THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2026-0150

Steven Rand et. al.

v.

State of New Hampshire

APPEAL PURSUANT TO SUPREME COURT RULE 7 FROM A JUDGMENT OF THE ROCKINGHAM COUNTY SUPERIOR COURT

No. 2026-0150

BRIEF OF AMICUS CURIAE NEW HAMPSHIRE CHARITABLE FOUNDATION IN SUPPORT OF APPELLEES

Filed Pursuant to Sup. Ct. R. 30 with the Written Consent of All Parties to the Case

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STATEMENT OF INTEREST OF AMICUS CURIAE

John Donne famously wrote: "No man is an island . . . ." J. Donne, Meditation No. 17, *Devotions Upon Emergent Occasions* (1623). The New Hampshire Charitable Foundation ("NHCF"), and the thousands of generous donors and nonprofit grantees with whom NHCF works, share this conviction: our fates are intertwined, and when a community can draw on the potential, strength, ingenuity, and grace of every person in it, that community will be healthier, happier, more prosperous, and a better place to live for all.

NHCF's philanthropic work reflects this certainty, and the knowledge that likewise no New Hampshire community is an island. Our shared stake in the education and well-being of all New Hampshire's children does not stop at the town line and does not rest on the happenstance of zip code. NHCF's mission is for New Hampshire to be a community where everyone can thrive, not one where some are left far behind but "on average" we do okay. From the early days of NHCF more than 60 years ago, NHCF has supported high-quality public education for all New Hampshire students as indispensable to an educated citizenry, an inclusive and well-functioning democracy, and a strong and resilient economy for the people of the Granite State.

NHCF comes to this matter as New Hampshire's community foundation and largest and most visible source of philanthropic capital. Community foundations are committed to the common good, and NHCF plays a unique role in our state: identifying community needs; funding community organizations; and partnering with state and local leaders,

generous individuals and families, fellow funders, students, and others across a wide range of areas crucial to the well-being of the individual and the collective. NHCF invests nearly $80 million a year in grants to nonprofits, and close to $8 million annually as the largest provider of private scholarships for deserving New Hampshire students in need.

NHCF is statewide in reach, but also deeply rooted in the communities it serves. NHCF's philanthropic investments span many areas essential to healthy and vibrant communities. The charitable groups and initiatives NHCF supports serve people in virtually every municipality across the state; indeed, it is likely that there are few in New Hampshire who have not been touched by the work of NHCF's nonprofit grantees – from child care centers and after school programs to family resource centers and behavioral health facilities, from food pantries and soup kitchens to libraries and cultural institutions, from lake protection associations to housing organizations – and countless more. Hundreds of NHCF's grantees offer educational and enrichment opportunities, youth support, career development, and other services to help children, youth, and families thrive.

The State asserts summarily that this case is not about educational adequacy or sufficient public education funding, but that could not be further from the truth. Quality educational opportunities are largely a function of the funding that undergirds them, and New Hampshire's approach to funding public schools has left many districts with insufficient resources, many property taxpayers with unfair tax burdens, and many children with inequitable educational opportunities. NHCF's strategic plan asserts: "Our state's economic inequity is keenly felt by children in struggling communities with underfunded school districts, where student

outcomes are strongly correlated with poverty." N.H. Charitable Found., *Together We Thrive*, at 10, available at https://www.nhcf.org/wp-content/uploads/2021/05/Together-We-Thrive-May-2022.pdf. In recent decades, NHCF grants have supported major community and state government-sponsored initiatives to study and strengthen the state's public education system in New Hampshire. Because public education is vital to NHCF's core mission, for the first time in NHCF's history, NHCF appeared as an amicus curiae in the case of *Contoocook Valley School District v. State of New Hampshire* two years ago.

NHCF submits this brief to assist the court in understanding how the State's current, unconstitutional approach to education funding affects educational opportunities, community well-being, workforce strength, and civic life across New Hampshire. NHCF's statewide experience demonstrates why the constitutional responsibility to provide an adequate education cannot meaningfully be fulfilled if access to adequate opportunity depends on the property wealth of a student's municipality. The State must be held accountable in meeting its constitutional obligations to make available an adequate education for every New Hampshire child and must do so in a way that does not unduly burden and disadvantage municipalities and school districts with the fewest resources.

SUMMARY OF THE ARGUMENT

For more than 30 years, this Court has repeatedly recognized the right to an education enshrined in New Hampshire's Constitution – a right deemed to be essential to the preservation of a free government by both our Constitution's framers and this Court alike. *See* N.H. Const. pt. II, art. 83.

Yet, in its Brief, the State asks this Court to eliminate this right altogether or render it wholly unenforceable. The framers, including John Adams, would today find it troubling that the executive branch here seeks to eliminate this right, thus fostering ignorance and oppression in lieu of the knowledge and liberty intended in establishing this constitutional right. *Cf. McDuffy v. Secretary of the Executive Office of Educ.*, 415 Mass. 545, 582–83 (1993). This fundamental right remains the cornerstone to developing an educated citizenry capable of participating civically as well as succeeding economically. The protection of this fundamental right through proper judicial remedy will promote civic engagement, sustain our democracy, and preserve New Hampshire's economic stability and well-being.

The State's constitutional mandate to provide an adequate education is directly linked to fulfillment of its obligation to ensure sufficient funding, which cannot be met by relying on municipal property taxes. Such a system deepens the disparities in education received by New Hampshire students, and thus for many of our young people disadvantages their future, as well as the future of our state. Over the course of more than 30 years of patient judicial restraint, the State has still not fulfilled its duty, and, for the good of New Hampshire as a whole, the State should not be allowed to continue to shirk its constitutional obligation to fund an adequate education for all New Hampshire children.

ARGUMENT

I. THIS COURT SHOULD NEITHER ELIMINATE NOR WEAKEN NEW HAMPSHIRE CHILDREN'S CONSTITUTIONAL RIGHT TO AN ADEQUATE EDUCATION – A RIGHT FUNDAMENTAL TO NEW HAMPSHIRE'S DEMOCRACY

The State asks this Court to eliminate New Hampshire children's constitutional and judicially enforceable right to an education – something that, based on NHCF's analysis, no state in this country has ever done.[1] Alternatively, short of eliminating an enforceable right, the State argues that it can force municipalities to meet the State's obligation without regard for the resulting inequities. The practical effect of the State's argument would be to eviscerate this constitutional right for New Hampshire's children and render it wholly unenforceable. Neither of these outcomes should be entertained by this Court.

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[1] *See, e.g.*, *Vitale v. Bellows Falls Union High Sch.*, 217 Vt. 611, 622–23 (2023); *Gannon v. State*, 298 Kan. 1107, 1146 (2014); *McCleary v. State*, 173 Wash. 2d 477, 514 (2012); *Columbia Falls Elementary Sch. Dist. No. 6 v. State*, 326 Mont. 304, 310 (2005); *Lake View Sch. Dist. No. 25 of Phillips Cnty. v. Huckabee*, 364 Ark. 398, 415–16 (2005); *Abbeville Cnty. Sch. Dist. v. State*, 335 S.C. 58, 68–69 (1999); *Campbell Cnty. Sch. Dist. v. State*, 907 P.2d 1238, 1263–64 (Wyo. 1995); *McDuffy v. Sec'y of Exec. Off. of Educ.*, 415 Mass. 545, 606 (1993); *Rose v. Council for Better Educ., Inc*., 790 S.W.2d 186, 205 (Ky. 1989); *Pauley v. Kelly*, 162 W. Va. 672, 707–08 (1979); *Horton v. Meskill*, 172 Conn. 615, 648–49 (1977).

A. The Framers Viewed Education as Essential to Our Democracy and to Ameliorating Poverty

The right to an adequate education enshrined in our State Constitution and upheld by this Court for more than 30 years of jurisprudence is foundational to our democracy. Our State Constitution provides:

> Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country . . . .

N.H. Const. pt. II, art. 83 (emphasis added). The constitutional mandate that the legislature shall have the duty to "cherish" education is "not . . . merely a statement of aspiration," and imposes on our legislature the onerous yet invaluable task of ensuring that the people are educated. *Claremont Sch. Dist. v. Governor*, 138 N.H. 183, 187 (1993) ("*Claremont I*"); *see also McDuffy*, 415 Mass. at 560–61; *State v. Jackson*, 71 N.H. 552, 53 A. 1021, 1022 (1902) (holding that "the injunction 'to cherish the interest of literature'" intended "more than a mere sentimental interest" and that early legislation on education "shows conclusively, if any such evidence were needed, that the framers of the constitution, as well as their contemporaries in the legislature, regarded the subject of education as one of public concern, to be cherished, regulated, and controlled by the state; and the

great multitude and variety of acts passed since show that no different view has ever been entertained").

The framers of New Hampshire's Constitution identified an educated citizenry as "'essential to the preservation of a free government,' and believed that 'spreading the opportunities and advantages of education' is a means to the end of preserving a free, democratic state." *Claremont I*, 138 N.H. at 187 (quoting N.H. Const. pt. II, art. 83); *see also id.* (citing *McDuffy*, 415 Mass. at 561 ("Put otherwise, an educated people is viewed as essential to the preservation of the entire constitutional plan: a free, sovereign, constitutional democratic State.")); *Campbell Cnty. Sch. Dist.*, 907 P.2d at 1259 (describing the sentiment of the framers that "education was a vital and legitimate state concern, not as an end in itself, but because an educated populace was viewed as a means of survival for the democratic principles of the state").

The establishment of a right to an education under New Hampshire's Constitution arose directly out of the principles expressed by John Adams. Adams drafted the Education Clause in the Massachusetts Constitution, upon which New Hampshire modeled its own Constitution and from which it adopted a nearly identical education clause that became Part II, Article 83. *See Claremont I*, 138 N.H. at 186. John Adams believed that education was "more indispensable . . . under a free government than any other." John Adams, The Works of John Adams, VI, at 198 (C.F. Adams, ed. 1851). According to Adams, in government forms like monarchies, only "the few who are likely to govern must have some education, but the common people must be kept in ignorance[.]" *Id.* (emphasis added). Such ignorance was inimical to a democracy, as "[l]iberty cannot be preserved

without a general knowledge among the people," and "[w]herever a general knowledge and sensibility have prevailed among the people, arbitrary government and every kind of oppression have lessened and disappeared in proportion." *McDuffy*, 415 Mass. at 583 & n.50 (quoting *Dissertation on the Canon and Feudal Law*, in III The Works of John Adams 447, 448 (C.F. Adams ed. 1851)). Adams and other framers associated "ignorance" with "oppression," as juxtaposed with "knowledge and liberty," and eschewed the criticism of education as a "needless expense," arguing such a position "was calculated to foster ignorance and, with it, servility." *McDuffy*, 515 Mass. at 582–83 (expressing John Adams's belief that "widespread public education was integral to the very existence of a republican government"); *id.* at 584–85 (citing Samuel Adams's belief in the "Necessity & Importance of encouraging that System of Education, which in my opinion is so well calculated to diffuse among the Individuals of the Community the Principles of Morality, so essentially necessary to the Preservation of publick Liberty").

Thus, contrary to the State's contention, the drafters of our State Constitution saw widespread education, particularly for the poor, as essential to a free and democratic state and had every reason to create an enforceable right for all the state's children to receive an adequate education. The original drafter of the Education Clause also did not ignore the fact that education came with expense. Adams believed that "[l]aws for the liberal education of youth, especially the lower classes of people, are so extremely wise and useful, that, to a humane and generous mind, no expense for this purpose would be thought extravagant." John Adams, IV

Thoughts on Government in The Works of John Adams 189, 199 (C.F. Adams ed. 1851). He also wrote:

> The instruction of the people, and every kind of knowledge that can be of use to them in the practice of their moral duties, as men, citizens, and Christians, and of their political and civil duties, as members of society and freemen, ought to be the care of the public, and of all who have any share in the conduct of its affairs, in a manner in that never yet has been practised in any age or nation. The education here intended is not merely that of the children of the rich and noble, but of every rank and class of people, down to the lowest and the poorest. It is not too much to say, that schools for education of all should be placed in convenient distances, and maintained at public expense. The revenues of the State would be applied infinitely better, more charitably, wisely, usefully, and therefore politically, in this way than even maintaining the poor. This would be the best way of preventing the existence of the poor.

John Adams, The Works of John Adams, VI, at 168 (C.F. Adams, ed. 1851).

This Court has followed the reasoning of the framers when, time and again, it recognized the right as the "cornerstone of our democratic system." *See Claremont I*, 138 N.H. at 191–92 (quoting 1795 speech by Governor Gilman and response by the House and Senate, which vowed to "most cordially embrace all proper measures to diffuse Knowledge and Information, to promote Literature and to cherish seminaries of Learning as the most direct and certain means to perpetuate to posterity that Constitution, which forms our Glory, our Safety, and our Happiness"). This Court has held that the State's constitutional duty, the responsibility for which the State now seeks either to shirk or to pass onto the shoulders of New Hampshire towns, "extends beyond mere reading, writing and

arithmetic," and "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." *Claremont I*, 138 N.H. at 192. *See also McCleary*, 173 Wash. 2d at 516 ("[T]he State's constitutional duty to provide an 'education' goes beyond mere reading, writing and arithmetic. It also embraces broad educational opportunities needed in the contemporary setting to equip our children for their role as citizens and as potential competitors in today's market as well as in the marketplace of ideas. Education plays a critical role in a free society. It must prepare our children to participate intelligently and effectively in our open political system to ensure that system's survival." (internal citations and quotations omitted)); *Rose*, 790 S.W.2d at 210–12; *Pauley*, 162 W. Va. at 705–06. In addition to ensuring the survival and success of local and national democracy, it is also "doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954).

The Constitutional provision guaranteeing an adequate education is thus vital to the economy, as well as to the success of democracy and the body politic, and "even a minimalist view of educational adequacy recognizes the role of education in preparing citizens to participate in the exercise of voting and first amendment rights. The latter being recognized as fundamental, it is illogical to place the means to exercise those rights on less substantial constitutional footing than the rights themselves." *Claremont Sch. Dist. v. Governor*, 142 N.H. 462, 473 (1997) ("*Claremont II*"). *Fogg v. Board of Educ. of Union Sch. Dist. of Littleton*, 82 A. 173, 175–76, 76 N.H. 296 (1912) ("The primary purpose of the maintenance of

the common-school system is the promotion of the general intelligence of the people constituting the body politic and thereby to increase the usefulness and efficiency of the citizens, upon which the government of society depends.").

B. The State's Request to Eliminate the Constitutional Right of New Hampshire Students to an Adequate Education Is Unjustified

Over the past 30 years, this Court has time and again recognized this constitutional right, and there is no basis to reverse that jurisprudence now. Under the doctrine of *stare decisis*, this Court's ruling "demands respect in a society governed by the rule of law, for when governing legal standards are open to revision in every case, deciding cases becomes a mere exercise of judicial will with arbitrary and unpredictable results." *Appeal of N.H. Dept. Transportation*, 174 N.H. 610, 615 (2021). "When asked to reconsider a holding, the question is not whether [the Court] would decide the issue differently de novo, but whether the ruling has come to be seen so clearly as error that its enforcement was for that very reason doomed." *Id.* The Court's holding that there is a constitutional right to an adequate education is not in any way erroneous; nor was, or is, its enforcement "doomed." The Legislature has simply and repeatedly failed to meaningfully act on its constitutional mandate since this Court's decision in *Claremont I*. *See also Londonderry Sch.. Dist. SAU No. 12 v. State*, 154 N.H. 153, 163 (2006) ("Respectful of the roles of the legislative and executive branches, each time this court has been requested to define the substantive content of a constitutionally adequate public education, we have properly demurred. Deference, however, has its limits."). The logical

extension of the State's apparent position that legislative intransigence is a recipe for rendering decisions of this Court "doomed" and thus reversible would be an invitation for policymakers to flout any decisions of this Court where there is legislative resistance or controversy. In fact, the Legislature has recently shown its hand in seeking to escape any judicial oversight or accountability for meeting its Constitutional obligation to ensure an adequate education for all New Hampshire children. *See* HB 1815-FN (N.H. 2026) ("How the state and its local governmental entities choose to raise, allocate, and spend financial resources to implement this integrated public education system is a political policy matter reserved to legislative and executive judgment and control.").

Contrary to the State's position, none of the factors weighed when analyzing whether to overrule precedent apply in this case. The rule here has not become "difficult or impractical" to apply. *Ball v. Roman Catholic Bishop of Manchester*, 177 N.H. 612, 620 (2025). The General Court's failure to act is not evidence that the Court's *Claremont* jurisprudence is "unworkable." Overruling *Claremont* would create a hardship by continuing to widen the disparities within New Hampshire communities and impairing educational attainment and socio-economic mobility for many of our young people, as discussed in more detail *infra*. *Id.* Finally, the law has not developed in such a manner as to undercut this Court's *Claremont* jurisprudence, and no facts have changed or have come to be seen so differently as to rob that jurisprudence of significant application or justification. *Id*.

Likewise, whether the State has met its obligation to provide an adequate education is inextricably intertwined with whether the State has

met its obligation to assure sufficient funding, making education funding a constitutional question within this Court's purview to adjudicate. *See Campbell Cnty.*, 907 P.2d at 1264 ("When the legislature's transgression is a failure to act, our duty to protect individual rights includes compelling legislative action required by the constitution."). As Justice Marshall wrote in the seminal case of *Marbury v. Madison*:

> So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

5 U.S. 137, 178 (1803) (emphasis added). Whether the State has delivered a constitutionally adequate public education to all children by way of sufficient funding is therefore a justiciable question, as recognized by this Court in *Claremont I* and its progeny, as well as numerous other state courts. *See Contoocook Valley Sch. Dist. v. State*, 177 N.H. 406, 431 (2025) ("Our school funding jurisprudence spanning the last three decades conclusively demonstrates the justiciability of the constitutional question presented."); *see also McCleary*, 173 Wash. 2d at 546 ("While we recognize that the issue is complex and no option may prove wholly satisfactory, this is not a reason for the judiciary to throw up its hands and offer no remedy at all."); *Columbia Falls Elementary Sch. Dist. No. 6*, 326 Mont. at 309 ("[A]lthough the provision may be non-self-executing, thus requiring initial legislative action, the courts, as final interpreters of the Constitution, have the final obligation to guard, enforce, and protect every

right granted or secured by the Constitution . . . .” (internal quotations omitted)); *Campbell Cnty.*, 907 P.2d at 1264; *Rose*, 790 S.W.2d at 209. When asked to do so, the Court is entitled—and obligated—to test the constitutionality of what the Legislature has done and assess whether constitutional duties are being met.

The State has failed to provide any basis for its contention that this Court should look past the principle of *stare decisis* and more than 30 years of this Court’s clear and well-reasoned rulings. The question of how the State funds education is also justiciable and well-deserving of this Court’s scrutiny.

C. The Constitutional Right to an Education Is an Affirmative Duty Imposed on the State

Because our Constitution provides it is the Legislature’s duty to ensure an adequate education, the State’s argument that it is “irrational” to conclude that an affirmative constitutional right is found anywhere besides Part I of the Constitution is incorrect. This right is an affirmative or positive constitutional right that “imposes a duty on the State to ‘realize and advance the objects and purposes for which . . . powers have been granted” – distinct from so-called “negative” constitutional rights that impose an obligation on the State to refrain from certain actions. Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review*, 112 Harv. L. Rev. 1131, 1138 (Apr. 1999) (quoting D.J. Galligan, *Discretionary Powers: A Legal Study of Official Discretion*, at 30 (1986)). The insertion of that right in Part II of New Hampshire’s Constitution, which grants the government its powers, *see Wooster v. Plymouth*, 62 N.H. 193, 197 (1882), aligns with the general structure of our Constitution: the

obligation to ensure an adequate education is an affirmative obligation of the Legislature, which body of government is only established by the grace of Part II. The Court's pronouncement in *Fogg* that "[f]ree schooling furnished by the state is not so much a right granted to pupils as a duty imposed upon them for the public good" is therefore not in conflict with this Court's *Claremont* jurisprudence, as the State contends in its brief. *See Fogg*, 82 A. at 175, 177 (holding that, where the plaintiff's son lived over four miles from the nearest school, and transportation provided to him by the school board would be for his benefit alone, "the mere matter of the expense does not justify the board in refusing to furnish any transportation for the plaintiff's son during any part of the school year" and that this refusal to provide transportation "practically den[ied] him the means of attending a public school for any part of the school year" and was therefore "unauthorized and illegal"). In fact, the Encouragement of Education clause was given its own section in Part II, thereby equating the importance of education with the establishment of the Senate, House, and Judiciary. *See id.* ("In accordance with this injunction [in the Encouragement of Education clause], the state has always maintained for its protection and at great expense a common school system which long ago became one of the most important governmental agencies.").

D. The State Cannot Meet Its Constitutional Obligation by Relying on Unequal Municipal Property Taxes

The State cannot have it both ways: if the State is permitted to "delegat[e] down" to New Hampshire municipalities this constitutional obligation, the unequal taxes imposed by municipalities across the State – on behalf of the State and its obligation to fund an adequate education –

constitute a state tax and are therefore unconstitutional for disproportionality. N.H. Const. pt. II, art. 5. If these municipal taxes are not taxes imposed on behalf of the State, then the State is shirking its responsibility altogether in citing to and relying on them when claiming it has funded an adequate education. Further, were the State to prevail in its position that it may delegate to municipalities its constitutional responsibility to fund an adequate education, the State could conceivably provide $1 per child and rely on municipal taxes for the balance, with disastrous results for both students and taxpayers in our poorer communities.

This Court has already rejected the argument that New Hampshire's history of fostering local control over education justifies the State relying on disparate municipal property taxes to satisfy its duty to fund an adequate education. This Court held in *Claremont II*:

> We recognize that local control plays a valuable role in public education; however, the State cannot use local control as a justification for allowing the existence of educational services below the level of constitutional adequacy. The responsibility for ensuring the provision of an adequate public education and an adequate level of resources for all students in New Hampshire lies with the State.

142 N.H. at 475–76 (emphasis added). *See Campbell Cnty.*, 907 P.2d at 1246 ("[L]ocal control is not a constitutionally recognized interest and cannot be the basis for disparity in equal educational opportunity."). Relying on towns to fund their own schools conditions a child's right to an adequate education on the zip code they happen to live in, thus foregoing the constitutional requirement to "spread[] the opportunities and advantages

of education through the various parts of the country." N.H. Const. pt. II, art. 83.

The State argues in its brief that its historical reliance on local districts and municipalities in the late 18th and early 19th centuries to organize schools undercuts this Court's precedent that there is a constitutional right to an adequate education funded by the State. Local funding arrangements pre-dating this Court's holding in *Claremont I* do not and cannot justify eliminating New Hampshire children's constitutional right to an adequate education, particularly where such arrangements promote the concentration of resources in wealthy towns and do not equally spread educational opportunity as the Constitution requires. N.H. Const. pt. II, art. 83; *see also* John Adams, Papers of John Adams, I, at 106 (Robert J. Taylor, ed. 1977) ("Knowledge monopolized, or in the Possession of a few, is a Curse to Mankind. We should dispense it among all Ranks. We should educate our children. Equality should be preserved in knowledge."). As explained below, there are serious consequences for New Hampshire when the unequal concentration of educational resources persists under a predominantly municipality-funded model.

II. ABSENT THE STATE PROVIDING REQUISITE RESOURCES, INEQUITIES IN OUR PUBLIC EDUCATION SYSTEM WILL PERSIST AND WORSEN

New Hampshire's unequal tax burdens, disparate educational opportunities, and uneven student outcomes demonstrate the consequences of relying on unequal municipal resources. It is the State's recognized responsibility to provide funding to ensure that every child has access to an adequate education. And it is critical to understand what is at stake when

the State fails to meet this constitutional mandate. Despite more than 30 years of this Court patiently urging the Legislature to act to meet its constitutional obligations, state support for local communities remains inequitable and falls far short of what schools need to help our children learn and thrive. New Hampshire has the dubious distinction of ranking last in the entire nation for the percentage of public education revenue provided through state funding. N.H. Fiscal Policy Inst., *Analysis: Property Taxpayers Fund More than Seven in Ten Dollars Spent on New Hampshire Public Education* (Aug. 5, 2026), https://nhfpi.org/press-releases/analysis-property-taxpayers-fund-more-than-seven-in-ten-dollars-spent-on-new-hampshire-public-education/.

Indeed, the State's share of school funding has steadily declined over time, failing to keep up with rising costs and making local property taxpayers shoulder an increasing share of New Hampshire's total education funding burden. N.H. Fiscal Policy Inst., *Issue Brief: Why State Adequate Education Aid Varies by Community* (Aug. 3, 2026), at 7. Today, property taxes account for approximately 72% of all public school district revenue, with approximately 63% from local education property taxes and 9% from SWEPT, a state tax collected and retained by municipalities. *Id.* at 3. This downshifting has not affected all communities, property taxpayers, or children equally. Funding inadequacies and tax rate disparities have helped certain pockets of New Hampshire prosper, while other New Hampshire children and communities have fallen even further behind.

Different New Hampshire communities have very different capacities to raise education revenue through property taxes, based on their aggregate property wealth. Some communities can raise substantial revenue

with comparatively modest tax rates, while others must impose a much higher burden on property taxpayers to raise the same or, often, far less education revenue. For example, the owner of a $500,000 home in Charlestown – with a combined education property tax rate of $25.10 per $1,000 of property value – would pay $12,550 in local and state education property taxes. In neighboring Acworth – with a combined education property tax rate of just $9.13 – the owner of a $500,000 home would pay only $4,565. *See* N.H. Dep't Revenue Admin., *Municipal Tax Rates 2025* (Jan. 23, 2026). Such a substantial difference in tax rates may influence household and business decisions with the consequence of further widening disparities in property wealth and tax capacity over time.

The regressive nature of the State's approach to education funding, including allowing wealthier communities to retain "excess" SWEPT dollars, means that high poverty districts receive far less per pupil funding than low-poverty districts unless high-poverty districts collect property taxes at markedly higher rates. And even with heavy tax burdens in low-income communities, the funding is inadequate given the needs of the student population. The State recognizes (in its approach to differentiated aid) that on average it costs more to provide for the educational needs of children in poverty. *See* Comm'n to Study Sch. Funding, *Our Schools, Our Kids: Achieving Greater Equity for New Hampshire Students and Taxpayers* ("Commission Rpt."), at 7, 15, 38 (Dec. 1, 2020).

Public education is a public good that benefits us all, whether we have children in the school system or not, and whether we live in property-rich communities or not. We all rely on an educated populace to become the nurses, doctors, nonprofit leaders, teachers, entrepreneurs, public-health

researchers, elected officials, lawyers, judges, community volunteers, engineers, emergency responders, builders, service professionals, homecare workers, and others who support every facet of life in New Hampshire. Robust state support for public education matters across: (1) individual student achievement and economic and social mobility; (2) workforce pipeline and economic prosperity; and (3) the state's overall civic health.

A. The Importance of Education to Individual Student Achievement and Economic and Social Mobility

New Hampshire Department of Education data reveal notable differences in mathematics, reading, and science proficiency associated with district poverty and local property wealth. In 2019, the New Hampshire General Court created an independent, bipartisan commission to study school funding, with members appointed by legislative leaders and the Governor. The Commission's 2020 report included this finding:

> While New Hampshire's state-average student outcomes are among the best in the country, that is not true for all school districts. Average performance by district falls over a wide range with some districts well above state average and others so far below average that it calls into question whether there was an opportunity for any students in those districts to access an adequate education.

Commission Rpt. at 47–48 (December 1, 2020). The Commission's report found that "the highest poverty districts in New Hampshire spend less money per student, on average, than more affluent districts. As a corollary, [d]istricts with higher property wealth spend more, on average, than districts with lower property wealth." *Id.* at 74 (internal quotations omitted). The Commission also found that poorer student outcomes are

related to lower spending per student, which is in turn tied to lower property valuations. *Id.*

While property-poor communities strain to raise enough tax revenue to meet their children's education funding needs, Department of Education data reflect that student proficiency on statewide assessments of mathematics, reading, and science varies concerningly among the most property rich and the most property poor communities. In a comparison based on equalized property values per pupil, students in the communities that fall in the bottom quartile (that is, the 25% of municipalities with the least property wealth per student) perform worse than those in the highest quartile (the top 25% of wealthiest communities by this measure) on every single proficiency assessment: mathematics, reading, and science, at every tested grade level (3rd, 5th, 8th, and 11th grades).[2] Looking more closely at the lowest quartile, for example, in the 2025–2026 school year, only 15% of 11th grade students in these districts scored proficient in math, versus over double that (36%) in districts that fall in the highest quartile. Eighth grade reading and science proficiency disparities were likewise skewed: only 33% of New Hampshire students in the bottom quartile scored proficient in reading and 20% proficient in science, compared to 60% and

[2] The assertions in this paragraph are derived from an independent analysis commissioned by NHCF based on New Hampshire Department of Education Assessment Data, https://www.education.nh.gov/who-we-are/division-of-educator-and-analytic-resources/bureau-of-education-statistics/assessment-data.

41% proficiency rates, respectively, among New Hampshire students in the highest quartile.[3]

While the State focuses on average student performance, we know that averages do not tell the whole story and fail to account for students whose educational needs are not being met by the current inequitable funding approach. Research highlights that, "[e]ven as New Hampshire's average graduation rate remains above the national average, this broad metric conceals disparities [among] communities. Averages cannot convey the reality of places where one in three students doesn't graduate on time in four years, or where rates fluctuate dramatically year to year because small schools lack stable resources." N.H. Sch. Funding Fairness Project, *Graduation Gaps: Examining Inequities in New Hampshire's Public Schools*, https://fairfundingnh.org/graduation-rates-2025/. The same research highlights a "general trend in New Hampshire public high schools where higher equalized valuation per pupil[4] often aligns with higher graduation rates. Consistent with this broader statewide pattern, Moultonborough, with one of the highest valuations per pupil at nearly $15

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[3] *See supra*, note 2. All proficiency percentages cited are district averages. An average of all student scores for districts in each quartile was calculated to assess the percentages of students that scored at a certain proficiency level. For example, 15% of 11th grade students in all of the districts in the lowest quartile scored "proficient" in math.

[4] "Equalized valuation per pupil" is a measure of a school district's local property wealth relative to the number of public school students it serves, calculated by the total fair market value of taxable property in a district (equalized to be assessed at 100% of market value), divided by the number of resident public school students. RSA 198:15-u.

million, reports a graduation rate of 90.48%, while schools like Pittsfield and Franklin, with valuations per pupil below $1.3 million, have significantly lower graduation rates of 70.8% and 72.53%, respectively. *Id.*

Research looking at SAT scores reflects similar evidence of disparities. "Students in high schools in property-poor districts (equalized property value per student below $900,000) had lower average [SAT] scores than those with higher property values per student." N.H. Sch. Funding Fairness Project, *Variation in New Hampshire Public High School SAT Scores*, https://fairfundingnh.org/variation-new-hampshire-public-high-school-sat-scores/. "The average SAT result for all 79 high schools over the three years studied was 1037. Among the nineteen high schools with the least equalized property values per pupil, all below $900,000 per pupil, not one had an average score equal to the state average or better." *Id.* (emphasis added). The State's representation that New Hampshire students are "on average" scoring above the national average in certain assessments does not paint the full picture of what is happening in our state.

These wide variations in educational achievement have long term consequences for New Hampshire students. Students lacking baseline proficiency, a high school diploma, or at least average SAT scores are far less likely to be able to pursue higher education. Higher education supports social mobility, greater access to employment opportunities, and increased earnings. *See* Nat'l Acads., *Reducing Intergenerational Poverty*, https://nap.nationalacademies.org/resource/27058/interactive/; U.S. Bureau of Labor Statistics, *Unemployment Rates for People 25 Years and Older by Educational Attainment*, https://www.bls.gov/charts/employment-situation/unemployment-rates-for-persons-25-years-and-older-by-

educational-attainment.htm. Lower educational attainment, in turn, is linked to higher rates of unemployment and poverty as well poorer health outcomes, including higher rates of cardiovascular and all-cause mortality. Najah Khan et al., *Low Educational Attainment Is Associated with Higher All-cause and Cardiovascular Mortality in the United States Adult Population*, BMC Public Health (May 2023); Nat'l Bureau of Econ. Research, *Why Do More Educated Communities Have Better Health Outcomes?*, https://www.nber.org/bh/20242/why-do-more-educated-communities-have-better-health-outcomes?page=1&perPage=50. In his book *Our Kids*, noted author and political scientist Robert Putnam flagged achievement disparities between non-poor and poor students nationally, and the tendency of those with higher incomes to increasingly self-segregate into higher performing schools, highlighting this driving concern: "[A]cademic achievement . . . is a dominant contributor to class disparities in later outcomes, such as college graduation, incarceration, and adult earnings." Robert Putnam, *Our Kids*, at 162 (2015).

B. The Importance of Education to New Hampshire's Workforce Pipeline and Economic Prosperity

When the State fails to adequately support all public schools to meet the educational needs of all our children, we consign some of our kids to achieving less than their full potential and to worse outcomes. Individual student disparities, of course, feed up into workforce challenges. Increasing access to educational attainment is key to the success of our economy and to the businesses that call New Hampshire home. Workforce projections suggest that almost 69% of jobs in the state will require a credential beyond high school. Georgetown Univ., McCourt School of Public Policy, Center

on Education and the Workforce, *After Everything: Projections of Jobs, Education, and Training Requirements Through 2031*, at 130. For our state's economy to prosper, we must focus on cultivating a skilled and well-educated workforce.

Currently, the state is facing daunting workforce challenges. First, not enough credentialed workers exist to meet the demands of current employers. As of 2023, there were only 28 available workers for every 100 open positions in New Hampshire, and "[a]ccess to a qualified workforce remains the foremost challenge facing businesses today, particularly as the labor market continues to evolve in response to technological advancements, demographic changes, and shifting workforce values and expectations." N.H. Dep't Bus. & Econ. Affairs, *Workforce Toolbox Executive Summary*, https://www.nheconomy.com/office-of-outdoor-recreation/what-we-do/workforce-development/workforce-toolbox-executive-summary (citing U.S. Chamber of Commerce, *Understanding New Hampshire's Labor Market*, https://www.uschamber.com/workforce/understanding-new-hampshire-labor-market). This workforce capacity gap exists in every corner of the state and across many sectors, requiring that all our students have access to a high-quality public education that positions them to take advantage of post-secondary options and to meet the demands of today's labor market.

Moreover, the state is projected to face a potentially catastrophic labor shortfall in the coming years, with a projection of over 190,000 unfilled jobs in New Hampshire by 2032. N.H. Dep't Bus. & Econ. Affairs, *State of New Hampshire Workforce Assessment*, at 24 (Aug. 2022). We can

ill afford to leave any of our students behind by failing to educate them for participation in New Hampshire's workforce of tomorrow.

Additionally, even with local talent and labor force growth, the state will need to attract skilled workers to relocate here to fill some of the jobs most critical to our economy. *Id.* at 38–39. While there are many strategies for attracting this pool of talent, research supports the link between quality schools and attracting newcomers, including skilled workers and their families. *See* Alexander Marre, et al., *School Quality as a Tool for Attracting People to Rural Areas*, Federal Reserve Bank of Richmond (Aug. 2020), https://www.richmondfed.org/publications/research/economic_brief/2020/eb_20-09. The economic future of our state therefore depends in no small part on New Hampshire having high-quality, State-supported, and equitably resourced schools.

C. The Importance of Education to New Hampshire's Civic Health

Modern research substantiates John Adams's belief that an educated citizenry and the functioning of a free and democratic society are fundamentally linked. Such research demonstrates that educational attainment is positively associated with many of the indices of civic health and civic participation that make our state strong: voting, attending public meetings, charitable giving, participation in social groups, and whether one believes that they matter to their community. Univ. N.H. Carsey Sch. of Pub. Policy, *2020 New Hampshire Civic Health Index*, at 12–13, 19–20 (2020); Univ. N.H. Carsey Sch. of Pub. Policy, *2024 New Hampshire Civic Health Report*, at 15, 17, 19 (2024). Indeed, the 2020 Civic Health Index

produced by the Carsey School of Public Policy at the University of New Hampshire found that "[e]ducation is the most consistent, stable predictor of civic behavior of all types." Univ. N.H. Carsey Sch. of Pub. Policy, *2020 New Hampshire Civic Health Index*, at 7 (2020). The report also noted that student educational experiences tied to varying funding levels of public education "can have consequences for their later participation in public life." *Id.* at 9. "Those with a college degree are much more likely to vote than are those with only a high school degree, and the more education one has, the more likely one is to vote." *Id.* at 11. "Education overwhelmingly makes a difference in the way Granite Staters participate and take action in political and civic life in their communities," and "without a doubt, education (both achievement and access to civics education) influences Granite Staters' civic habits, attitudes, and subsequent participation in their communities." *Id.* at 12–13. "On almost every measure, higher educational achievement levels were associated with higher levels of civic awareness and engagement." *Id.* at 20.

Those responsible for framing the State's constitutional duty to educate our youth cared deeply about the fundamental link between an educated citizenry and the functioning of a free and democratic society. So, too, does NHCF. The constitutional duty imposed on the State to fund an adequate education has not been met and cannot be satisfied by shifting the burden onto New Hampshire municipalities. Such a framework fails to "spread[] the opportunities and advantages of education" throughout the state as required by the Constitution, and forsakes the future of our state's children. N.H. Const. pt. II, art. 83.

CONCLUSION

For the foregoing reasons, NHCF respectfully requests that this Honorable Court affirm the trial court's order and reject the State's efforts to eliminate or impair New Hampshire children's constitutional right to an education.

Respectfully submitted,

NEW HAMPSHIRE CHARITABLE FOUNDATION

By their attorneys,

McLANE MIDDLETON, PROFESSIONAL ASSOCIATION

Dated: November 3, 2026

By: */s/ Michael A. Delaney*

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SUPREME COURT RULE 30 CERTIFICATION OF WRITTEN CONSENT

Undersigned counsel hereby certifies that they have received the written consent of all parties to the case to file this amicus brief.

Date: November 3, 2026 By: */s/ Michael A. Delaney*

Michael A. Delaney, NH Bar 10504

CERTIFICATE OF COMPLIANCE

I, Michael A. Delaney, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains less than 9,500 words exclusive of pages containing the table of contents, table of citations, and any addendum containing the pertinent text of constitutions, statutes, rules, regulations, and/or other such matters. Counsel relied upon the word count of the computer program used to prepare this brief.

Date: November 3, 2026 */s/ Michael A. Delaney*
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief has been served on all parties via service through the Court's electronic filing system.

Date: November 3, 2026 By: */s/ Michael A. Delaney*
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