

STATE OF NEW HAMPSHIRE
Superior Court
Grafton, ss.

Case No. 215-2022-CV-00167

Steven Rand and Randvest, Inc.,
120 Highland Street
Plymouth, NH 03264

Dr. Robert Gabrielli and the
Gabrielli Family Ltd. Partnership,
40 Via Tranquilla
Concord, NH 03301

Jessica Wheeler Russell and Adam Russell,
76 Manor Road
Concord, NH 03303

James Lewis,
70 Turnberry Lane
Hopkinton, NH 03229

John Lunn,
23 Fletcher Road
Newport, NH 03754

Petitioners,

v.

The State of New Hampshire
c/o Attorney General for the State of NH
33 Capitol Street
Concord, NH 03301,

Defendant.

FIRST AMENDED COMPLAINT

Now come the petitioners, by and through their undersigned counsel, and complain
against the State of New Hampshire as follows:

I. INTRODUCTION

1. This is an action in which the petitioners, all of whom own real property in New Hampshire and pay local school property taxes to fund kindergarten through twelfth grade public education, seek a declaratory ruling that the State of New Hampshire improperly relies upon local taxpayers, including Petitioners, to raise the funds necessary to provide students with a constitutionally adequate education as required by Part II, Article 83 of the New Hampshire Constitution, because the State's own funding falls far shy of that amount. As a result, the funding for a constitutionally adequate public education is largely paid for by taxes that are not uniform in rate as required by Part II, Article 5 of the New Hampshire Constitution.

2. Petitioners also seek a permanent injunction that requires New Hampshire to discontinue its unconstitutional public education funding scheme, and for such other relief as is just and proper.

II. THE PARTIES

3. Petitioner Steven Rand resides in Plymouth, New Hampshire where he owns and operates Rand's Hardware, which has been located at 71 Main Street, Plymouth since 1908. Mr. Rand resides at 120 Highland Street, in Plymouth, New Hampshire. Mr. Rand directly, or through Randvest, Inc., owns his home, the separate property where he operates his hardware store, and rental properties. Mr. Rand, or Randvest, as indicated, pays local property taxes to the Town of Plymouth, New Hampshire for town taxes and for the Statewide Education Property Tax ("SWEPT"), which is discussed below. He has also paid local property taxes to the Town for educational purposes to pay for public kindergarten through eighth grade education in his town and to pay for high school education at the Plymouth Regional High School. The real

property owned by the petitioners is reflected in Table A, which is attached as an appendix to this complaint.

4. Petitioner Dr. Robert Gabrielli resides at 40 Via Tranquilla in Concord, New Hampshire. He and his wife are the sole owners of the Gabrielli Family Limited Partnership, through which they own commercial real estate at 316-322 Village Street, in Penacook, a section of Concord. They purchased this property, which includes retail space and apartments, in 1980. Dr. Gabrielli pays local property taxes to the city of Concord, New Hampshire on the commercial real estate for city taxes and for the SWEPT, which is discussed below. Dr. Gabrielli has also paid local property taxes for educational purposes to the city of Concord for his commercial real estate. The city of Concord transfers the SWEPT and local education tax revenues to the Merrimack Valley School District to pay for public elementary, middle school and high school education.

5. Petitioners Jessica Wheeler Russell and Adam Russell reside in the Penacook section of Concord, New Hampshire. Ms. Wheeler Russell, Mr. Russell and their family live in a home in Penacook, at 76 Manor Road. Ms. Wheeler Russell and Mr. Russell have paid local property taxes to the city of Concord, New Hampshire on their home for city taxes and for the SWEPT, which is discussed below. Ms. Wheeler Russell and Mr. Russell have also paid local property taxes for educational purposes to the city of Concord for their home. The city of Concord transfers the SWEPT and local education tax revenues to the Merrimack Valley School District to pay for public elementary, middle school and high school education. Although Ms. Wheeler Russell is a member-at-large of the Merrimack Valley School Board, she brings this action solely in her individual capacity and not as a school board member.

6. Petitioner James Lewis resides in the Town of Hopkinton, New Hampshire. He has owned his home at 70 Turnberry Lane for 23 years. He is the Superintendent of Schools in Lempster, NH, a small rural school district, and he is a volunteer firefighter in Hopkinton. He pays property taxes to the Town of Hopkinton, including the local educational tax and the SWEPT, which is discussed below. The Town of Hopkinton transfers the SWEPT and local education taxes it collects to the Hopkinton School District to pay for public elementary, middle school and high school education for Hopkinton students.

7. Petitioner John Lunn resides with his wife Meredith in Newport, New Hampshire. They have owned their cape style home at 23 Fletcher Road since 1991. The Lunn's pay local property taxes to the town of Newport, New Hampshire, including the local education tax and the SWEPT, which is discussed below. The town of Newport transfers the SWEPT and local education tax revenues to the Newport School District to pay for public elementary, middle school, and high school education. Meredith Lunn, 72 years old, is retired on social security and John Lunn, 64, works as part-time manager of the Newport public access TV station. To supplement their income the Lunn's converted the second floor of their home into a rental studio apartment.

8. The State of New Hampshire is a governmental body that may sue and be sued for declaratory and injunctive relief. The State has the unequivocal legal duty to provide a constitutionally adequate public education to every educable child in the state. Further, any tax used to meet this duty must be equal in valuation and uniform in rate. The State has adopted a number of laws, rules, and practices designed to provide public educational services to eligible children and to finance the cost of those educational services.

III. THE CONSTITUTIONAL PRINCIPLES AT ISSUE IN THIS CASE

A. School Taxes Used to Provide an Adequate Public Education to New Hampshire's Students Must be Equal in Valuation and Uniform in Rate.

9. In 1997, the New Hampshire Supreme Court found the State's school funding scheme unconstitutional and ordered the State to re-design its school funding system within 17 months. *Claremont Sch. Dist. v. Governor*, 142 N.H. 462, 465 (1997) ("*Claremont I*") ("In this appeal we hold that the present system of financing elementary and secondary public education in New Hampshire is unconstitutional. To hold otherwise would be to effectively conclude that it is reasonable, in discharging a State obligation, to tax property owners in one town or city as much as four times the amount taxed to others similarly situated in other towns or cities.").

10. With respect to taxes necessary to raise funds so the State can comply with its duty to provide a constitutionally adequate education, the Court held that "[a]lthough the taxes levied by local school districts are local in the sense that they are levied upon property within the district, the taxes are in fact State taxes that have been authorized by the legislature to fulfill the requirements of the New Hampshire Constitution." *Id.* at 469. "Consequently, '[t]here is abundant justification in fact for taking this property out of the class taxed locally, and taxing it at the average rate throughout the state.'" *Id.* (quoting *Opinion of the Justices*, 84 N.H. 559, 566 (1930)).

11. The Court also explicitly held: "To the extent the State relies upon property taxes to fund a constitutionally adequate public education, **the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State.**" *Id.* at 471 (emphasis added).

12. In so ruling, the New Hampshire Supreme Court stated that “[t]here is nothing fair or just about taxing a home or other real estate in one town at four times the rate that a similar property is taxed in another town to fulfill the same purpose of meeting the State’s educational duty.” *Id.*

B. The State Has a Constitutional Duty to Provide a Public Education to New Hampshire’s Students.

13. The State’s duty to provide a public education to the children of New Hampshire has been part of our Constitution since 1784. The New Hampshire Supreme Court affirmed this obligation 29 years ago in *Claremont School District v. Governor* (“*Claremont I*”), 138 N.H. 183 (1993), when it declared that the New Hampshire Constitution obligates the State and the State alone “to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire” and “to guarantee adequate funding.” *Id.* The cost of providing an education that meets the constitutional standard of adequacy must be funded by state taxes that are equal in valuation and uniform in rate.¹

IV. THE COMPONENTS OF THE STATE’S CURRENT EDUCATION FUNDING SCHEME

14. New Hampshire’s education funding system has multiple components. First, the State sets an arbitrarily low level of state “adequacy aid” that does not begin to approach the actual cost of a constitutionally adequate public education, and pays for only about 28% of the cost of public education. N.H. DEP’T OF EDUCATION, STATE SUMMARY REVENUE AND EXPENDITURES OF SCHOOL DISTRICTS 2020-2021 (2021), <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/summary-of-rev.-exp-fy2021.pdf>.

¹ Petitioners focus on the lack of uniformity in tax rates in the instant complaint.

15. The amount of this state aid is based on a formula that assumes that the base cost of a constitutionally adequate education is \$3,708.78,² RSA 198:40-a(II)(a), with small additional enhancements, called “differentiated aid” based on the number of students who are eligible for free- or reduced-price lunch (a placeholder for children in poverty), who qualify as English language learners, or who receive Special Education services. RSA 198:40-a(II)(b)-(d). There is also a category of differentiated aid that provides a stipend for students who score low on state assessment tests if the student does not otherwise qualify for differentiated aid. RSA 198:40-a(II)(e). Table B of the Appendix sets out the amount of adequacy and differentiated aid required by RSA 198:40-a.

16. Like the State-funded cost of adequacy, the amounts allocated by the State to pay for the various differentiated aid stipends are arbitrarily low and insufficient to pay the additional costs necessary to provide the children who qualify for differentiated aid with a constitutionally adequate education.

17. Including the additional differentiated aid, the State provided districts during the 2020-21 school year with approximately \$4,597 per student³ to meet its constitutional responsibility to fund adequacy, N.H. DEP’T OF EDUCATION, MUNICIPAL SUMMARY OF ADEQUACY AID (2021), https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/2020-04/ad_ed_aid_fy2021.pdf, while the average per pupil cost published by the New Hampshire Department of Education (NHDOE) for that same year was \$18,434.21. N.H.

² The State’s adequacy aid is adjusted each biennium based on changes to the Consumer Price Index. RSA 198:40-d. In 2020-2021, the State’s baseline adequacy grant per pupil was \$3,708.78. N.H. DEP’T OF EDUCATION, MUNICIPAL SUMMARY OF ADEQUACY AID (2021), https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/2020-04/ad_ed_aid_fy2021.pdf.

³ This number is derived by dividing “Total Calculated Cost of an Adequate Education” (\$769,142,373.74) by “19-20 Membership ADM” (167,284.28).

DEP'T OF EDUCATION, STATE AVERAGE COST PER PUPIL AND TOTAL EXPENDITURES 2020-2021, <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/state-avg-cpp-fy2021.pdf>.

18. When accounting for the costs associated with capital expenses, transportation, debt service, tuition and construction costs,⁴ the average per pupil cost is \$21,762.96 (approximately \$3,300 higher). *Id.*

19. The Statewide Education Property Tax, which is collected and distributed locally, ostensibly raises funds needed to meet the State's cost of funding an adequate education. RSA 76:3. Effective July 1, 2022, the SWEPT will raise approximately 7% of the actual cost of public education.⁵

20. In previous years, the SWEPT raised about 10% of the actual cost and is slated to return to the 10% level on July 1, 2023.⁶

21. For most towns, the modest amount raised by the SWEPT does not meet the State's minimalist adequacy funding level. In these property-poor and middle-wealth communities, the State's "adequacy aid" supplements the SWEPT funds to bring the total amount of state support to approximately the \$4,597 average adequacy cost. In property-wealthy communities, however, the SWEPT raises more funds per pupil than the State's low standard for what it asserts is the cost of a State-funded adequate education.

⁴ Despite being integral to the provision of educational services, these costs are not factored into the State's current funding level.

⁵ For the two-year state budget that became effective on July 1, 2021, the legislature reduced the amount to be raised by the SWEPT from \$363 million to \$263 million, for one year only.

⁶ At \$363 million, the SWEPT accounts for approximately 10% total net revenues. *See* N.H. DEP'T OF EDUCATION, STATE SUMMARY REVENUE AND EXPENDITURES OF SCHOOL DISTRICTS 2020-2021 (2021), <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/summary-of-rev.-exp-fy2021.pdf>.

22. Since 2011, the legislature has allowed these property-wealthy communities to retain the remaining revenue created by the SWEPT, to use as they see fit, either to lower their tax rates or spend the funds for any other purpose.

23. By far the largest source of school funding in New Hampshire is the local education tax, which makes up more than 60% of total public education revenue. N.H. DEP'T OF EDUCATION, STATE SUMMARY REVENUE AND EXPENDITURES OF SCHOOL DISTRICTS 2020-2021 (2021), <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/summary-of-rev.-exp-fy2021.pdf>. This revenue is necessary to make up the huge shortfall between the level of State aid and the actual cost of educating children in New Hampshire's public schools.

24. Because of the great disparities in property wealth among school districts, these local taxes are levied at rates that vary widely from school district to school district, thus imposing disproportionate tax rates on property owners across the state.

25. Almost 25 years after the Court's decision in *Claremont II*, K-12 public education remains primarily funded by disproportionate and inequitable local property taxes.

26. No state in America relies upon local property taxes to fund public education to the extent New Hampshire does. See NAT'L CTR. FOR EDUCATION STATS., THE CONDITION OF EDUCATION: PUBLIC SCHOOL REVENUE SOURCES 3 (2020), https://nces.ed.gov/programs/coe/pdf/coe_cma.pdf ("The percentages of revenues coming from local sources were highest in New Hampshire[,] at 62%).

V. THE CURRENT EDUCATION PROPERTY TAX SYSTEM IS UNCONSTITUTIONAL

27. Local property taxes upon which the State of New Hampshire relies to fund a constitutionally adequate public education are administered in a manner that is not uniform in rate throughout the state.

A. Because of Loopholes for Property-Wealthy Towns, the SWEPT Was and Will Again Be Unconstitutional.

28. The Statewide Education Property Tax (SWEPT) is a state tax, although the State leaves it to local municipalities to assess, collect, and distribute the funds.⁷

29. By statute, the legislature has directed the Commissioner of the Department of Revenue Administration (“DRA”) to set the SWEPT rates by issuing a warrant in December of each year.

30. For the 2022-2023 state fiscal year only, the legislature lowered the amount of the money to be collected by SWEPT from \$363 million to \$263 million.

31. This temporarily eliminated the surplus SWEPT revenues that property-wealthy towns have previously failed to send to the State and instead have kept for themselves.

32. However, as of July 1, 2023, the SWEPT will revert to its higher level and the disparities and inequities outlined below will return in full force.

⁷ The revenues generated by SWEPT never come into the State’s possession. *See* RSA 76:3, 76:8. Indeed, the State must include a footnote in its Comprehensive Annual Financial Report (CAFR) to reflect that the “Statutory Fund” consisting of SWEPT is “Retained Locally by Cities and Towns.” N.H. DEP’T OF ADMIN. SERVS., COMPREHENSIVE ANNUAL FINANCIAL REPORT 148, n.2 (2020), https://www.das.nh.gov/accounting/FY%2020/FY_2020_Comprehensive_Annual_Financial_Report.pdf.

33. In the property-wealthy communities, a portion of the revenue from a state tax that is intended to generate revenue to satisfy the State's duty to educate children across the state will once again be siphoned off by these communities.

34. This state revenue is absorbed into the local budgets of the wealthy towns, instead of being sent to the State, to then be distributed to communities where SWEPT does not raise enough revenue to fund the State's low adequacy standard.

35. A smaller number of towns also engage in a tax avoidance strategy where they offset the required SWEPT tax rate set by the DRA Commissioner's warrant by setting a local education tax rate that is negative.

36. For example, for the fiscal year ending June 2021, the SWEPT tax rate for Hale's Location was \$1.85/\$1,000 and the local education tax rate was set at a negative \$1.84/\$1,000, resulting in an effective combined education rate of one cent per thousand (\$0.01/\$1,000).

37. For examples of other communities offsetting the SWEPT with a negative local education tax, see Table C of the Appendix (Communities that Impose Negative School Tax Rates).

38. Petitioners expect this tax avoidance strategy to continue regardless of the amount of revenue generated by the SWEPT.

39. Because of the strategies employed by the property-wealthy towns to keep funds beyond those necessary to pay for the State's purported cost of adequacy or to offset the SWEPT with negative tax rates, taxpayers in wealthy towns pay lower effective rates for this state tax, which violates the core constitutional principle that state taxes must be imposed at uniform rates. *See Opinion of the Justices*, 142 N.H. 892 (1998) (rejecting the ABC "special abatement plan" for wealthy communities); *Claremont School Dist. v. Governor*, 144 N.H. 210

(1999) (holding that a phased-in component of the statewide education property tax for wealthy communities was unconstitutional because it resulted in varying property tax rates that were unreasonable and disproportionate).

B. Because the State's Adequacy Aid Falls Far Short of the Cost of a Constitutionally Adequate Education, Property Owners Must Make Up the Difference Through the Local Property Tax.

i. The State's Adequacy Aid is Woefully Insufficient to Meet its Constitutional Responsibilities

40. The Court did not define the specific components of a constitutionally adequate education in any of the 10 *Claremont* decisions, or in any subsequent decision, instead making clear that it is the legislature's responsibility to do so. The Court did, however, make clear that constitutional adequacy must be determined in the context of what educational services are offered by all New Hampshire schools. The Court chose a practical, expansive, and forward-looking model. *See Claremont I*, 138 N.H. at 192 ("Given the complexities of our society today, the State's constitutional duty extends beyond mere reading, writing, and arithmetic. It also includes broad educational opportunities needed in today's society to prepare citizens for their role as participants and **as potential competitors in today's marketplace of ideas.**" (emphasis added)); *Claremont II*, 142 N.H. at 474 ("A constitutionally adequate public education is not a static concept removed from the demands of an evolving world. . . [a] broad exposure to the social, economic, scientific, technological, and political realities of today's society is essential for our students to compete, contribute, and flourish in the twenty-first century.").

41. The State has identified a baseline allocation per pupil, initially set at \$3,450.00. RSA 198:40-a (2008).

42. This baseline amount has only seen *de minimis* adjustments over the last 15 years. In 2015, the baseline was increased by approximately \$100 to \$3,561.27. RSA 198:40-a (2022).

43. The baseline allocation per pupil is adjusted each biennium based on changes to the Consumer Price Index. RSA 198:40-d.

44. For 2020-2021, the State’s baseline grant amounted to \$3,708.78. N.H. DEP’T OF EDUCATION, MUNICIPAL SUMMARY OF ADEQUACY AID (2021), https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/2020-04/ad_ed_aid_fy2021.pdf.

45. The arbitrarily low amount of State funding is insufficient to cover the cost of the educational services and standards contemplated in the State’s adequate education statute.

46. Underscoring that it is appropriate to look at what other schools provide, the Court also wrote: “It is basic, however, that in order to deliver a constitutionally adequate public education to all children, **comparable funding must be assured** in order that every school district will have the funds necessary to provide such education. Imposing dissimilar and unreasonable tax burdens on the school districts creates serious impediments to the State’s constitutional charge to provide an adequate education for its public school students.” *Claremont II*, 142 N.H. at 476 (emphasis added).

47. Given the Court’s interpretation of the constitutional responsibility to allow students to “compete in the marketplace of ideas” and statement that schools must have comparable funding, Petitioners contend that the cost of a constitutionally adequate education should be derived from the average spending per pupil of schools across New Hampshire, with allowances for different student demographics and the geography of local school districts. The cost should also account for and include the cost of transportation, capital costs, and debt.

48. The New Hampshire Department of Education (“NHDOE”) reports the costs per pupil spent by New Hampshire school districts. These reported costs are limited to non-capital

costs and do not include the significant costs to provide transportation to school children. The average or mean cost per pupil published by the NHDOE on its website in each of the last 5 reporting years was:

2020-21 - \$18,434.21

2019-20 - \$16,823.88

2018-19 - \$16,346.45

2017-18 - \$15,865.26

2016-17 - \$15,310.67

N.H. DEP'T OF EDUCATION, COST PER PUPIL BY DISTRICT (2017-2021),
<https://www.education.nh.gov/who-we-are/division-of-educator-and-analytic-resources/bureau-of-education-statistics/financial-reports>.

49. This data, and similar data, published by the NHDOE informs policymaking in the state and provides the most accurate information on education costs and expenditures, as well as the sources of education funding and tax rates imposed upon different districts for that purpose.

50. The State has never made payments to local school districts to support the funding of educational services in amounts that approach even one-third of the actual cost of providing public education in New Hampshire, non-capital and capital costs included.

51. The State has determined that the baseline cost of adequacy is \$3,708.78 per pupil. Yet no school district spends as little as this.⁸

52. By intentionally underfunding the cost of a constitutionally adequate education, the

⁸ In the 2020-2021 school year, the lowest spending district, Manchester, spent more than three times as much. N.H. DEP'T OF EDUCATION, COST PER PUPIL BY DISTRICT, 2020-2021 (2021), <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/cpp-fy2021.pdf>.

State has shifted most of its funding responsibility to local property taxpayers, including Petitioners, in violation of Part II, Article 83 and Part II, Article 5 of the New Hampshire Constitution. The State's unconstitutional tax shift affects property owners who own property for personal residences and affects those who own property for a business purpose, making some communities less competitive economically because of disproportionately high tax rates.

ii. Funding an Adequate Education for which the State is Responsible with Local Property Taxes is Inherently Inequitable and Unconstitutional

53. The State is constitutionally mandated to provide an adequate education. *Claremont I*, 138 N.H. at 184. The taxes imposed to fund this responsibility are state taxes. *Claremont II*, 142 N.H. at 469. State taxes must be equal in valuation and uniform in rate across the state. *Id.* at 471. By primarily relying on local property taxes with hugely disproportionate rates because of greatly varying property wealth, the State violates this precept of Part II, Article 5 of the New Hampshire Constitution.

54. The average equalized valuation⁹ of property per pupil in New Hampshire school districts for the 2020-2021 school year, the last reported, was \$1,346,793. N.H. DEP'T OF EDUCATION, EQUALIZED VALUATION PER PUPIL, 2020-2021 (2021), https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/EVPP-FY-2021-PDF_0.pdf. This means that the school district with the average financial strength had \$1,346,793 in property value for each student residing in the district against which it could levy a school tax.

⁹ To "equalize" the valuation of property in a community simply means that the property is assessed at 100% fair market value, regardless of its local assessment. The New Hampshire DRA performs this function for all taxable realty across the state, enabling accurate comparisons of tax rates across the state.

55. Statewide, equalized valuations per pupil in the 2020-2021 school year ranged from a low of \$523,285 per pupil in Claremont to a high of \$120,861,443 per pupil in Millsfield. *Id.*

56. For communities with at least 100 public school students in residence, the high was \$8,987,902 per pupil in Moultonborough. *Id.*

57. Portsmouth had an equalized valuation per pupil of \$3,399,350, just shy of three times the state average. *Id.*

58. Petitioner Steven Rand lives in Plymouth where the last reported equalized valuation per pupil, for the 2020-2021 school year, was \$942,652. *Id.* This means that Plymouth has about 70% of the financial strength to raise money for its schools as the state average in New Hampshire.

59. As an indication of how Plymouth has lost ground over time, the equalized valuation per pupil in the 2015-2016 school year was \$826,496, as compared to a state average of \$939,001 or 88% of the average.

60. Plymouth children attend high school at the Plymouth Regional High School, which is a part of the Pemi-Baker Cooperative School District. The Pemi-Baker Cooperative School District is made up of individual school districts that maintain their own elementary and middle schools and send their children to the Plymouth Regional High School. Ashland, Ellsworth and Waterville Valley also have an agreement to send high school children to the Plymouth Regional High School on a tuition basis but maintain their own K-12 school district. (This collection of school districts is referred to as the “Pemi-Baker Districts.”)

61. Each of the children who attend the Plymouth Regional High School is eligible to receive the exact same educational services, regardless of the property wealth or tax rates of the communities in which they reside.

62. The equalized valuations for each of the Pemi-Baker Districts vary widely from highs of \$5,469,546 per pupil in Waterville Valley and \$4,754,006 per pupil in Holderness, to \$942,652 per pupil in Plymouth.

63. The equalized valuations per pupil for all of the Pemi-Baker School Districts are presented in Table D of the Appendix. For comparison, the corresponding equalized valuations per pupil for the 2015-2016 school year are also provided.

64. Petitioners Dr. Gabrielli, Ms. Wheeler Russell, and Mr. Russell live or own property in Penacook where they suffer a double disadvantage. Penacook's financial strength fares poorly when compared to the state average equalized valuation per pupil. Penacook also has a much lower equalized valuation per pupil than the rest of the city of Concord, of which Penacook is a part for all purposes except for public education.

65. Petitioner James Lewis lives and pays property taxes in Hopkinton, where the reported equalized valuation per pupil for the 2020-2021 school year, was \$941,727, which was 69.9% of the state average of \$1,346,793. This means that Hopkinton has only about 69.9% of the financial strength to raise money for its schools as the average school district in New Hampshire.

66. As an indication of how Hopkinton has lost ground over time, the equalized valuation per pupil in the 2015-2016 school year was \$711,379, as compared to a state average of \$939,001, or about 75.7% of the state average.

67. Petitioner John Lunn lives and pays taxes in the Town of Newport, where the reported equalized valuation per pupil for the 2020-2021 school year, was \$649,873, which was 48.2% of the state average of \$1,346,793. This means that Newport has only about 48.2% of the financial strength to raise money for its schools as the average school district in New Hampshire.

68. As an indication of how Newport has lost ground over time, the equalized valuation per pupil in the 2015-2016 school year was \$503,931, as compared to a state average of \$939,001, or about 53.7% of the state average.

69. The last reported equalized valuation per pupil, for the 2020-2021 school year, for Penacook was \$654,006, 48.6% of the state average and 57% of the equalized valuation per pupil for the rest of Concord.

70. Penacook has lost ground over time compared to the rest of the state. The equalized valuation per pupil for Penacook in the 2015-2016 school year was \$468,614, 50% of the state average.

71. In the following few paragraphs, Petitioners provide the Court with the last reported equalized school tax rates. Petitioners set out the equalized SWEPT rate, the local equalized school tax rate, and the combined equalized school tax rate (SWEPT plus local). Petitioners allege that the local education property tax burden is reflected by the combined equalized school tax rate.

72. Petitioner Rand lives in Plymouth and Plymouth is part of the Pemi-Baker Regional Cooperative School District. The rates for the Pemi-Baker Districts range from a high of \$15.25/\$1,000 in Campton to lows of \$3.33/\$1,000 in Waterville Valley and \$6.90/\$1,000 in Holderness. Plymouth has a combined tax rate of \$13.69/\$1,000. Table E provides the education tax rates for the Pemi-Baker Districts.

73. The state average combined education tax rate was \$11.33 for the 2020-2021 school year.

74. Petitioners Dr. Gabrielli, Ms. Wheeler Russell, and Mr. Wheeler own property and live in Penacook and pay school taxes to the Merrimack Valley School District. Their 2020-

2021 school tax rates were \$1.65/\$1,000 for SWEPT and \$15.09/\$1,000 for local education taxes for a combined total of \$16.74. Concord's combined rate was \$13.81/\$1,000 and the state average, again, was \$11.33/\$1,000.

75. Petitioner James Lewis owns property and lives in Hopkinton and pays school taxes to the Town of Hopkinton to support the Hopkinton School District. His 2020-2021 school tax rates were \$1.66/\$1,000 for SWEPT and \$16.74/\$1,000 for local education taxes, for a combined total of \$18.40 in school taxes, compared to the state average of \$11.33/\$1,000.

76. Petitioner John Lunn owns property and lives in Newport and pays school taxes to the Town of Newport to support the Newport School District. His 2020-2021 school tax rates were \$1.74/\$1,000 for SWEPT and \$13.73 for local education taxes, for a combined total of \$15.57 in school taxes, compared to the state average of \$11.33/\$1,000.

77. The source for all of the above tax rate information is a website maintained by the New Hampshire DOE: N.H. DEP'T OF EDUCATION, VALUATIONS, PROPERTY TAX ASSESSMENTS AND TAX RATES OF SCHOOL DISTRICTS (2020-2021), https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/values-2020-revised_0.pdf. The DRA also maintains the tax rate information.

78. The tax rate information provided in the foregoing paragraphs and on the State's own websites establishes that taxes for schools in New Hampshire are unconstitutional in that they are not uniform in rate.

VI. CAUSES OF ACTION

79. Petitioners adopt and incorporate by reference each and every preceding paragraph as if fully set forth herein.

80. Petitioners seek a declaratory judgment from this Court that finds and declares the following:

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.

81. Petitioners also seek permanent injunctive relief requiring New Hampshire to discontinue its unconstitutional public education funding scheme because they suffer irreparable harm, any harm suffered by the State is outweighed by the harm that Petitioners suffer and, finally, because an injunctive ruling for Petitioners is in the public interest.

82. Petitioners further seek an order, directing the State to adopt a revised cost determination, which accounts for the full cost of providing constitutional adequacy to all school districts and amounts to no less than the average state expenditure per pupil, with allowances for demographic and geographic diversity and that includes consideration of the costs of transportation, capital costs, and debt.

83. Petitioners further seek attorney's fees and such other relief as this Court deems just and proper.

VII. CLAIMS FOR RELIEF

A. Petitioners seek a declaratory judgment as described above;

B. Petitioners seek permanent injunctive relief to address the State's constitutional violations;

C. Petitioners seek an order directing the State to revise its cost determination as described above, such that it will discontinue its reliance on local property taxes to meet the State's Article 83 responsibilities;

D. Petitioners seek an order requiring the State to pay the costs and attorney's fees in this matter; and

E. Petitioners seek such other relief as the Court deems just and proper.

Dated: Concord, New Hampshire
August 23, 2022

Respectfully submitted,

/s/ Andru Volinsky

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**pro hac vice pending*

Appendix to Complaint

Table A. Real Property Owned by Petitioners

Owner	Street Address	Use of Property	Paid Local Town Taxes	Paid SWEPT Taxes	Paid Local Education Taxes	Subject to Business Taxes
Randvest	67-71 Main Street Plymouth	Rand's Hardware, Commercial and Residential rental units	Yes	Yes	Yes	Yes
Steven Rand (RS Rand Revocable Realty Trust)	120 High Street, Plymouth	Personal Residence	Yes	Yes	Yes	No
Randvest	15 Chase Street, Plymouth	Commercial and Residential Rental	Yes	Yes	Yes	Yes
Randvest	17 Railroad Square, Plymouth	Commercial Rental	Yes	Yes	Yes	Yes
Randvest	463 Daniel Webster Hwy, Plymouth	Residential Rental	Yes	Yes	Yes	Yes
Gabrielli Family Limited Partnership	316-322 Village Street, Concord	Commercial and Residential	Yes	Yes	Yes	Yes
Jessica Wheeler Russell and Adam Russell	76 Manor Road, Concord	Personal Residence	Yes	Yes	Yes	No
James Lewis	70 Turnberry Lane, Hopkinton	Personal Residence	Yes	Yes	Yes	No
John Lunn	23 Fletcher Road, Newport	Personal Residence	Yes	Yes	Yes	No

Table B. Adequacy and Differentiated Aid pursuant to RSA 198:40-a¹⁰

Category	Amount
Cost of an Adequate Education	\$3,708.78
Differentiated Aid – Free- or Reduced-Price Lunch	\$1,854.38
Differentiated Aid – English Language Learner	\$725.63
Differentiated Aid – Special Education	\$1,995.21
Differentiated Aid – Low Test Scores	\$725.63*
*Only available if doesn't receive other Differentiated Aid.	

¹⁰ N.H. DEP'T OF EDUCATION, MUNICIPAL SUMMARY OF ADEQUACY AID (2021), https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/2020-04/ad_ed_aid_fy2021.pdf.

Table C. Communities that Impose Negative School Tax Rates¹¹

District	SWEPT rate per \$1,000	Local Education Tax rate per \$1,000 Parens “()” indicate negative rate
Carroll County	\$1.85	(\$1.84)
Hale’s Location	\$1.85	(\$1.84)
Coos County	\$1.71	(\$0.61)
Cambridge	\$1.68	(\$1.65)
Dix Grant	\$1.66	(\$1.66)
Dixville	\$1.60	(\$0.47)
Millsfield	\$1.80	(\$0.16)
Odell	\$1.73	(\$1.73)
Pinkhams Grant	\$1.93	(\$1.93)
Success	\$1.69	(\$1.69)
Wentworth Location	\$1.70	(\$1.68)
State Average	\$1.70	\$9.63

¹¹ N.H. DEP’T OF EDUCATION, VALUATIONS, PROPERTY TAX ASSESSMENTS AND TAX RATES OF SCHOOL DISTRICTS (2020-2021), https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/values-2020-revised_0.pdf.

Table D. Equalized Valuations per Pupil for Pemi-Baker Districts

District	2020-2021¹²	2015-2016¹³
Ashland	\$1,284,172	\$1,083,870
Campton	\$1,122,326	\$891,811
Ellsworth	\$1,862,840	\$964,886
Holderness	\$4,754,006	\$2,889,731
Plymouth	\$942,652	\$826,496
Rumney	\$1,529,129	\$1,018,964
Thornton	\$1,582,475	\$1,188,142
Waterville Valley	\$5,469,546	\$8,946,204
Wentworth	\$1,179,294	\$983,255
State Average	\$1,346,793	\$939,001

¹² N.H. DEP'T OF EDUCATION, EQUALIZED VALUATION PER PUPIL, 2020-2021 (2021), https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/EVPP-FY-2021-PDF_0.pdf.

¹³ N.H. DEP'T OF EDUCATION, EQUALIZED VALUATION PER PUPIL, 2015-2016 (2016), https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/equal_pupil15_16.pdf.

Table E. Tax Rates for Pemi-Baker Districts¹⁴

District	Local Education Rate/\$1,000	SWEPT Rate/\$1,000	Combined Education Tax Rate/\$1,000
Ashland	\$11.89	\$1.62	\$13.51
Campton	\$13.43	\$1.82	\$15.25
Ellsworth	\$9.12	\$1.58	\$10.70
Holderness	\$5.43	\$1.47	\$6.90
Plymouth	\$11.93	\$1.76	\$13.69
Rumney	\$12.93	\$1.50	\$14.43
Thornton	\$11.48	\$1.65	\$13.13
Waterville Valley	\$1.44	\$1.89	\$3.33
Wentworth	\$11.02	\$1.81	\$12.83
State Average	\$9.63	\$1.70	\$11.33

¹⁴ N.H. DEP'T OF EDUCATION, VALUATIONS, PROPERTY TAX ASSESSMENTS AND TAX RATES OF SCHOOL DISTRICTS (2020-2021), https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/values-2020-revised_0.pdf.

Certificate of Service

I hereby certify that a true and exact copy of this Amended Complaint has been served upon the State of New Hampshire this 26th day of August 2022, by way of the Court's electronic filing and service system.

/s/ Natalie J. Laflamme
Natalie J. Laflamme