EXPRESS LANGUAGE WHEN POWER IS INTENDED

57. The 1903 amendment to Article 83 added language concerning corporations, monopolies, trusts, and restraints of trade. Unlike the original education language, that 1903 language uses express, power-granting terms: “all just power possessed by the state is hereby granted to the general court to enact laws to prevent” monopolies and conspiracies that destroy free and fair competition. N.H. Const. pt. II, art. 83 (as amended 1903).

58. The contrast is instructive. The Constitution knows how to grant power when the people intend to grant it. The education portion of Article 83 says “cherish.” It does not say “tax,” “raise money,” or “fully fund.” Courts may not read materially different constitutional language as though it meant the same thing.

59. Article 83 as it appears today is not a single original command. It is a compiled provision containing distinct historical layers that must be read separately: the 1784 “cherish”

language, the 1877 limitation on tax money for religious schools, and the 1903 express grant of power over corporations and monopolies. Reading the modern compiled text as one unified command, without separating the 1784 education language from the later 1877 limitation and 1903 express grant, and without the 1850 record, obscures the original public meaning of the education clause. A later editorial compilation cannot supply constitutional taxing authority the people never granted.

XI. PART I, ARTICLE 6 AND THE LOCAL, CONSENT-BASED ORIGINS OF SCHOOL SUPPORT

60. As originally adopted in 1784, Part I, Article 6, the clause governing public support of teachers of piety, religion, and morality, did not itself impose any tax. It empowered the legislature only to authorize the several towns, parishes, bodies corporate, and religious societies “to make adequate provision at their own expense” for the support of “public protestant teachers of piety, religion and morality,” provided that those bodies would elect and contract for their own teachers, and that no person would be compelled to pay toward the teachers of another sect. Its preamble ties this to “public instruction in morality and religion,” so that religion, morality, and instruction were administered together, at the local level, and out of local funds.

61. Article 6 is therefore an enabling clause, not a self-executing tax. The people empowered the legislature only to authorize local bodies to act, and only at those bodies’ own expense. Article 6 imposed no State tax, established no State-funded system, and compelled nothing of its own force; it is a permission structure that kept the support of public teachers local and consent-based. It is not a public-schools funding clause (that subject belongs to Part II,

Article 83), but its enabling, local, at-their-own-expense design is evidence of the constitutional structure into which the education provisions were later read.

62. Two features of that design bear on this case. First, provision was made by local bodies (towns, parishes, and societies) at their own expense, not by the State. Second, the article guarded against compelled support across sects. The 1784 framework was thus one of local provision and local control, not centralized State taxation for a State-defined purpose.

63. The founding generation debated whether government could compel support for religious teaching. In Virginia, James Madison's Memorial and Remonstrance Against Religious Assessments (1785) helped defeat a proposed general assessment for teachers of religion. New Hampshire took a different course in 1784, authorizing local support of religious teachers, but, as set out below, even that local religious compulsion was abandoned in 1819. The State's historical trajectory ran toward less compelled and less centralized support, never toward a compulsory statewide tax.

64. The Toleration Act of 1819 provides unusually direct evidence of how the Legislature understood and exercised the taxing structure of the Constitution. See Laws of New Hampshire, vol. 8, Second Constitutional Period, 1811–1820, ch. 69, pp. 820–822 ("Free Toleration Act"), approved July 1, 1819. The Act addressed both religious support and ordinary town charges, including schools, in the same enactment, and its language carefully identified the body exercising the taxing authority, the class subject to taxation, the object for which money could be raised, and the property upon which the assessment could fall.

65. As to religious societies, the Act authorized each religious sect or denomination to associate and exercise the corporate powers necessary "to assess and raise money by taxes

upon the polls and rateable estate of the members of such associations." The taxable class was therefore expressly limited to "the members of such associations." The Act further provided "that no person shall be compelled to join or support, or be classed with, or associated to any congregation, church or religious society without his express consent first had and obtained," and that a person who separated from a society by written notice "shall thereupon be no longer liable for any future expenses which may be incurred by said society or association." The Legislature thus treated "support" as a concrete financial obligation and tied membership, taxation, withdrawal, and future liability together.

66. In the same Act, the Legislature separately addressed schools and other municipal charges: "That the inhabitants of each town in this State, qualified to vote at any meeting duly and legally warned and holden in such town, may grant and vote such sum or sums of money as they shall judge necessary for the support of schools, school houses, the maintenance of the poor, for laying out and repairing highways, for building and repairing bridges, and for all the necessary charges arising within said town, to be assessed on the polls and estates in said town as the law directs." That language is structurally precise: the taxing decision belonged to "the inhabitants of each town"; the amount was what "they shall judge necessary"; the objects included that town's "schools" and "school houses"; the charges were those "arising within said town"; and the assessment fell upon "the polls and estates in said town."

67. Petitioners do not contend that local school taxation was voluntary in the individual-consent sense established for religious support. The significance of the 1819 Act is different and narrower: the same Legislature, in the same enactment, distinguished between two systems of support. Religious taxation was confined to the members of voluntary

associations. School funding remained a matter of municipal self-government, the inhabitants of each town voted the amount they considered necessary for their own schools and school houses, and the resulting charge was assessed on polls and estates in that town.

68. The 1819 Act therefore does more than show the end of compulsory religious support. It shows that when the Legislature exercised taxing authority, it used express language defining the taxing body, taxable class, tax base, purpose, and geographic reach of the assessment. Nothing in that enactment resembles a compulsory statewide, State-defined, State-administered education tax; the statutory system was local in both decision and assessment.

69. That distinction matters because Article 83 contained no taxing language at all. The 1819 Legislature did not treat the word "cherish" as a self-executing statewide tax command; when it authorized money to be raised for schools, it did so expressly and locally. And when the 1850 Convention later sought to transform common-school support into a constitutional obligation to maintain free common schools "at the public expense," it again used express constitutional language and an express assessment formula, which the people did not ratify.

70. The 1850 record confirms how that language was understood. The Convention's Bill of Rights committee proposed to revise Article 6 by striking "the legislature to authorize," striking "towns, parishes, bodies corporate or" in two places, and striking "protestant", leaving only the several "religious societies" empowered to make provision "at their own expense" for teachers of piety, religion, and morality. The proposal to strip "towns" from the clause shows the words were understood to authorize local bodies, including towns, to

raise and apply their own funds for that support. That revision, like the Convention's separate proposal for common schools "at the public expense," was not ratified.

71. The rejection of the 1850 public-expense proposal did not deny the legislature's power to tax for schools. That power rests on Part II, Articles 5 and 6 and was exercised by statute before and after 1850, and towns funded their own common schools throughout. What the people declined in 1850 was the creation of a constitutional obligation to fund common schools at the public expense, a binding, formula-driven, State-level funding duty. The distinction is between a discretionary power (which existed and continued) and a mandatory constitutional duty (which was proposed and refused). What the people declined to make a binding duty in 1850, a court later supplied by construing Article 83 in 1993.

72. The full clause therefore stood until 1968, when the people amended Part I, Article 6. Comparing the ratified texts, the 1968 amendment removed the word "towns" and deleted the entire empowerment "to make adequate provision at their own expense, for the support and maintenance of public protestant teachers of piety, religion and morality," leaving only the right of parishes, bodies corporate, and religious societies to elect their own teachers. In that precise sense the 1968 amendment did delete a constitutional authorization, the local, at-their-own-expense authority to support public teachers. But that deleted authority was local and consent-based, its object was teachers of piety, religion, and morality, and by 1968 it had long been a dead letter, the compelled support of religious teachers having ended with the 1819 Toleration Act.

73. What the 1968 amendment did not do is equally important. It did not grant the State any new education-taxing power; it did not amend Article 83 to make "cherish" a taxing clause; it did not amend Article 5; and it did not disturb the towns' separate, statutorily grounded

authority to tax for their own common schools, which rests on Part II, Articles 5 and 6 and on statute, not on Part I, Article 6.

74. That local power to tax for a town's own schools is not challenged here. As with SWEPT and the Local Education Tax, Petitioners challenge only the compulsion to fund a State-defined adequacy duty the people never adopted, not the power to tax for education.

75. Read together, the history yields a single conclusion. The only constitutional text that ever expressly authorized provision for public teachers was local and "at their own expense," and it was deleted in 1968; a compulsory common-school mandate "at the public expense" was expressly proposed in 1850 and rejected by the people. A compulsory, statewide, State-defined and State-administered education tax matches neither model: neither the local, own-expense provision the framers actually wrote, nor any public-expense mandate the people ever ratified. It rests not on constitutional text adopted by the people, but on later judicial construction of Article 83. Deletion is not a grant, silence is not consent, and a duty the people declined to adopt cannot be supplied by interpretation.

76. The 1819 Act and the 1850 Convention must be read together. In 1819, the Legislature expressly provided that the inhabitants of each town could vote money for the support of their own schools and school houses, for charges arising within that town, assessed upon polls and estates in that town. In 1850, when the Convention sought to create something materially different, a constitutional obligation to maintain free common schools "at the public expense," backed by an express statewide assessment formula and a State superintendent, it proposed an amendment to the Constitution, which the people did not ratify. The historical sequence therefore distinguishes three things that Claremont later blurred: a legislative power to permit local school taxation; a proposed but rejected

constitutional duty to fund free common schools at public expense; and Article 83's actual command merely to "cherish" education. A judicial interpretation cannot collapse those three distinct constitutional categories into one.

XII. PART I, ARTICLE 37 PROHIBITS ANY BRANCH FROM ENLARGING CONSTITUTIONAL POWER

77. Part I, Article 37 requires the legislative, executive, and judicial powers to be kept separate and independent as far as the nature of a free government will admit. The power to tax and the power to appropriate are legislative; the power to amend the Constitution belongs to the people through Article 100.

78. The judiciary may interpret the Constitution and enforce its limits, including by invalidating an unconstitutional tax, but it may not create or mandate a taxing authority the people did not grant. The Legislature may not enact unconstitutional education taxes; the Executive may not administer them; and the Judiciary may not supply, by converting Article 83's civic-encouragement language into a taxing command, the authority that Articles 5, 83, and 100 withhold.

79. This separation runs in both directions. In Merrill v. Sherburne the Court held that "[t]he entire legislature can perform no judiciary act," 1 N.H. 199, 209 (1818), and struck down a statute by which the Legislature had reached into the judicial power. The same principle forbids the inverse: just as the Legislature may not exercise the judicial power, the Judiciary may not exercise the taxing and appropriating power that Article 37 commits to the Legislature. A tax sustained solely to fund a judicially created funding mandate would

let the courts wield, in substance, the very power Merrill forbids one branch from taking from another.

80. Article 5's "contrary or repugnant" limitation is itself a structural safeguard: it prevents any branch from using one constitutional provision to defeat the rest of the Constitution.

81. These questions are justiciable, not political questions committed to another branch. New Hampshire has adopted the political-question framework of Baker v. Carr, 369 U.S. 186, 217 (1962), and has held that claims of compliance with mandatory constitutional provisions are justiciable, that legislative consideration of a constitutional question does not foreclose judicial scrutiny, and that where a mandatory constitutional provision is at stake the courts "are mandated to do no less" than intervene. Baines v. N.H. Senate President, 152 N.H. 124, 129, 132 (2005). The education duty and the requirement of uniform taxation to fund it have repeatedly been treated as justiciable. See Claremont I, 138 N.H. 183 (1993) (education duty justiciable and judicially enforceable). Petitioners' claims that the challenged taxes are repugnant to Article 5 present precisely such justiciable questions of constitutional compliance, while the distinct question whether Claremont should be reconsidered is preserved for the Supreme Court, not this Court.

XIII. CLAREMONT SHOULD BE LIMITED, OR THE QUESTION PRESERVED FOR SUPREME COURT REVIEW

82. Petitioners recognize that this Court is bound by decisions of the New Hampshire Supreme Court and do not ask this Court to disregard them. Petitioners expressly preserve for Supreme Court review whether Claremont Sch. Dist. v. Governor, 138 N.H. 183 (1993),

and Claremont Sch. Dist. v. Governor, 142 N.H. 462 (1997), and their progeny should be limited, reconsidered, or overruled.

83. Claremont interpreted Article 83 without reconciling that interpretation with Article 5's express limitation, the pre- and post-1968 Article 6 history, Article 12's consent principle, Article 37's separation of powers, or Article 100's amendment process, and without the 1850 Convention Journal, which had not been published when Claremont was decided.

84. This is not an attack on Claremont's interpretive method but an application of it. Claremont held that the "obvious starting point" in construing Article 83 is "to determine what the particular words used meant in 1784," 138 N.H. at 186-87, and that constitutional words carry "the same meaning that they must have had to the electorate on the date the vote was cast," id. at 186. Yet Claremont resolved the question without the 1850 Convention record, the 1819 Act's express local school-tax structure, or the balance of the historical evidence now presented. Applying Claremont's own rule to the full record, Article 83's duty to "cherish" does not yield a fundable, statewide, State-administered education-taxing duty, which is precisely the changed-and-newly-seen-facts ground on which reconsideration is warranted.

85. New Hampshire applies a settled four-factor stare decisis framework. The Court will reconsider a precedent only after considering: (1) whether the rule has proven intolerable by defying practical workability; (2) whether reliance on it would make overruling a special hardship; (3) whether related principles of law have developed so as to leave 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 rob the old rule of significant application or justification. See Ford v. N.H. Dep't of Transp., 163 N.H. 284, 290 (2012); State v.

Quintero, 162 N.H. 526, 532-33, 539 (2011); Jacobs v. Director, N.H. Div. of Motor Vehicles, 149 N.H. 502, 505 (2003); Brannigan v. Usitalo, 134 N.H. 50, 53 (1991); Boyle v. City of Portsmouth, 172 N.H. 781, 787 (2020). Because the Court will not revisit a precedent unless the moving party briefs all four factors, see Ford, 163 N.H. at 290, Petitioners address each below to preserve the question.

86. First (workability): Petitioners submit that the Claremont rule has generated decades of recurring litigation and repeated invalidation of successive legislative funding responses, indicating persistent difficulty in practical application. Whether this rises to unworkability is a question Petitioners preserve for the Supreme Court.

87. Second (reliance): The reliance at stake is governmental and statutory, the State's education-finance enactments, not the settled property or contract reliance to which stare decisis gives special weight. Reliance on an erroneous reading of the taxing power cannot immunize that reading from correction, and any transition can be addressed by legislative response under Part II, Article 100.

88. Third (remnant of abandoned doctrine): Claremont rested in significant part on the Massachusetts decision in McDuffy and on a reading of Article 83 that Petitioners contend is in tension with Article 5's express limitation, Article 12's consent principle, and Article 37. Petitioners preserve whether related principles have so developed as to leave the original rule a remnant of abandoned doctrine.

89. Fourth (changed or newly-seen facts): This factor is the strongest. The Journal of the 1850 Constitutional Convention, the people's express, and rejected, attempt to create a funded "free common schools at the public expense" mandate, was not published until 2005–2006

and was not before the Court when Claremont was decided in 1993 and 1997. The original public meaning of Article 83 is now seen through a primary source the Claremont Court never had, which robs the implied-taxing-power reading of significant justification. See Boyle, 172 N.H. at 787; Ford, 163 N.H. at 290.

90. This preservation request is not academic. As of 2026, the State of New Hampshire has itself asked the New Hampshire Supreme Court to reconsider the Claremont precedents. The question whether those precedents should stand is therefore squarely presented to the Court through a State-driven vehicle. Petitioners' interest in preserving the same question is concrete and timely.

91. At a minimum, Claremont cannot be extended to validate taxes that independently violate Article 5. A State education duty, if one exists, must be funded through taxes that comply with the Constitution as a whole. Petitioners therefore ask this Court to decline any extension of Claremont and to preserve the reconsideration question for the Supreme Court.

XIV. SWEPT: THE ARTICLE 5 REPUGNANCY QUESTION IS PRESERVED

92. SWEPT is a State education property tax imposed under RSA 76:3 and related provisions and administered through State law, DRA action, and municipal collection. Petitioners acknowledge that in Rand v. State, 177 N.H. 383 (2025) ("Rand"), 2025 N.H. 27, the Supreme Court held that SWEPT, as administered, is "equal in valuation and uniform in rate throughout the State" and therefore is not facially invalid under the proportionality requirement of Part II, Article 5, while holding the use of negative local rates in certain unincorporated places unconstitutional.

93. SWEPT is, in origin and purpose, a creature of Claremont. It was enacted by Laws 1999, chapter 17 (codified at RSA 76:3 and RSA 76:8) as the Legislature's response to Claremont School District v. Governor, 142 N.H. 462 (1997) (Claremont II), and to implement that decision's holding that any property tax used to fund an adequate education be "equal in valuation and uniform in rate," id. at 471. The Act's own text recites that it was passed to cure the funding system held unconstitutional in Claremont, see Claremont School District v. Governor (Statewide Property Tax Phase-In), 144 N.H. 210, 212 (1999) (Claremont III). SWEPT therefore exists to satisfy the Claremont interpretation of Part II, Article 83. If, as Petitioners contend, that interpretation read into Article 83 a fundable, judicially enforceable duty the people never adopted, the tax enacted to satisfy it rests on the same interpretation and has no independent constitutional pedigree. Petitioners do not contend that SWEPT fell automatically when its premise is questioned; they contend that it stands or falls with the Claremont interpretation and cannot be defended as an exercise of a taxing authority the Constitution independently supplies.

94. Rand resolved a uniformity-and-administration challenge to SWEPT. It did not decide the distinct question Petitioners present here: whether SWEPT is "repugnant or contrary" to Part I, Articles 6, 12, and 37, and Part II, Articles 83 and 100, because it rests on a State education obligation for which the Constitution supplies no taxing authority. That is the second Article 5 inquiry described in Part V, and it was not the basis of decision in Rand.

95. SWEPT is the clearest vehicle for that repugnancy question. It is unambiguously a State tax imposed for the State education purpose, the taxing district is the State, and its sole reason for being is to fund the Claremont adequacy duty. It is therefore, in its entirety, State

compulsion in service of an obligation the people never adopted. Because Rand has already settled SWEPT's uniformity, repugnancy is the only Article 5 question that remains for it.

96. Petitioners further note that the State has characterized SWEPT as a State tax in the Rand proceedings. At oral argument the State acknowledged that SWEPT is a State tax, that the taxing district is the State, and that municipalities collect SWEPT as agents for the State, with the statute then appropriating the revenue back to municipalities for the use of their school districts. See Exhibit O (Rand oral-argument transcript). Those admissions confirm that SWEPT is not a local levy merely because it is collected locally. To the extent SWEPT is a State-purpose tax resting on the Claremont education duty, its validity is bound up with the Article 5 repugnancy question and with the continued validity of Claremont, both of which are preserved for Supreme Court review.

97. Petitioners therefore do not ask this Court to declare SWEPT facially invalid in the teeth of Rand. They ask the Court to recognize that the Article 5 repugnancy challenge to SWEPT, as applied to Petitioners, is distinct from the question Rand decided, and to preserve it for the Supreme Court.

XV. THE LOCAL EDUCATION TAX AS A NON-UNIFORM STATE-PURPOSE TAX (PRESERVED)

98. The Local Education Tax is imposed locally but funds an education obligation defined, regulated, and mandated by the State. The State defines adequacy, sets the education-finance structure and accountability requirements, and funds less than the full cost it defines; the shortfall is shifted to municipalities and local taxpayers, whose education tax rates vary materially from town to town.

99. The State-purpose character of the Local Education Tax follows from the State's own control of the obligation. Under the Claremont line, the State must define an adequate education, determine its cost, fund it with constitutional taxes, and ensure its delivery through accountability. See Claremont Sch. Dist. v. Governor (Accountability), 147 N.H. 499, 505 (2002); Londonderry Sch. Dist. SAU #12 v. State, 154 N.H. 153, 155-56 (2006). The State defines the substantive content of adequacy by statute, see RSA 193-E:2 and RSA 193-E:2-a, and sets the per-pupil cost of adequacy, see RSA 198:40-a. Having defined and priced the obligation, the State funds less than the full cost it sets and shifts the balance to municipalities, whose local education tax rates then vary materially from town to town.

100. Taxes used for a State purpose must comply with Part II, Article 5. See Claremont II, 142 N.H. 462; Sirrell v. State, 146 N.H. 364 (2001). Petitioners contend that a State-purpose education tax imposed at materially different effective rates across municipalities is not, in practical effect, "equal in valuation and uniform in rate," and is therefore repugnant to Article 5.

101. Petitioners acknowledge that the Rand majority rejected a related effective-rate theory as applied to the retention of excess SWEPT, treating retention as an exercise of the spending power. Petitioners respectfully submit that the better view is that of the partial dissent, which would have credited the effective-rate analysis. See Rand, 177 N.H. 383 (Bassett, J., dissenting in part). Petitioners preserve this issue for Supreme Court review.

102. The State cannot define education as a State duty for purposes of control while calling the resulting tax local for purposes of avoiding Article 5. To the extent the Local Education Tax funds the State-defined obligation, it is a State-purpose tax subject to Article 5, and its constitutionality is preserved for review.

103. Petitioners challenge the Local Education Tax on two distinct grounds: first, that it is non-uniform in violation of Article 5's proportionality requirement; and second, that it is repugnant to Article 5 to the extent it funds the State-defined adequacy obligation the people never adopted.

104. Petitioners are careful about the limits of this challenge. They do not contend that all local education taxation is unlawful. To the extent a town votes to tax itself to fund its own schools, for local educational choices above the State-mandated adequacy floor, that is legitimate local self-government, grounded in Part II, Articles 5 and 6 and in statute, and it is not challenged here. What Petitioners challenge is only the portion of the tax that funds the State-defined and State-mandated adequacy obligation, the state-purpose slice that is local in label but State in substance, together with the tax's non-uniformity. The repugnant feature is State compulsion for a duty the Constitution does not impose, not local funding of a community's own schools.

XVI. CLAIMS FOR RELIEF

COUNT I, Declaratory Judgment (RSA 491:22)

105. Petitioners repeat and reallege the foregoing paragraphs.

106. Petitioners claim present legal and equitable rights to be free from unconstitutional, unauthorized, and unconsented taxation. Respondents claim authority adverse to those rights by assessing, administering, collecting, defending, or enforcing the challenged education taxes. An actual controversy exists, and declaratory judgment will resolve the parties' rights, duties, and legal relations.

COUNT II, Tax Abatement, Refund or Credit, and Statutory Interest

107. Petitioners repeat and reallege the foregoing paragraphs.

108. Petitioners timely filed an abatement application challenging both SWEPT and the Local Education Tax; the Town failed to grant the abatement and failed to issue a lawful decision by July 1, 2026. Petitioners are aggrieved and entitled to abatement, refund or credit, and statutory interest under RSA 76:17-a for any unlawfully paid education taxes.

COUNT III, SWEPT: Article 5 Repugnancy (Preserved for Supreme Court Review)

109. Petitioners repeat and reallege the foregoing paragraphs.

110. Article 83 is not a taxing provision and does not authorize SWEPT. SWEPT is unambiguously a State tax for the State education purpose and exists solely to fund the Claremont adequacy duty; it is therefore, in its entirety, State compulsion for an obligation the people never adopted. To that extent Petitioners contend it is repugnant to Part I, Articles 6, 12, and 37, and Part II, Articles 83 and 100, in violation of Article 5's express limitation. Because Rand v. State (2025) already settled SWEPT's uniformity, repugnancy is the only remaining Article 5 question for it. Petitioners do not seek a trial-court ruling contrary to Rand; they preserve this distinct Article 5 repugnancy question for Supreme Court review and seek a declaration that Claremont not be extended to validate SWEPT against this challenge.

COUNT IV, Local Education Tax: Non-Uniform State-Purpose Tax (Preserved)

111. Petitioners repeat and reallege the foregoing paragraphs.

112. The Local Education Tax is challenged on two grounds: that it is non-uniform in violation of Article 5's proportionality requirement, and that it is repugnant to Article 5 to the extent it funds the State-defined adequacy obligation. Petitioners do not challenge

genuine local-choice education funding, a town taxing itself for its own schools above the State-mandated adequacy floor is legitimate local self-government under Part II, Articles 5 and 6 and statute, and is not challenged here. The challenge is confined to the state-purpose portion of the tax, the funding of the State-defined adequacy mandate, together with the tax's non-uniformity. Petitioners preserve the effective-rate and repugnancy theories for Supreme Court review and seek declaratory and abatement relief consistent with the relief requested below.

COUNT V, Article 83 Is Not a Taxing Provision

113. Petitioners repeat and reallege the foregoing paragraphs.

114. Article 83 directs that education be cherished; it grants no taxing authority. Article 5 cannot supply by implication the education-taxing power that Article 83 does not contain, and using Article 5 to transform Article 83 into a taxing clause would itself be repugnant to Article 83's text and to Article 100's amendment process.

COUNT VI, Part I, Article 12 (Lack of Consent)

115. Petitioners repeat and reallege the foregoing paragraphs.

116. Part I, Article 12 forbids taking or applying a person's property to public uses without consent or the authority of the representative body. Because the representative body's authority to tax is itself conditioned by Article 5, which authorizes only taxes that are not repugnant to the Constitution, it cannot supply lawful consent to an education tax that Article 5 does not authorize. The challenged taxes therefore take or apply property without lawful consent. The constitutional measure of a tax is that it be just: "reasonable" means

"just," so that each individual's just share, and no more, shall fall upon him. See Opinion, 4 N.H. 565, 569 (1829).

COUNT VII, Part I, Article 6 (No State Education-Taxing Power Created)

117. Petitioners repeat and reallege the foregoing paragraphs.

118. The pre-1968 Part I, Article 6 language was local and consent-based, situated in the clause on public support of teachers of piety, religion, and morality; the 1968 amendment removed it as a religious-equality measure and granted no replacement State education-taxing authority. The challenged State-controlled education-tax structure cannot be grounded in Article 6 and must be tested under Part II, Articles 5 and 6, read with Articles 12, 37, 83, and 100.

COUNT VIII, Part I, Article 37 (Separation of Powers)

119. Petitioners repeat and reallege the foregoing paragraphs.

120. The judiciary may interpret the Constitution and invalidate unconstitutional taxes, but it may not create or mandate taxing authority the people did not grant. To the extent the challenged education taxes depend on a judicially supplied taxing authority not adopted through Article 100 and not contained in Article 83, they offend Article 37.

COUNT IX, Claremont Should Be Limited or the Question Preserved

121. Petitioners repeat and reallege the foregoing paragraphs.

122. Claremont was decided without reconciling Article 83 with Article 5's express limitation, the Article 6 history, Article 37, Article 100, or the 1850 Convention record now available. Petitioners have briefed each of the four stare decisis factors set out in Ford v. N.H. Dep't

of Transp., 163 N.H. 284, 290 (2012) (see Part XIII), and ask this Court to preserve for Supreme Court review whether Claremont should be limited, reconsidered, or overruled, a question the State itself has now placed before the Supreme Court, and to decline any extension of Claremont that would validate the challenged education taxes against the Article 5 repugnancy challenge.

COUNT X (Alternative), SWEPT Has No Constitutional Pedigree Independent of Claremont

123. Petitioners repeat and reallege the foregoing paragraphs, and plead this Count in the alternative to Counts III and IX.

124. SWEPT was enacted by Laws 1999, chapter 17 (codified at RSA 76:3 and RSA 76:8) for the express purpose of implementing the Claremont decisions. The Act recites that it was passed to cure the funding system held unconstitutional in Claremont II, and this Court has described it as the Legislature's response to that decision. See Claremont Sch. Dist. v. Governor (Statewide Property Tax Phase-In), 144 N.H. 210, 212 (1999).

125. SWEPT's constitutional characterization depends on that Claremont rationale. The requirement that the education property tax be uniform and statewide, rather than a permissible locally varying charge, rests on Claremont II's holding that a property tax used to fund the State's adequacy duty serves a State purpose and therefore must be "equal in valuation and uniform in rate." Claremont Sch. Dist. v. Governor, 142 N.H. 462, 471 (1997). The State purpose that supplies that rationale is the constitutional adequacy duty itself.

126. If the Court reconsiders or overrules Claremont and holds that Article 83 imposes no fundable, judicially enforceable education-funding duty, the State purpose on which SWEPT's characterization rests no longer exists, and SWEPT cannot be sustained on the Claremont rationale. Petitioners do not contend that the General Court lacks the power to tax for education; they contend that a statewide, State-defined, uniform education property tax cannot be continued against them on the strength of a duty the people never adopted and that the Court has reconsidered. To maintain such a tax after the duty falls, the Legislature must make a fresh and independent legislative choice to impose it, subject anew to Part II, Articles 5 and 6, and Part I, Article 12, and without the benefit of the Claremont State-purpose rationale.

127. Accordingly, in the alternative, Petitioners seek a declaration that SWEPT has no constitutional pedigree independent of the Claremont decisions; that the State may not sustain SWEPT against this challenge by relying on a duty the people never adopted; and that, upon any reconsideration of Claremont, the imposition of SWEPT upon Petitioners may not be continued on the Claremont rationale absent a fresh, independently justified legislative enactment, together with abatement, refund or credit, and statutory interest under RSA 76:17-a as the Court finds appropriate, or preservation of the question for Supreme Court review.

XVII. REQUEST FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

A. Accept jurisdiction under RSA 491:22 and RSA 76:17;

B. Declare that the Town of Windham's failure to respond by July 1, 2026 constitutes a denial or refusal to abate, and that Petitioners are aggrieved and entitled to judicial review;

C. Declare that Petitioners' abatement application challenged both education portions of the tax bill, SWEPT and the Local Education Tax, and that those are distinct levies for purposes of abatement, judicial review, and constitutional analysis;

D. Declare that Part II, Article 5 is a conditional delegation of taxing authority and prohibits laws and taxes that are contrary to, or repugnant to, the Constitution;

E. Declare that Part II, Article 83 is not a taxing provision and does not authorize SWEPT, compulsory local education taxation, or a judicially enforceable taxing mandate;

F. Declare that the 1850 Convention record, the 1876–1877 record and Question 13, the 1903 amendment, and the 1968 amendment confirm that no State education-taxing power was granted by implication, and that the ratified 1877 text ("schools or institutions") controls over any later typographical error;

G. Declare that, to the extent the Local Education Tax funds a State-defined education obligation, it is a State-purpose tax subject to Article 5, and that the State may not divide a single education-funding obligation into separate labels to avoid constitutional limits;

H. Decline to extend Claremont to validate either SWEPT or the Local Education Tax against the Article 5 repugnancy challenge, and preserve for Supreme Court review whether Claremont should be limited, reconsidered, or overruled;

I. As the preferred management of this matter, stay this action pending the New Hampshire Supreme Court's decision in Rand v. State, No. 2026-0150, because that appeal presents the same questions concerning Part II, Article 83 and the Claremont decisions that control the constitutional claims here, so that this Court need not rule on questions on which it is bound by controlling precedent;

J. In the alternative, reserve and transfer the constitutional questions of law presented here to the New Hampshire Supreme Court without ruling, under Supreme Court Rule 9, or by such other interlocutory transfer, reservation, or report as may be appropriate, on the ground that they are questions of law that this Court is bound by controlling precedent to leave for the Supreme Court and that only that Court can resolve;

K. Order abatement of the SWEPT and Local Education Tax portions of Petitioners' tax bill, and refund or credit of amounts unlawfully paid, with statutory interest under RSA 76:17-a, to the extent relief is available consistent with controlling precedent;

L. Enter injunctive relief under Superior Court Rule 48 only as necessary to prevent future enforcement consequences and to effectuate declaratory relief;

M. Reserve to Petitioners the right to trial by jury on any issue so triable under Part I, Article 20;

N. Preserve all constitutional questions, questions of law, and objections for appellate review or transfer under Superior Court Rule 46 and the applicable Supreme Court Rules; and

O. Permit Petitioners, through counsel and upon further order of the Court, to seek class certification, issue-class certification, consolidation, coordinated briefing, designation of a lead case, or other case-management relief under N.H. Superior Court Rule 16;

P. Award costs and such other relief as justice requires.

XVIII. RESERVATION AND PRESERVATION OF CONSTITUTIONAL QUESTIONS

128. Petitioners preserve all constitutional questions, questions of law, and objections for appellate review, including: whether Article 5's "contrary or repugnant" limitation bars reliance on Article 5 to impose or defend education taxes that conflict with Part I, Articles 6, 12, and 37, or Part II, Articles 83 or 100; whether Article 83 grants taxing authority; whether the 1850, 1877, 1903, and 1968 record forecloses an implied education-taxing grant; whether the ratified 1877 text controls over the later "or/of" error; and whether Claremont should be limited, reconsidered, or overruled.

129. Petitioners raise and preserve these questions under the New Hampshire Constitution independently of any federal ground, and ask the Court to address the state constitutional questions first. See State v. Ball, 124 N.H. 226, 231-33 (1983).

130. Case-management reservation. Petitioners bring this action individually and do not seek to represent absent parties pro se. Petitioners allege that numerous similarly situated New Hampshire taxpayers have filed, are preparing to file, or intend to file related RSA 491:22 challenges raising the same common constitutional questions concerning SWEPT, the Local Education Tax, and Part II, Articles 5 and 83 and Part I, Articles 6, 12, and 37. Petitioners reserve the right, through counsel and upon further order of the Court, to seek class certification, issue-class certification, consolidation, coordinated briefing, designation of a lead case, or other appropriate case-management relief under N.H. Superior Court Rule 16. Individual abatement amounts, payment status, and taxpayer-specific remedies may remain subject to individual determination.

XIX. EXHIBITS AND RECORD MATERIALS

Exhibit A, Petitioners' 2025 property tax bill, showing separate itemized SWEPT and Local Education Tax components.

Exhibit B, Petitioners' RSA 76:16 abatement application, including constitutional grounds.

Exhibit C, Proof of filing and of the Town's non-response or denial.

Exhibit D, Relevant excerpts from the Journal of the 1850 Constitutional Convention, including the proposed Article 83 replacement and State superintendent provision.

Exhibit E, Publication history of the 1850 Journal (located 1980; published 2005–2006).

Exhibit F, Relevant excerpts from the Journal of the 1876 Constitutional Convention concerning the Article 83 proviso and "money raised by taxation."

Exhibit G, 1877 ballot Question 13 and Question 1.

Exhibit H, Ratified 1877 Article 83 amendment text.

Exhibit I, Secretary of State correspondence concerning the Article 83 "or/of" wording (must be the actual correspondence, not a description).

Exhibit J, 1968 ballot question and amendment to Part I, Article 6.

Exhibit K, Pre-1968 and post-1968 text of Part I, Article 6.

Exhibit L, Laws of New Hampshire, vol. 8, Second Constitutional Period, 1811–1820, ch. 69, pp. 820–822 ("Free Toleration Act"), approved July 1, 1819.

Exhibit M, Current official text of Articles 5, 6, 8, 12, 37, 83, and 100.

Exhibit N, DRA and municipal tax-rate materials showing SWEPT and local education tax administration.

Exhibit O, Rand oral-argument transcript, showing the State's acknowledgment that SWEPT is a State tax collected by municipalities as agents for the State.

Exhibit P, Relevant Rand and ConVal orders and excerpts, as judicially noticed.

Respectfully submitted,

Dated: ______________

/S/ Thomas J. Murray Jr.

/S/ Lynn M. Murray

Lynn & Thomas J. Murray Jr.

29 Westshore Rd, Windham, NH 03087

781-389-6107, Tom@gipamerica.org

Petitioners, pro se

CERTIFICATE OF SERVICE

I certify that on ____________ a copy of this petition was served upon the Town of Windham, the Windham Board of Selectmen / Assessors, the New Hampshire Department of Revenue Administration, the Commissioner of the Department of Revenue Administration, the State of New Hampshire, and the Office of the Attorney General, by **[method of service]**.

/S/ Thomas J. Murray Jr.

/S/ Lynn M. Murray

Lynn & Thomas J. Murray Jr.