

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

No. 215-2022-CV-00167

Steven Rand, et al.

v.

State of New Hampshire

**DEFENDANT’S REPLY TO PLAINTIFFS’ OBJECTION TO DEFENDANT’S MOTION
FOR RECONSIDERATION**

The State of New Hampshire, by and through counsel, hereby replies to the plaintiffs’ objection to the State’s motion for reconsideration. In support thereof, the State provides the following:

1. The Plaintiffs’ objection to the State’s Motion to Reconsider alleges that the State “mischaracterized the plaintiffs’ claims” because the State pointed out that Plaintiffs were attempting to articulate a Part II, Article 83 claim after premising their standing to bring that claim on an alleged Part II, Article 5 injury. [Pls.’ Obj. ¶1]. In support of this assertion, Plaintiffs wrote: “in order to prove their Article 5 claim in its entirety, the plaintiffs needed to also prove an Article 83 claim.” [Pls.’ Obj. ¶4].

2. The plaintiffs amended complaint states (and underlines) their “causes of action” as follows: “Petitioners seek a declaratory judgment from this Court that finds and declares: The State does not currently guarantee funding sufficient to cover the cost of an adequate education. As a result, New Hampshire must rely on local school taxes to bridge the gap. These local

school taxes violate Part II, Article 5 of the New Hampshire Constitution because they are not uniform in rate.” Pls.’ Amended Compl. ¶ 80.

3. This portion of plaintiffs’ amended complaint advances two claims: (1) a Part II, Article 83 claim seeking a declaration that the State does not currently guarantee funding sufficient to cover the cost of an adequate education; and (2) a Part II, Article 5 claim that local education tax rates are unconstitutional as a result because they are not uniform in rate.

4. The State understands Plaintiffs’ clarification in their objection to the State’s motion for reconsideration to be a concession either that plaintiffs lack standing to raise an independent Part II, Article 83 claim, or that plaintiffs must establish standing to raise a Part II, Article 83 claim and prove that claim before they can prove their Part II, Article 5 claim.

5. If plaintiffs lack standing to raise an independent Part II, Article 83 claim, they cannot obtain the Part II, Article 83 remedies they sought—namely, a declaration that the State does not currently guarantee funding sufficient to cover the cost of an adequate education—and cannot obtain the narrower Part II, Article 83 they actually obtained—a declaration that the base adequacy figure and special education differential aid figure in RSA 198:40-a, II are unconstitutional.

6. As such, the Court must analyze whether the plaintiffs have standing to raise their Part II, Article 83 claim first. If they do not, their case fails.¹

7. This Court did not do a Part II, Article 83 standing analysis in its merits order. It should therefore reconsider its merits order on that basis and, for the reasons explained in the

¹ Plaintiffs take issue with the State’s decision in its motion to reconsider not to offer “any response to this Court’s detailed evidentiary findings” or to try to “defend the current funding levels or tax rates[.]” [Pls.’ Obj. ¶2]. But the purpose of a motion to reconsider is not to re-litigate the merits of a two-week trial through a ten-page motion. It is to identify points of law or fact a party believes the court overlooked or misapprehended. The plaintiffs’ criticism is inapt to the context.

State's post-trial memorandum, find the plaintiffs lack standing to maintain a Part II, Article 83 claim, deny their requests for relief, and dismiss the case.

8. Moreover, in its merits order, this Court substantially narrowed plaintiffs' Part II, Article 83 adequacy claim from a broad challenge that the State "does not currently guarantee funding sufficient to cover the cost of adequate education," to whether certain provisions of RSA 198:40-a are constitutionally sufficient, and then found only two provisions of RSA 198:40-a insufficient and unconstitutional under Part II, Article 83.

9. As a result, this narrowed Part II, Article 83 claim is now substantially out of alignment with the Plaintiffs' Part II, Article 5 claim.

10. To the extent this Court's merits ruling finds the Plaintiffs' constitutional rights under Part II, Article 5 are being violated because of a Part II, Article 83 violation as Plaintiffs articulate, this conclusion rests upon three necessary assumptions outlined in Plaintiffs' objection, all of which are incorrect:

- a. First, that the State directs or requires municipalities to raise local education property taxes under RSA 76:8, III for the purpose of helping the State meet its constitutional adequacy obligation;
- b. Second, that the holding in *Claremont II* is extremely broad allowing a taxpayer to establish a Part II, Article 5 violation anytime he or she can establish that: (i) money was spent to pay for some component of constitutional adequacy; and (ii) the money so spent is traceable back to a local tax source rather than a state revenue source; and
- c. Third, if the State is providing insufficient funding through certain portions of 198:40-a to meet its constitutional obligation to cost and fund RSA 193-E:2-a,

the shortfall is necessarily being covered by local education property taxes and not by other sources of State revenue.

11. This Court should reconsider its merits ruling because the first and second of these assumptions rest on a misapprehension of law, and the third of these assumptions rests on misapprehensions of law and fact and a failure of proof in this case.

I. The First Assumption Is Incorrect As A Matter Of Law.

12. RSA 76:8, III authorizes municipalities to raise local education property taxes.

13. The State does not direct or require municipalities to raise local education property taxes under RSA 76:8, III for any purpose.

14. The State costs and funds its constitutional adequacy obligations through RSA 198:38-:45 and RSA 76:8, I & II, the SWEPT statutes. The purpose of these statutes is to cost and fund those amounts and to ensure the State's Part II, Article 83 obligations are met.

15. RSA 76:8, III does not cost and fund those amounts and its purpose, evident from its text, does not include funding the State's constitutional adequacy obligations. RSA 76:8, III merely authorizes municipalities to impose local education property taxes to raise additional funds for their schools.

16. This regime is materially different than the tax regime at issue in *Claremont II*, which imposed the State's constitutional duty entirely upon the town district to raise and appropriate sufficient money, in addition to school money raised by the town, to properly maintain schools.

17. RSA 76:8, III imposes no duties or requirements on a municipality to raise a local education property tax. Instead, it permits a municipality to authorize a local education tax through its school district budgeting processes and voter approval of school district budget items

the municipality desires to finance through local taxation. The tax in this regard is not for general purposes of the state, but for the locally-authorized expenses of the municipality's school district or schools.

18. The Department of Revenue Administration formally sets the local education tax rate only after the municipality votes to approve the funding of specific school district expenditures via a local education property tax. It is incorrect as a matter of law to suggest, as plaintiffs do, that the Department of Revenue Administration forces or directs municipalities to impose local education property taxes.

19. Ultimately, the taxing district created upon the municipality's exercise of its authority under RSA 76:8, III is properly the municipality, not the State. *See Opinion of the Justices*, 4 N.H. 565 (1829) ("No tax is ever imposed upon a single town by the legislature. All town taxes are raised by a vote of the inhabitants of the towns respectively.") (cited favorably in *Claremont II*, 142 N.H. 462, 470 (1997)).

20. Consequently, a local education property tax raised pursuant to RSA 76:8, III need only be uniform in rate across the municipality in which it is imposed to be constitutional under Part II, Article 5, and is not converted into a State tax simply because the State is not spending enough to meet its Part II, Article 83 obligation.

21. The touchstone question under *Claremont II* is whether the purpose of RSA 76:8, III, as informed by its text, is compulsory and designed to raise revenue for the State to meet the State's constitutional adequacy obligation.

22. The inquiry is not whether the effect of the State's education spending conduct has converted an otherwise permissible municipal tax into a State tax through the municipality's

spending conduct. As *Rand v. State*, 2025 N.H. 27, ¶ 14, indicates, how a government spends lawfully raised tax revenue does not implicate or inform a Part II, Article 5 analysis.²

23. It is undisputed that the local education property taxes in this case are all uniform in rate across each municipality, and plaintiffs’ entire Part II, Article 5 claim hinges on a fiction that somehow these municipally-authorized taxes are transformed into State taxes if the State is not meeting its constitutional funding obligation.

24. No New Hampshire Supreme Court case holds that municipally-authorized taxes are transformed into State taxes if the State is not meeting its constitutional funding obligations.

25. Accordingly, the plaintiffs’ Part II, Article 5 claim is non-viable and should be denied and dismissed from this case for this reason alone.

II. *Claremont II* Is Not As Broad As Plaintiffs Suggest.

26. *Claremont II* holds that, when the State seeks to fund its constitutional obligation to fund an adequate education with property taxes, the taxing district is the State and the tax imposed by the State for that purpose must therefore be uniform in rate across the State. *See* 142 N.H. at 471 (“To the extent that the property tax is used in the future to fund the provision of an adequate education, the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State.”).

27. The Statewide Education Property Tax (“SWEPT”) is the State property tax used, in part, to fund the State’s constitutional adequacy obligation. The adequate education grant statutes contain additional targeted revenues, RSA 198:38-:45.

² This Court’s analysis also suggests that a municipality could never voluntarily choose to raise a local education property tax to cover a particular expense required for adequacy, even if it were advantageous for it do so, because the resulting tax would be unconstitutional. Such an analysis removes authority and flexibility from municipalities to fashion budgets and make purchases for their schools of their choosing. Neither Part II, Article 5 nor Part II, Article 83 impose such restrictions on municipalities.

28. It has been definitively determined by the New Hampshire Supreme Court that the SWEPT is assessed at a uniform rate across the State, *Rand v. State*, 2025 N.H. 27, ¶ 16, and how SWEPT revenue is spent does not implicate Part II, Article 5, *id.* ¶ 14. The State provides adequate education grants through RSA 198:38-:45 to fund its constitutional adequacy obligations. *Id.* ¶¶ 19-20 (reading RSA 198:41, the adequate education grant statute, in harmony with RSA 76:8).

29. RSA 76:8, III does not factor into the State’s adequate education grant nor does the State count revenue raised by its exercise as part of the State’s adequate education funding grant to a municipality. *See* RSA 198:41-:42.

30. Instead, RSA 76:8, III stands as a separate authorization that permits municipalities should they so choose to raise local education property taxes to fund school district expenditures as their local communities deem appropriate, perhaps even as a matter of convenience in lieu of the municipality redirecting its meals and rooms tax revenue or some other State revenue provided to the municipality for its general use to the school district.

31. *Claremont II* does not render taxes municipalities authorize under RSA 76:8, III unconstitutional nor does *Claremont II* transform such municipally-authorized taxes into State taxes. *See Claremont II*, 142 N.H. at 475 (“Our decision does not prevent the legislature from authorizing local school districts to dedicate additional resources to their schools . . .”).

32. The plaintiffs’ position to the contrary is incorrect.

III. Plaintiffs Have Not Proven That Local Education Property Taxes Are Needed To Cover Shortfalls In State Funding.

33. Separate and apart from this Court’s misinterpretation of *Claremont II*, this Court’s Part II, Article 5 ruling misapprehends the law and the facts. Specifically, given this Court’s narrow definition of Adequacy Funds in its merits order, it cannot be assumed that all or

even most municipalities are using local education property taxes to cover shortfalls in adequacy funding, and it certainly cannot be assumed that municipalities have no other option but to fund adequacy with local education property taxes.

34. School districts receive extraordinary need grants. RSA 198:40-f. They receive state aid under RSA 186-C:18. They receive reimbursement under RSA chapter 188-E. They may receive building aid under RSA 198:15-a - :15-hh. :15-r, :15-u - :15-w. They may receive cooperative school district aid, RSA 198:18, or area school aid, RSA 198:19.

35. Outside of the school context, municipalities receive a substantial meals and rooms tax distribution from the State that they may use for any purpose they choose. RSA 78-A:26, III-IV. They receive distributions under RSA 72-B:11 [Excavation Tax], RSA 79:13 [Normal Yield Tax], RSA 79-A:25 [Land Use Change Tax], and RSA 228:69, I(a) [Railroad Fund Distributions]. They receive surplus revenue generated by the imposition of State authorized motor vehicle registration fees. RSA 261:74-d. There may well be other unrestricted revenues municipalities receive from the State.

36. Municipalities could direct all of this State revenue provided to them for their general use to their school districts to cover State constitutional adequacy costs. *See* RSA 31:4 (“Towns may at any legal meeting grant and vote such sums of money as they judge necessary for any purpose for which a municipality may act if such appropriation is not prohibited by the laws or by the constitution of this state.”).

37. Municipalities could also choose to use this State revenue for other municipal purposes and choose instead to raise a local education property taxes to cover school expenditures. Doing this may eliminate the formality and extra step of simply shifting State

revenue from the municipality to the school district, and then the municipality raising a different a local tax rate to fund what that State revenue would have funded.

38. The plaintiffs marshalled no evidence in this case establishing that a State shortfall in the base adequacy or special education differential aid figure must automatically be made up for through a local education property tax in any single municipality, let alone a sufficiently large number of them to obtain facial declaratory relief. That is a far wider and more complicated factual question for which sufficient evidence was not provided from or about any municipality, and no expert purported to undertake such an analysis in this case.

39. Consequently, the plaintiffs' argument in this regard hinges on nothing more than a speculative indirect effect and does not establish as a matter of fact an injury sufficient to confer standing under Part II, Article 5.

40. The New Hampshire Supreme Court made clear in *Rand v. State*, 2025 N.H. 27, that theoretical indirect effects of State spending conduct on municipalities are not relevant to a Part II, Article 5 analysis. In that case, the plaintiffs asserted that the theoretical indirect effect of the State spending SWEPT revenue in the manner it chooses to spend it creates "effective" local education property tax rates that are not uniform in rate from municipality to municipality thereby violating Part II, Article 5.

41. The Supreme Court rejected that position: "The plaintiffs do not dispute that under the SWEPT, as administered, taxpayers are actually assessed at a uniform rate. That concludes the constitutional inquiry. The 'effective rates' in the expert's data reflect, at most, an indirect effect of municipalities retaining excess SWEPT revenue, as the statutory scheme permits. Theoretical indirect effects of the scheme on municipalities are not relevant to the analysis under Part II, Article 5." *Rand v. State*, 2025 N.H. 27, ¶ 16.

42. This Court is erroneously importing a similar theoretical indirect effect analysis back into this case to find a Part II, Article 5 violation at plaintiffs' invitation. It is assuming that any deficiency in the base adequacy amount or the special education differential aid amount contained in RSA 198:40-a, II, has the indirect effect of requiring a municipality to choose to raise a local education property tax to cover that insufficiency with local tax dollars, without considering all of the State revenue provided or directed to municipalities and school districts, without considering whether a municipality actually needs to do that, and without the wide-ranging factual record about each municipality's and school district's finances to draw such a conclusion.

43. This Court's decision to the contrary is incorrect as a matter of law and fact and should therefore be reconsidered.

44. Accordingly, for the reasons explained above, as well as in its motion to reconsider, the State maintains that this case should be dismissed for lack of standing because the plaintiffs lack standing under Part II, Article 83 to maintain their Part II, Article 83 claim and obtain Part II, Article 83 remedies. The State further asserts that the plaintiffs' remaining Part II, Article 5 claim or theory is non-viable and, even if its not, the plaintiffs lack standing to maintain it and failed to prove it at trial.

WHEREFORE, the State respectfully requests that this Court issue an order:

- A. Granting its motion to reconsider and dismissing this case in its entirety for lack of standing;
- B. Vacating its Part II, Article 5 standing analysis;
- C. Dismissing the plaintiffs' Part II, Article 5 claim as non-viable;
- D. Dismissing the plaintiffs' Part II, Article 5 claim as not supported by sufficient evidence; and

E. Granting such further relief as the court deems just and equitable.

Respectfully submitted,

STATE OF NEW HAMPSHIRE

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: September 17, 2025

By: /s/Anthony J. Galdieri
Anthony J. Galdieri, No. 18594
Solicitor General
Samuel Garland, No. 266273
Senior Assistant Attorney General
New Hampshire Department of Justice
1 Granite Place South
Concord, NH 03301
Phone: (603) 271-3658
anthony.j.galdieri@doj.nh.gov
samuel.rv.garland@doj.nh.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was sent via the Court's electronic filing system to all parties of record.

Date: September 17, 2025

/s/Anthony J. Galdieri
Anthony J. Galdieri