

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

No. 2026-0150

STEVEN RAND & a.

v.

STATE OF NEW HAMPSHIRE

BRIEF OF AMICUS CURIAE THOMAS J. MURRAY JR.

IN SUPPORT OF NEITHER PARTY

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FILING POSTURE

This brief is submitted by Thomas J. Murray Jr. in his individual capacity and in support of neither party. Amicus requested consent under New Hampshire Supreme Court Rule 30 from counsel for the State, counsel for the Rand appellees, and counsel for the Coalition Communities. Counsel for the Coalition Communities indicated that they do not object. Counsel for the Rand appellees declined consent by electronic mail dated September 4, 2026. Because written consent of all parties was not obtained, amicus files this brief with a contemporaneous motion for leave under Rule 30(1), in which each party's position is stated.

DISCLOSURE AND NON-LAWYER STATEMENT

Amicus prepared this brief himself and no party, party's counsel, or person other than amicus contributed money intended to fund the preparation or submission of this brief. Amicus is not an attorney, appears only on his own behalf, represents no other person or entity, and offers nothing in this brief as legal advice.

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Constitutional Provisions

N.H. CONST. pt. I, art. 6

N.H. CONST. pt. II, art. 83

Primary Historical Source

Journal of the Convention to Revise the Constitution of the State of New Hampshire, November 1850 (N.H. Dep't of State 2005) ("1850 Journal")

Party Filing

Brief for the State of New Hampshire at 38-39, Steven Rand & a. v. State of New Hampshire, No. 2026-0150 (N.H.) ("State Br.")

STATEMENT OF INTEREST OF AMICUS CURIAE

1. Amicus Thomas J. Murray Jr. is a New Hampshire taxpayer and resident of Windham. He appears in this Court in his individual capacity and in support of neither party.
2. Amicus is the self-represented petitioner in *Murray v. Town of Windham*, No. 218-2026-CV-00988 (Rockingham County Superior Court), a pending tax appeal under RSA 76:17 that raises constitutional questions related to New Hampshire education taxation and the historical meaning of Part II, Article 83.
3. The interest presented here is narrower than the claims in *Murray*. In preparing that case, amicus assembled and examined the documentary record of New Hampshire's Fifth Constitutional Convention of 1850-1851, including the official Journal published by the New Hampshire Department of State in 2005.
4. Amicus does not ask this Court to decide the adequacy, tax-rate, or remedial questions in this appeal in his favor. He does not urge affirmance or reversal, and he does not ask this Court to decide any claim pending in *Murray*.
5. Amicus offers the 1850-1851 record for one purpose only: if the Court addresses the historical foundation of Claremont, that history should be considered in its actual documentary sequence and with the publication history of the official Journal accurately understood.

QUESTION PRESENTED

Whether the documentary record of the 1850-1851 Fifth Constitutional Convention materially bears on the historical premise underlying Claremont's interpretation of Part II, Article 83, where the Convention expressly considered whether to make school funding constitutionally mandatory, directed that an imperative assessment article be drafted, received a committee report distinguishing general support of schools from a constitutional pecuniary command, and then proposed express funding language that the existing Article 83 did not contain.

I. INTRODUCTION AND NARROW PURPOSE OF THE BRIEF

This brief is not about whether education is important. It is not about what level of adequacy funding is constitutionally sufficient. It is not about the validity of any particular tax rate, and it does not ask the Court to select a remedy. It asks a narrower historical question: what does the 1850-1851 constitutional record show about the distinction between Article 83's existing duty to "cherish" public schools and an express constitutional command requiring the Legislature to provide specified pecuniary means for them?

6. The State's present brief already discusses the 1850 Convention, the proposed movement of the education language to the Bill of Rights, the proposed free-common-school provision, and Leonard's November 21

report. State Br. 38-39. Amicus therefore does not claim that those isolated propositions are newly discovered in this appeal.

7. The narrower contribution of this brief is to place those materials in the Convention's chronological sequence: Steele's November 16 instruction to draft an imperative assessment article; the Convention's November 19 adoption of that instruction; Leonard's November 21 explanation of when a constitutional provision would be needed to authorize and require additional pecuniary means; the December 26 substitute for Article 83; the January 3 ballot questions; and the April 17 tabulation of the March vote. 1850 Journal 38, 48, 52-53, 191, 276-77, 288, 373, 376, 378.
8. The second contribution is publication history. The official manuscript Journal was not printed contemporaneously. The Secretary of State's 2005 Introduction states that the delegates called for printing their Journal but the task "was never completed," and that when the manuscript was relocated to the State Archives in 1980 its existence was "then unknown to living researchers." 1850 Journal, Introduction v (William M. Gardner, Sec'y of State, Nov. 23, 2005).
9. The Editorial Note further states that the original manuscript was not known to the then-active political or historical community until 1980; Archives staff later transcribed it, placed it in an electronic database and on computer disk, proofread it, and prepared it for publication. 1850 Journal, Editorial Note vi (Frank C. Mevers, State Archivist).
10. Claremont I was decided in 1993 and Claremont II in 1997. The official manuscript Journal was first printed by the Department of State in 2005. That chronology does not mean that every 1850 Convention

proposal was unavailable from every other source; the State itself cites an earlier Rumford Press publication. State Br. 38-39. It does mean that the official manuscript Journal, in the complete form and sequence cited here, was not a published source before the Claremont Courts.

11. Modern digitization and OCR make historical sources far easier to locate and search in 2026. The State's present ability to find and cite 1850 material therefore should not be confused with proof that the same official Journal was available, searchable, or before the Court in 1993 or 1997.

II. THE OFFICIAL 1850 JOURNAL ADDS A CHRONOLOGICAL PRIMARY-SOURCE RECORD

12. The value of the 2005 Journal is not merely that it contains a quotation also found elsewhere. Its value is sequence. The Journal records what the Convention was instructed to do, what it voted to do, what the Education Committee said it was doing, what language was ultimately drafted, how the proposal was submitted, and how the vote was recorded.
13. That sequence matters because the interpretive question is not simply whether nineteenth-century New Hampshire supported education. The narrower question is whether the existing constitutional language was treated as already containing the particular funding command later attributed to it, or whether the Convention believed a different and more explicit constitutional provision was needed to create that command.

14. The Journal permits that question to be examined from the Convention's own procedural record rather than from a retrospective summary alone.

III. THE CONVENTION DIRECTED THAT AN IMPERATIVE SCHOOL-ASSESSMENT ARTICLE BE DRAFTED

A. November 16: Steele introduced an express drafting instruction

15. On November 16, 1850, J. H. Steele of Peterborough introduced a resolution directing the Committee on Education to "frame an article to be inserted in the Constitution making it imperative on the legislature to provide for the assessment of at least _____ per cent on the State Inventory, to be held sacred for the purpose of sustaining common or primary schools." 1850 Journal 38 (Nov. 16, 1850).
16. The wording is significant. Steele did not merely propose a statute or an increased appropriation. He proposed an article "to be inserted in the Constitution" for the stated purpose of "making it imperative" on the Legislature to provide for a school assessment. *Id.*

B. November 19: the Convention adopted the instruction

17. On November 19, the Convention resumed consideration of "the resolution relating to the assessment of per cent on the State Inventory to be applied exclusively for the support of common or primary schools." The Journal records: "It was decided in the affirmative And the resolution was adopted." 1850 Journal 48 (Nov. 19, 1850).
18. Thus, before Leonard reported for the Education Committee and before the final Article 83 substitute was drafted, the Convention itself had

already directed that an imperative constitutional assessment provision be prepared.

IV. LEONARD DISTINGUISHED A GENERAL DUTY TO SUSTAIN SCHOOLS FROM A CONSTITUTIONAL PECUNIARY COMMAND

19. On November 21, Levi W. Leonard reported for the Committee on Education. The report described common or primary schools as deserving the special encouragement and support of the State and stated that "the duty of sustaining them is imperative both on legislators and on the people." 1850 Journal 52 (Nov. 21, 1850).
20. That sentence is important because it prevents an overstatement of the historical record. Leonard did not characterize all support of education as optional. He described a general duty to sustain common schools as imperative. *Id.*
21. But when the report turned specifically to additional money, it drew a further constitutional distinction:

"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." 1850 Journal 53 (Nov. 21, 1850).
22. The report also credited the Legislature with having observed the existing article. Leonard wrote that the legislators of New Hampshire "have not been unobservant of that excellent article in our constitution,

which enjoined upon them, 'the encouragement of literature and the sciences, and the cherishing of all seminaries and public schools.'"

1850 Journal 52. Amicus quotes that sentence because it is the strongest statement in the report against reading the 1850 record too broadly. Leonard plainly regarded the existing article as enjoining a duty, and he regarded that duty as having been observed.

23. The two statements are reconcilable, and the report itself reconciles them. Leonard used the language of injunction to describe encouragement and cherishing. When he turned to pecuniary means, he did not say the existing article supplied them. He said a provision "authorizing and requiring" the Legislature to grant them should be adopted. 1850 Journal 53. A committee that understood the existing article to authorize and require legislative funding grants would have had no occasion to propose adding one.
24. The report then discussed the existing statutory amount, stated that it was desirable to increase the sum from one hundred twenty to one hundred twenty-five dollars per dollar of State valuation, and explained the concern for smaller and farming towns. 1850 Journal 53.
25. The report concluded with a proposed resolution that the Legislature be "authorized and required" to establish and maintain free common schools "at the public expense" and be "further required" to provide for annual assessment and collection of not less than one hundred twenty-five dollars for every dollar of State taxes apportioned to the several cities, towns, and places. 1850 Journal 53-54.
26. The distinction is therefore narrower than saying Article 83 imposed no educational duty. The record supports a more precise proposition:

Leonard distinguished a general duty to sustain schools from a constitutional provision that would expressly authorize and require the Legislature to supply additional pecuniary means through a specified assessment mechanism.

27. The running head on printed page 53 reads "Thursday, November 21, 1860." The surrounding entries and the Convention chronology establish that the date is November 21, 1850; the "1860" running head is an apparent typographical error in the 2005 transcription/publication.
28. Sanborn of Hanover subsequently used the phrase "permanent which is now changeable" and "imperative which is now optional" while discussing the proposed office of State superintendent. 1850 Journal 54. Because that passage addresses the superintendent proposal, amicus does not rely on it as a characterization of the funding duty. Leonard's report and Steele's resolution are the direct funding evidence.

**V. THE SAME DAY, THE BILL OF RIGHTS COMMITTEE
REPORTED THE REMOVAL FROM ARTICLE 6 OF THE
LEGISLATURE-AUTHORIZING CLAUSE AND THE MUNICIPAL
ENTITIES**

29. On the same day that Leonard reported for the Committee on Education, Mr. Bartlett of Portsmouth reported for the committee on the department of the Bill of Rights. The report enumerated, item by item, the changes the Convention had ordered made to Part I, Article 6. 1850 Journal 59 (Nov. 21, 1850).
30. Among the items the committee reported striking from the sixth article were the following:

"They have also stricken out the following, viz: 'the legislature to authorize from time to time.' They have also stricken out the following occurring in two places, viz: 'towns, parishes, bodies corporate or.'" 1850 Journal 59.

31. The significance of that report lies in its specificity. It is not a redraft from which deletions must be inferred by comparison with earlier text. It is an itemized list of what the Convention had ordered removed, stated in the Convention's own words. The two items quoted above were the clause authorizing legislative action and the municipal entities that clause could reach. What survived in the article as reported was the provision empowering the several religious societies to make provision at their own expense. *Id.*
32. The nouns struck from Article 6 did not disappear from the Convention's work. Five weeks later, the substitute proposed for Part II, Article 83 directed assessment and collection "in the several towns parishes and places in this State." 1850 Journal 191 (Dec. 26, 1850). Amicus does not contend that the Convention announced a reason for that sequence, and the Journal records none. The sequence is offered as documentary fact: the entities were removed from the article that had authorized legislative action and appear in the article that would have commanded school funding.
33. The same report records changes plainly directed at religious liberty: the committee struck "Evangelical principles" and inserted "the principles of the Bible," and elsewhere removed denominational references. 1850 Journal 59. Amicus does not suggest otherwise. The

two items quoted above are of a different character. Neither "the legislature to authorize from time to time" nor "towns, parishes, bodies corporate or" is a sectarian term, and a committee revising the article for religious-liberty purposes alone would have had no occasion to remove the legislature's authorizing power or the municipal entities that power could reach.

VI. THE CONVENTION THEN DRAFTED AN EXPRESS ARTICLE 83 FUNDING MANDATE

A. December 26: the Committee on Revising Business proposed a substitute for Article 83

34. On December 26, Nathaniel Wells reported for the Committee on Revising Business, to which Articles 82 through 97 of Part II and the Education Committee's reports and resolutions had been referred. The report stated: "In place of the 83d Article insert the following Articles." 1850 Journal 191 (Dec. 26, 1850).

35. The first proposed replacement 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." 1850 Journal 191.

36. The next provisions vested supervision of public instruction in a State superintendent and such other officers as the Legislature might direct, and provided for the superintendent's biennial election. 1850 Journal 191.

B. The text shows what a constitutional funding command looked like to this Convention

37. The proposed funding language is mandatory in form: "The Legislature shall make provision." 1850 Journal 191.

38. It is fiscal in operation: it expressly reaches "assessment and collection," identifies the units in which the assessment would occur, and establishes a minimum amount tied to the apportionment of State taxes. *Id.*

39. It is specific as to use: the money would be "applied exclusively to the support of such schools." *Id.*

40. The existing Article 83 contains none of those fiscal terms. It directs legislators and magistrates to "cherish" the interests of literature and the sciences and all seminaries and public schools, and to encourage or inculcate a broader list of civic objects. The 1850 substitute instead uses the language of command, public expense, assessment, collection, a numerical floor, and exclusive application.

41. The drafting act does not mathematically prove what Article 83 meant in 1784. It does, however, create a serious interpretive question: if the existing "cherish" language already carried the same mandatory funding consequence, why did the Convention direct an imperative assessment article, explain the need for a constitutional provision

authorizing and requiring additional pecuniary means, and then draft that detailed replacement?

VII. THE FUNDING PROPOSAL WAS PART OF A BROADER CONSTITUTIONAL REWORKING OF EDUCATION

42. The Convention's treatment of education in this period had three moving parts, drafted within six weeks of one another. Part I, Article 6 was narrowed: the clause authorizing legislative action and the municipal entities were struck, leaving a provision reaching religious societies providing at their own expense. 1850 Journal 59, 150. The existing Part II, Article 83 language was proposed for relocation into the Bill of Rights as Article 40. 1850 Journal 153. And Part II, Article 83 itself was proposed to be replaced with an express fiscal command. 1850 Journal 191. Amicus does not contend that the Convention described these as a single plan, and the Journal records no such description. The point is that the same body, in the same session, addressed the authorizing article, the location of the general education language, and the funding mechanism, each separately and each in different terms.
43. The Convention did not address the funding clause in isolation. It also revised Part I, Article 6 and proposed moving the existing "knowledge and learning" and "cherish" language into a new Article 40 of the Bill of Rights. See 1850 Journal 152-54 (proposed Bill of Rights, including Article 40); State Br. 38.

44. Proposed Article 40 retained the familiar formulation that knowledge and learning are essential to preservation of a free government and that legislators and magistrates should cherish literature, sciences, seminaries, and public schools. 1850 Journal 153-54.
45. The proposed Article 83 replacement, by contrast, supplied the express funding and assessment machinery. 1850 Journal 191.
46. The division of constitutional work is probative. The Convention could retain the general "cherish" concept in the Bill of Rights while separately drafting a command dealing with free common schools, public expense, assessment, collection, and a minimum funding floor. That structure supports the inference that the two concepts were not treated as textual equivalents.
47. The State itself describes the 1850 proposals collectively as changes that would have created a more State-centric, State-controlled public-school system. State Br. 38-39. Amicus does not adopt every characterization in the State's brief, but the State's treatment confirms that the proposed funding provision was an affirmative constitutional change, not merely a quotation of the existing Article 83.

VIII. THE MARCH 1851 VOTE IS CORROBORATIVE, NOT DISPOSITIVE

A. The Convention used fifteen ballot questions

48. On January 3, 1851, the Convention directed that the proposed amendments be submitted to the qualified voters at the March town meetings through fifteen questions. 1850 Journal 276-77 (Jan. 3, 1851).
49. Question 1 asked: "Do you approve of the Bill of Rights, as amended by the Convention?" 1850 Journal 288 (as printed with the returns). The corresponding text at page 277 reads "as amended by the Constitution," an apparent slip in the 2005 printing; the text at page 288 is used here. The proposed relocation of the education language to Article 40, together with the other Bill of Rights changes, was therefore submitted through Question 1.
50. Question 11 separately asked whether voters approved "the amendment requiring the election of a Superintendent of Public Instruction." 1850 Journal 277. For precision, the 8,257-to-30,248 tally recorded for Question 11 at page 376 concerns the superintendent question and should not be attributed to the school-funding provision. 1850 Journal 376.
51. Question 15 asked: "Do you approve of the other alterations and amendments, as made in the amended Constitution?" 1850 Journal 277. Because the funding clause was not separately identified in Questions 1 through 14, it fell within that residual group of "other alterations and amendments."

B. The aggregate vote

- 52. The official aggregate for Question 1 was 14,456 affirmative and 24,342 negative. 1850 Journal 373 (Apr. 17, 1851).
- 53. The official aggregate for Question 15 was 9,377 affirmative and 27,821 negative. 1850 Journal 378 (Apr. 17, 1851).
- 54. Those numbers show that the proposed texts did not become part of the Constitution. They do not, standing alone, prove why individual voters voted as they did.

C. The vote should be used with restraint

- 55. Question 15 bundled multiple constitutional alterations. Question 1 likewise addressed the Bill of Rights as a whole. Voters may have rejected those packages for reasons unrelated to education, or because of the amount, formula, administration, or scope of the proposed school provisions.
- 56. Accordingly, amicus does not offer the vote as a plebiscite on the modern Claremont question. The stronger evidence is the drafting record. The vote is corroborative only: the express funding text was proposed through the constitutional amendment process and did not become part of the Constitution.

**IX. THE RECORD BEARS DIRECTLY ON THE HISTORICAL
PREMISE OF CLAREMONT**

- 57. Claremont I 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 of New Hampshire and to guarantee adequate funding." *Claremont Sch. Dist. v. Governor*, 138 N.H. 183, 184 (1993).
58. The Court further stated that the constitutional language "command[s]" that the State provide an education to all citizens and "support all public schools." *Id.* at 187. It recognized that implementation of the duty could be delegated, *id.* at 191, and described free public education as at least an "important, substantive right," *id.* at 192.
59. *Claremont II* then held, for the Part II, Article 5 question before it, that a property tax used to fund the State's constitutional education duty must be equal in valuation and uniform in rate throughout the State. *Claremont Sch. Dist. v. Governor*, 142 N.H. 462, 466, 468-71 (1997). The Court also addressed the plaintiffs' request to declare a State-funded constitutionally adequate public education a fundamental right. *Id.* at 472-73.
60. The 1850 record bears on the historical premise behind those holdings because it shows a constitutionally authorized convention confronting the fiscal question directly. The Convention did not merely repeat "cherish." It instructed that an imperative assessment article be drafted, received a report stating that a constitutional provision should authorize and require additional pecuniary means, and proposed express language requiring public expense, assessment, collection, and a minimum funding floor. 1850 Journal 38, 48, 53, 191.
61. That record cuts against treating "cherish" and the proposed 1850 fiscal command as though they necessarily expressed the same constitutional proposition. At minimum, it supplies historical evidence that the two forms of language were understood to do different work.

62. Amicus does not ask this Court to overrule Claremont merely because the official Journal was published later. Nor does amicus contend that a later convention can alter the original public meaning of 1784 without ratification. The point is one of evidentiary weight: where the present appeal squarely asks this Court to reconsider Claremont, the Court should have before it the complete early constitutional record bearing on the exact subject.
63. This posture is particularly appropriate because the State itself has placed Claremont's historical foundation at issue and asks that Claremont I and its progeny be modified or overruled. See State Br. 59-91. Amicus remains in support of neither party and takes no position on the disposition of that request.

X. COUNTER-CONSIDERATIONS AFFECT WEIGHT, NOT RELEVANCE

64. The 1850 Convention was not the 1784 framing convention. Its understanding, sixty-six years later, is not identical to evidence of original public meaning at ratification.
65. A failed amendment does not prove the opposite meaning of the existing Constitution. Failed proposals are inherently ambiguous, particularly where multiple amendments were grouped into a single ballot question.
66. The proposed 1850 funding floor can plausibly be read as making an existing general education duty more specific rather than creating

every aspect of the duty from nothing. Leonard's own statement at page 52 that the duty of sustaining common schools was "imperative" supports taking that counter-reading seriously. 1850 Journal 52.

67. But that counter-reading does not erase Leonard's next step: when he addressed additional "pecuniary means," he said "there should be a provision in the constitution authorizing and requiring the legislature to grant them." 1850 Journal 53. The Convention then drafted precisely such a provision. 1850 Journal 191.

68. The best use of the record is therefore neither to ignore it nor to overstate it. It should be weighed with the 1784 text and history, later constitutional amendments, the parties' authorities, stare decisis, and the reliance interests that have developed under Claremont.

CONCLUSION

The 1850-1851 record does not decide this appeal by itself, and amicus does not ask the Court to use it to decide questions beyond this brief's narrow historical subject. It does, however, document a sequence directly relevant to the constitutional funding question.

The Convention directed that an article be drafted "making it imperative" on the Legislature to provide for a school assessment. 1850 Journal 38, 48. Leonard then distinguished a general duty to sustain schools from the need for a constitutional provision "authorizing and requiring" additional pecuniary means. *Id.* at 52-53. The Convention ultimately proposed an express Article 83 replacement requiring free common schools "at the public expense" and prescribing assessment, collection, and a

funding floor. Id. at 191. That proposal did not become part of the Constitution. Id. at 277, 378.

If this Court reaches the historical foundation of Claremont, the official 1850-1851 record should be considered in that analysis, with its limits acknowledged and its actual sequence preserved.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the applicable New Hampshire Supreme Court rules governing form and word limitation. The final word count, excluding material permitted to be excluded by rule, is 4618 words.

CERTIFICATE OF SERVICE

I certify that on September 10th, 2026, a copy of this brief was served through the New Hampshire Supreme Court electronic filing system upon all counsel of record, including counsel for the State, counsel for the Rand appellees, and counsel for the Coalition Communities.