

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Case No. 215-2022-cv-00167

Steven Rand, et al.
Plaintiffs

v.

The State of New Hampshire
Defendant

Objection to Plaintiffs' Expedited Motion for Protective Order

The eighteen plaintiff school districts in the matter of *Contoocook Valley Sch. Dist., et al., v. State of New Hampshire, et al.*, 213-2019-CV-00069, (“the Districts”), hereby object to the *Rand* Plaintiffs’ Motion for Protective Order because the Districts are represented with respect to the subject matter the *Rand* Plaintiffs seek to discuss with the Districts’ witnesses.

1. The *Rand* Plaintiffs seek to compel the attendance and testimony of four witnesses who testified on behalf of their respective school district employers in the *ConVal* trial. Moreover, the *Rand* Plaintiffs seek the Court’s permission to contact those

witnesses directly, presumably to exclude the Districts' counsel from participating in any witness preparation that may become necessary.^{1, 2}

2. Such communication is prohibited by N.H. Rule of Professional Conduct 4.2, which states:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

3. This rule, which is identical to the ABA Model Rule, is intended to “protect[] a person who has chosen to be represented by a lawyer in a matter against[,]” among other things, “the uncounselled disclosure of information relating to the representation.” ABA Model Code Comment, Rule 4.2 (2004). “What matter or matters are involved in a representation depends on the circumstances.” Restatement (Third) of the Law Governing Lawyers § 99, cmt. d (2000).

¹ The Districts anticipate that, once those witnesses have all been served, the Districts will object to those witnesses being compelled to testify for the reasons set forth in the Grantham School District's Motion to Quash Subpoena to Lisa Witte and Reply in support thereof. Index # 108. (The Reply, filed contemporaneously with this Objection, does not yet have an Index number.)

² In the Motion for Protective Order, counsel for the *Rand* Plaintiffs states that Attorney Tierney “may also have interfered with Rand Counsel's efforts to effect service of trial subpoenas.” Mot., at ¶ 1. He did not. Should the Court have any questions on this front, Attorney Tierney will gladly appear to answer them.

4. As the Districts' counsel explained in response to the request for assent to the instant motion:

The subject of our representation is education funding and the State's failure to fully fund. We understand that you wish to speak with our client's superintendents/business administrators on the very issues for which we represent them. This is prohibited by Rule 4.2. In addition, we understand that you want to have witnesses testify regarding the separability of base adequacy and differentiated costs. This was a central part of the ConVal case and, as I had discussed with your co-counsel Michael Jaoude, is a part of the State's appeal in the ConVal case.

Ex. 1, at 1.

5. In addition, the *Rand* matter itself is involved in Wadleigh, Starr & Peters' representation of the Districts and their employee witnesses.³ Counsel for the Districts have attended court hearings in the *Rand* matter on behalf of the Districts, just as the *Rand* Plaintiffs' counsel attended the *ConVal* trial on behalf of the *Rand* Plaintiffs. As the *Rand* Plaintiffs' motion points out, the Districts have had to take positions on the *Rand* Plaintiffs' various motions in the *ConVal* matter. Mot., at 3.

6. In fact, counsel for the *Rand* Plaintiffs explained to both undersigned counsel on different occasions that they sought to compel the Districts' employees' testimony *because* of the testimony they provided in the *ConVal* trial.

³ The employee witnesses are or were employed as superintendents or business administrators at their respective districts. With respect to the witnesses who have left the district on behalf of which they testified in *ConVal*, where those employee witnesses are in a position to potentially waive the District's attorney-client privilege, it does not matter that they are former employees. The Districts are entitled to protection from "uncounselled disclosure of information relating to the representation." ABA Model Code Comment, Rule 4.2.

7. That testimony was not limited to base adequacy. *See, e.g.*, Ex. 2, Trial Transcript – Day 3, at 522:5-10 (Theresa Taylor); Ex. 3, Trial Transcript – Day 4, at 680:1-19 (Ken Dassau); Ex. 4, Trial Transcript – Day 11, at 1878:16-25 (Lisa Witte); Ex. 5, Trial Transcript – Day 12, at 2142:11-2144:2 (Donna Magoon). And the Court’s November 20, 2023 decision in *ConVal* referenced differentiated aid a total of twenty-two times, including stating that “substantial evidence about differential aid was admitted at trial. Many of the plaintiff’s financial spreadsheets contained accountings for the amounts of differential aid received. Thus, the Court allowed cross examination on those figures during trial.” Order, *ConVal* Index # 246, at 6, n. 4.

8. In the *ConVal* matter, the question of whether base adequacy can be challenged without consideration for differentiated aid was briefed pretrial, argued during trial, and is explicitly raised by the State’s Notice of Appeal in the *ConVal* matter. Ex. 6, Notice of Appeal, at ¶¶ 8-9. That appeal is progressing; the State’s brief is to be filed this week. Differentiated aid was therefore the subject of many privileged conversations prior to, during, and after the *ConVal* trial. Ex. 7, Walker (Witte) Aff., at ¶ 11. To avoid inadvertent waiver of the Districts’ attorney-client and trial preparation privileges, the Districts’ employee witnesses must not be contacted without the Districts’ counsel’s consent or – at a bare minimum – counsel’s presence.

WHEREFORE, the Districts pray that this Court:

- a. Deny the *Rand* Plaintiffs' Motion for Protective Order;
- b. In the alternative, schedule a hearing on this Motion and the Grantham School District's Motion to Quash Subpoena to Lisa Witte; and
- c. Grant such further relief as is just and equitable.

Respectfully submitted,

**Contoocook Valley School District,
Mascenic Regional School District,
Monadnock Regional School District,
Winchester School District,
Fall Mountain School District,
Claremont School District,
Newport School District,
Hillsboro-Deering School District,
Grantham School District,
Manchester School District,
Windham School District,
Derry Cooperative School District,
Hill School District,
Mascoma Valley Regional School District,
Nashua School District,
Lebanon School District,
Hopkinton School District, and
Oyster River Cooperative School District**

By their attorneys,

Wadleigh, Starr & Peters, P.L.L.C.

By: /s/ *Elizabeth E. Ewing*
Michael J. Tierney – NHBA #17173
Elizabeth E. Ewing–NHBA #269009
95 Market Street
Manchester, NH 03101
(603) 669-4140
mtierney@wadleighlaw.com
ewing@wadleighlaw.com

& Co-Counsel for only the Nashua School District

Steven A. Bolton, Esq. NHBA #67
Nashua School District
229 Main Street
Nashua, NH 03061
boltons@nashuanh.gov

Dated: August 12, 2024

CERTIFICATION OF SERVICE

I hereby certify that a copy of this filing has this day been served via email on all parties via the Court's electronic case filing system.

/s/ Elizabeth E. Ewing

Exhibit 1

From: [Michael J. Tierney](#)
To: [Tsier, Alice](#)
Cc: mjaoude@hselaw.com; [Andru Volinsky](#); [King, Kim](#); [Elizabeth E. Ewing](#); jtobinjr@comcast.net
Subject: RE: Rand Litigation | Notice of Subpoena to Kenneth Dassau and forthcoming protective order motion
Date: Friday, August 9, 2024 12:42:25 PM

Alice:

We do not consent to you discussing with our clients the topics at issue in the ConVal case. The subject of our representation is education funding and the State's failure to fully fund. We understand that you wish to speak with our client's superintendents/business administrators on the very issues for which we represent them. This is prohibited by Rule 4.2. In addition, we understand that you want to have witnesses testify regarding the separability of base adequacy and differentiated costs. This was a central part of the ConVal case and, as I had discussed with your co-counsel Michael Jaoude, is a part of the State's appeal in the ConVal case. Even if you were to stay away from these topics, our school district clients are entitled to have us present to help them guard the attorney client privilege.

I would be happy to discuss with you further and send you a copy of the state's brief when it is filed next week.

Michael

Michael J. Tierney, Esq.
Wadleigh, Starr & Peters, PLLC
95 Market Street
Manchester, NH 03101
603-669-4140
603-206-7239 (Direct)
603-669-6018 (Fax)

From: Tsier, Alice <alice.tsier@whitecase.com>
Sent: Thursday, August 8, 2024 1:07 PM
To: Michael J. Tierney <mtierney@wadleighlaw.com>
Cc: mjaoude@hselaw.com; [Andru Volinsky <andruvolinsky@gmail.com>](mailto:andruvolinsky@gmail.com); [King, Kim <kim.king@whitecase.com>](mailto:kim.king@whitecase.com)
Subject: Rand Litigation | Notice of Subpoena to Kenneth Dassau and forthcoming protective order motion

You don't often get email from alice.tsier@whitecase.com. [Learn why this is important](#)

Hi Michael,

I work with Mike Jaoude and Andy Volinsky on the Rand litigation. I understand you've been in contact with our team regarding our request to facilitate testimony from certain witnesses who testified in ConVal.

As I understand you and Mike discussed, we are serving subpoenas on certain of these witnesses. To

that end, please find attached the subpoena we served on Kenneth Dassau this week and our email to him regarding the same.

Additionally, please find attached an expedited motion that we intend to file tomorrow, seeking a protective order that confirms we can speak with witnesses who previously testified in ConVal regarding all matters necessary to prepare their testimony in the Rand case, provided that they do not discuss attorney-client communications, or other confidential information.

We are confident that the judge will grant this relief and that the law is on our side. We would, however, be happy to forgo filing the motion if you would agree to stipulate to the relief we're seeking. Please let me know by **2 pm tomorrow** at the latest how you would like to proceed. If we don't hear from you, we will go ahead with our filing.

If you have any questions or would like to discuss I'm available for a call today or tomorrow morning.

Best,

Alice

Alice Tsier | Pro Bono Counsel

Pronouns: She/Her

T +1 212 819 2643 **M** +1 646 398 4808 **E** alice.tsier@whitecase.com

White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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Our external privacy policy is available on <https://www.whitecase.com/privacy-policy>.

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Exhibit 2

1 Yes. That is correct.

2 Q Okay. And can you tell us what those tuition rates
3 were for Winchester high school students? You can scroll the
4 document if you need to check.

5 A I believe the regular education, and I think I
6 mentioned earlier, is the 15,637. And that's for the regular
7 education high school students. And then the -- the non-area
8 special ed is the 29,000, which does include -- they -- they
9 list it as a full 29,000, but that includes the 15,637 for the
10 regular-ed portion.

11 Q Okay. Do you have an opinion about whether Winchester
12 would be able to run its own school district for less than
13 that amount per pupil?

14 A I -- I do not believe that the Winchester School
15 District could do that, could provide an adequate education
16 for the high school students, for that amount.

17 Q All right.

18 MS. EWING: At this point, we would move for the
19 admission of Defendants' Exhibit 280.

20 MR. GAGNON: No objection, Your Honor.

21 THE COURT: Okay. It's admitted.

22 (Defendants' Exhibit 280 received)

23 MS. EWING: Mandy, could you pull up Defendants'
24 Exhibit 14? Yes. That's right. That's the one. Yep.

25 BY MS. EWING:



Exhibit 3

1 Q And some of the students that are tuitioned (sic) to
2 Keene are also students who may require English language
3 learner services, correct?

4 A Possibly. Yes.

5 Q And they also -- Winchester pays the same tuition to
6 Keene for those students as --

7 A The tuition rate is the tuition rate for all regular
8 students.

9 Q For every single student? There is no
10 differentiation --

11 A Doesn't differentiate --

12 Q -- based on whether --

13 A -- between any of the seven districts participating in
14 SAU-29 and the other four sending districts -- five sending
15 districts. The rate is the rate.

16 Q So --

17 THE COURT: Isn't there a separate rate for special
18 education, though?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: Okay.

21 MS. WARR: I think he was excepting that one out.

22 THE COURT: Okay. All right.

23 THE WITNESS: Right.

24 MS. WARR: Is my understanding.

25 THE WITNESS: But if I might, Your Honor, but that



Exhibit 4

STATE OF NEW HAMPSHIRE
ROCKINGHAM COUNTY SUPERIOR COURT

1
2
3 CONTOOCCOOK VALLEY SCHOOL) Supreme Court Case No.
DISTRICT, & a.,) 2024-0121
4)
Plaintiffs,) Superior Court Case No.
5 vs.) 213-2019-CV-00069
6 STATE OF NEW HAMPSHIRE, & a.,) Brentwood, New Hampshire
7 Defendants.) May 1, 2023
8) 8:44 a.m.
) Volume XI of XV
) Pages 1785 - 2029

9 BENCH TRIAL - DAY 11
10 BEFORE THE HONORABLE DAVID W. RUOFF
JUDGE OF THE SUPERIOR COURT

11 APPEARANCES:

12 For the Plaintiff: Michael J. Tierney, Esq.
Elizabeth E. Ewing, Esq.
13 WADLEIGH, STARR & PETERS, PLLC
95 Market Street
14 Manchester, NH 03101

15 For the Plaintiff: Steven A. Bolton, Esq.
CITY OF NASHUA
16 229 Main Street
Nashua, NH 03060

17 For the Defendant: Samuel R.V. Garland, Esq.
18 Lawrence P. Gagnon, Esq.
Anthony J. Galdieri, Esq.
19 ATTORNEY GENERAL'S OFFICE
1 Granite Place South
20 Concord, NH 03301

21 For the Defendant: John R. Munich, Esq.
J. Nicci Warr, Esq.
22 Zachary Buchheit, Esq.
STINSON, LLP
23 7700 Forsyth Boulevard
Suite 1100
24 St. Louis, MO 63105

25



I N D E X

	<u>WITNESS (ES)</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
	<u>FOR THE PLAINTIFF:</u>				
	Jennifer Crawford		1789	1828	1834
	Lisa Witte	1838	1843	1878	1883
	Chris Martin	1884	1892	1925	1941
	Brian Connelly	1953	1963	1978	1981
	Amanda Isabelle	1984	1991	2005	2006
	Karen DeFrancis	2011			

10

	<u>WITNESS (ES)</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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12 FOR THE DEFENDANT:

13 NONE

14

	<u>MISCELLANEOUS</u>	<u>PAGE</u>
--	----------------------	-------------

16 NONE

17

	<u>EXHIBITS</u>	<u>ID</u>	<u>EVD</u>
	Plaintiff's 93 and 94	Hill School District DOE-25s	1961
	Plaintiff's 125 to 128	Mascenic School District DOE-25s	1891
	Plaintiff's 168 to 170	Monadnock School District DOE-25s	1842
	Defendant's 220	Monadnock School	1862

25



1 Q But you haven't done that analysis?

2 A Not with the numbers you're throwing at me, no.

3 Q These are your numbers.

4 A Um-hum. But I haven't done the analysis with them
5 that you are --

6 Q The teachers are the greatest cost driver for your
7 education?

8 A Yes. Well, teachers and other employees there, you
9 know, the support staff and of that nature. But, yeah.
10 Personnel costs overall. That's the word I'm looking for.

11 MR. GAGNON: No further questions, Your Honor.

12 THE COURT: Okay.

13 Attorney Tierney?

14 REDIRECT EXAMINATION

15 BY MR. TIERNEY:

16 Q There was a statement in Defendant's Exhibit 220 that
17 said that 95 percent of special education funding had been
18 provided by the state. I think you said that's inaccurate.
19 How do you know that?

20 A Just look at our -- I mean, look at our spending in my
21 district for special education. I believe it's right around 7
22 million out of a -- our total operating budget is 33 million.
23 If you go back and look at the amount of differentiated aid we
24 got for special education students, it doesn't come anywhere
25 near 7 million.



Exhibit 5

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY SUPERIOR COURT

3 CONTOOCCOOK VALLEY SCHOOL) Supreme Court Case No.
 DISTRICT & a.,) 2024-0121
 4)
 Plaintiffs,) Superior Court Case No.
 5) 213-2019-CV-00069
 vs.)
 6) Brentwood, New Hampshire
 STATE OF NEW HAMPSHIRE & a.,) May 2, 2023
 7) 1:04 p.m.
 Defendants.)
 8) Volume XII of XV
) Pages 2030 - 2165
 9 _____

10 BENCH TRIAL - DAY 12
 BEFORE THE HONORABLE DAVID W. RUOFF
 JUDGE OF THE SUPERIOR COURT

APPEARANCES:

12 For the Plaintiffs: Michael J. Tierney, Esq.
 Elizabeth E. Ewing, Esq.
 13 WADLEIGH STARR & PETERS PLLC
 95 Market Street
 14 Manchester, NH 03101

15 Steven A. Bolton, Esq.
 CITY OF NASHUA
 229 Main Street
 16 Nashua, NH 03060

17 For the Defendants: Samuel R.V Garland, Esq.
 Lawrence P. Gagnon, Esq.
 18 Anthony J. Galdieri, Esq.
 19 ATTORNEY GENERAL'S OFFICE
 1 Granite Place South
 20 Concord, NH 03301

21 John R. Munich, Esq.
 J. Nicci Warr, Esq.
 22 Zachary T. Buchheit, Esq.
 STINSON LLP
 23 7700 Forsyth Boulevard
 Suite 1100
 24 St. Louis, MO 63105

25



1 just talked about to provide the services in Plaintiff's
2 Exhibit 17?

3 A Yes, including the -- including any outside grants
4 that we have to apply for.

5 Q Okay.

6 A Including the revenue that we get from our community
7 members for taxes.

8 Q Thank you very much --

9 A You're welcome.

10 Q -- for the clarification. Okay.

11 Now, in terms of the money that the district gets, it's
12 based on the students it has who have those special needs in
13 the differential aid categories -- you follow?

14 A Yes.

15 Q The State receives extra funds for each of those
16 students who qualify for differential aid, right?

17 A Yes.

18 Q And I assume it's your position, also, that it
19 requires that the District is -- sorry, bad question.

20 I think it's also your position, that in order to fund
21 the services necessary to give those students an adequate
22 education, that it might cost the District a little more than
23 a student who doesn't qualify for differential aid; is that
24 right?

25 A Potentially.



1 Q Do you know how much more?

2 A No.

3 Q You haven't done that specific -- you haven't
4 quantified that specific dollar amount, have you?

5 A No. I -- I can attest -- attest that it is more to --
6 for -- I mean, we don't -- we don't get enough adequate aid to
7 cover.

8 Q Right.

9 A So an example would be if we have an out-of-district
10 student, right, we pay 150,000 dollars. We may get 75,000
11 dollars. We still have to pay that other funding, as well as
12 their transportation, as well as all the other stuff. So we
13 never get what -- what the cost is for that -- for the child,
14 so.

15 Q Okay. And would it just stand to reason that those
16 students who might have additional needs, there would be
17 additional costs associated with those needs, right?

18 A Correct.

19 Q Okay. But we're not sure what that quantity is,
20 specifically?

21 A Correct.

22 Q Okay. And similarly, Mr. Magoon, with respect to the
23 specific dollar amount the District gets for differential aid,
24 you haven't done a quantification -- you haven't quantified
25 how that figure compares to the extra costs associated with

1 those special needs students, have you?

2 A No.

3 Q Okay. The district hires teachers, right?

4 A Correct.

5 Q Would you agree that teacher and staff salaries and
6 benefits are the main driver of what it takes to educate a
7 student, in terms of costs?

8 A Yes.

9 Q Okay. And is there any analyses you can point to that
10 you can show me, or point to, that you've performed that
11 demonstrates sort of the Constitutional level -- I'm sorry,
12 let me back up.

13 Is there any analyses you can point to that demonstrate
14 what level of salary is needed to recruit and retain teachers
15 at the Constitutionally adequate level?

16 A Well, I think that what we would -- what the districts
17 do, is when you're in negotiations, you would look to see
18 what's being paid from other districts in your surrounding
19 area and try to be as close as you can be to them, so that way
20 you're not losing staff.

21 However, as you know, we don't get enough money, and our
22 townspeople don't have the money to pay. And so if I was
23 to -- to try to bring forward to my townspeople more money for
24 my staff, it would -- my budget would get turned down because
25 they can't afford to pay it.

Exhibit 6

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

<https://www.courts.nh.gov>

RULE 7 NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court or circuit court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving a collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A other than an appeal from the first final order. (An appeal from the first final order issued in a domestic relations matter filed under RSA chapters 457 to 461-A should be filed on this form.)

1. COMPLETE CASE TITLE AND CASE NUMBERS IN TRIAL COURT

Contoocook Valley School District, et al. v. State of New Hampshire, et al.
No. 213-2019-CV-00069

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

Rockingham County Superior Court
Hon. David W. Ruoff

3A. APPEALING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

State of New Hampshire; NH Dept. of Education;
Governor Sununu; Commissioner Edelblut

E-Mail address: _____

Telephone number: _____

3B. APPEALING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

John M. Formella, Attorney General

Anthony J. Galdieri, Bar No. 18594

Samuel Garland, Bar No. 266273

New Hampshire Department of Justice

1 Granite Place South

Concord, NH 03301

E-Mail address: **anthony.j.galdieri@doj.nh.gov**

Telephone number: **(603) 271-3658 ext**

4A. OPPOSING PARTY: NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

See attached addendum.

E-Mail address: _____

Telephone number: _____

4B. OPPOSING PARTY'S COUNSEL: NAME, BAR ID NUMBER, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS, AND TELEPHONE NUMBER.

Michael J. Tierney, Esq.

Elizabeth E. Ewing, Esq.

Wadleigh, Starr & Peters, PLLC

95 Market Street

Manchester, NH 03101

E-Mail address: **mtierney@wadleighlaw.com**

Telephone number: **(603) 669-4140 ext**

RULE 7 NOTICE OF MANDATORY APPEAL

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT
Steven A. Bolton, Esq., Nashua School District, 229 Main Street, Nashua, NH 03061
boltons@nashuanh.gov

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING. ATTACH OR INCLUDE COPY OF NOTICE AND DECISION.
11/20/2023

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION, IF ANY. ATTACH OR INCLUDE COPY OF NOTICE AND DECISION.
02/20/2024

7. CRIMINAL CASES: DEFENDANT'S SENTENCE AND BAIL STATUS
N/A

8. APPELLATE DEFENDER REQUESTED? YES or NO: No
IF YOUR ANSWER IS YES, YOU MUST CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND SUBMIT A CURRENT REQUEST FOR A LAWYER FORM (FINANCIAL STATEMENT). SEE SUPREME COURT RULE 32(4).

9. IS ANY PART OF CASE CONFIDENTIAL? YES or NO: No
IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.

10. IF ANY PARTY IS A CORPORATION, LIST THE NAMES OF PARENTS, SUBSIDIARIES AND AFFILIATES.

11. DO YOU KNOW OF ANY REASON WHY ONE OR MORE OF THE SUPREME COURT JUSTICES WOULD BE DISQUALIFIED FROM THIS CASE? YES or NO: Yes
IF YOUR ANSWER IS YES, YOU MUST FILE A MOTION FOR RECUSAL IN ACCORDANCE WITH SUPREME COURT RULE 21A.

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY FOR THIS APPEAL? SEE SUPREME COURT RULE 15, COMMENT.
YES or NO: Yes
IF YOUR ANSWER IS YES, YOU MUST COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS FORM.

RULE 7 NOTICE OF MANDATORY APPEAL

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.

See attached addendum.

14. CERTIFICATIONS

I hereby certify that every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading. To the extent that an unpreserved issue is raised as plain error, I hereby certify that I have specifically identified that issue as plain error in section 13.

Anthony J. Galdieri

Appealing Party or Counsel

I hereby certify that on or before the date below, copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Supreme Court Rules 5(1) and 26(2) and with Rule 18 of the Supplemental Rules of the Supreme Court.

03/21/2024

Date

Anthony J. Galdieri

Appealing Party or Counsel

13. SPECIFIC QUESTIONS TO BE RAISED ON APPEAL

1. Whether the trial court erred in denying the defendants' motion for summary judgment.
2. Whether the trial court erred in denying the defendants' motion in limine to exclude the testimony of Dr. Rizzo-Saunders.
3. Whether the trial court erred in denying the defendants' motion in limine to exclude the testimony of Dr. Bruce Baker.
4. Whether the trial court erred in denying the defendants' motion in limine to exclude expert testimony by certain non-retained experts.
5. Whether the trial court erred in granting the plaintiffs' request for declaratory judgment deeming RSA 198:40-a, II(a) unconstitutional on its face.
6. Whether the trial court erred in granting the plaintiffs' request for injunctive relief "insofar as the Court has established a conservative minimum threshold of \$7,356.01 which base adequacy aid funding must exceed."
7. Whether the trial court should have determined what the cost items are in the statutory definition contained in RSA 193-E:2-a, I by interpreting that statute and the specific regulations applicable to it, by identifying through that analysis what cost items are not included in that statutory definition as a matter of law and legislative intent, and by determining as a matter of fact thereafter what cost items are included in that definition based on the applicable statutory and regulatory language used.
8. Whether a plaintiff can bring a Part II, Article 83 challenge to a single portion of a statutory education funding methodology to the exclusion of other portions of the same methodology and to the exclusion of other statutory funding mechanisms through which the State provides money to support public education.
9. Whether the trial court erred in allowing the plaintiffs to challenge only RSA 198:40-a, II(a) as facially unconstitutional, as opposed to the entire costing formula contained in RSA 198:40-a, II, when RSA 198:40-a, III unambiguously states that "[t]he sum total calculated under paragraph II shall be the cost of an adequate education."
10. Whether the plaintiffs presented sufficient evidence to show that RSA 198:40-a, II(a) is facially unconstitutional.

11. Whether the trial court's injunction order and subsequent direction that "the State" begin paying millions of unappropriated dollars to public school districts violates the separation of powers and this Court's education funding decisions which typically give the other co-equal branches of government a sufficient opportunity to resolve any constitutional issues identified by the judicial branch.

12. If this Court's education funding decisions allow a single trial court judge to define and cost an adequate education under Part II, Article 83, and to impose that cost on state taxpayers, whether those decisions should be overruled as unworkable, non-justiciable, and a violation of the separation of powers.

13. Whether the trial court erred in awarding the plaintiffs' reasonable attorney's fees.

Exhibit 7

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

Case No. 215-2022-cv-00167

Steven Rand, et al.

Plaintiffs

v.

The State of New Hampshire

Defendant

Affidavit of Lisa Walker (formerly Witte)

Lisa Walker, being first duly sworn, hereby depose and say as follows:

1. My name is Lisa Walker. I recently changed my name, and I was formerly known as Lisa Witte.

2. I received a subpoena commanding me to appear and testify in the above-captioned matter.

3. Testifying would constitute a significant imposition on me, personally, as well as my current and former employers.

4. I have asked the Districts' attorneys to file a Motion to Quash the subpoena.

5. I believe that I have been subpoenaed in this case because, in my role as the superintendent of the Monadnock School District, I testified in the *ConVal* trial.

6. I retired from my position as the superintendent of the Monadnock School District on January 1, 2024.

7. I was retired for four months before I began working as a part-time superintendent at the Grantham School District. I also work as a part-time EMT for Peterborough, New Hampshire. I also own and operate a small business in Peterborough, New Hampshire.

8. As an EMT, I work two eight-hour shifts per week, from 8 am to 4 pm. I work an additional 24 hours per week at the Grantham School District.

9. My EMT schedule is set a month in advance, and I am required to request any time off before the schedule is set. To take time off in September, I would have had to request time off before August 1st.

10. I am currently scheduled to work a shift for Peterborough on September 30th. I am also obligated to work at Grantham School District that week for 24 hours. To appear and testify, I would have to violate Peterborough's policy and work the 24 hours at Grantham outside of regular business hours or to fall short of my contract with that district.

11. In addition to scheduling work in Grantham and Peterborough during normal business hours, the business I own and operate requires me to be on-site frequently and immediately after I end my work day with Grantham and/or Peterborough.

12. I am no longer employed by the Monadnock School District. I would need to consult with Monadnock's counsel at length before meeting with Plaintiffs' counsel or testifying to ensure that I do not waive the district's attorney-client privilege. Differentiated aid was the subject of many privileged conversations prior to, during, and after the ConVal trial.

13. For these reasons, testifying would be a significant burden.

14. I am no longer the best source of factual information about the Monadnock School District, as I no longer work there.

Date: August 12, 2024



Lisa Walker

STATE OF NEW HAMPSHIRE

COUNTY OF Hillsborough

Subscribed and sworn to, before me, this 12th day of August, 2024, by Lisa Walker.



Notary Public

My commission expires: April 10, 2029

EDMUND M WALKER
Justice of the Peace, State of New Hampshire
My Commission Expires April 10, 2029