

THE STATE OF NEW HAMPSHIRE

GRAFTON, SS

SUPERIOR COURT

No. 215-2022-CV-00167

Steven Rand, et al.

v.

The State of New Hampshire

ANSWER TO FIRST AMENDED COMPLAINT

The State of New Hampshire, by and through the Office of the Attorney General, submits the following Answer and Affirmative Defenses to the plaintiffs' First Amended Complaint¹:

1. This paragraph consists of prefatory language summarizing the nature of the plaintiffs' claims to which no response is necessary. If response is deemed necessary, the State admits only that the plaintiffs bring an action seeking a declaratory ruling that the State is failing to fund a constitutionally adequate education in violation of Part II, Article 83 of the New Hampshire Constitution and that the manner in which the State raises funds to pay for an adequate education violates Part II, Article 5 of the New Hampshire Constitution. The State lacks knowledge or information sufficient to form a belief as to the truth of the assertion in this paragraph that all of the plaintiffs "own real property in New Hampshire and pay local school property taxes to fund kindergarten through twelfth grade public education," and therefore denies

¹ The First Amended Complaint contains several headings and subheadings. Many of these headings and subheadings merely describe sections commonly found in pleadings, such as "Introduction" and "The Parties," and do not appear to contain freestanding allegations. The State does not address those specific headings and subheadings in this Answer, but generally denies them to the extent they are deemed to contain allegations to which responses are necessary. Many of the headings and subheadings in the First Amended Complaint contain statements of fact or law that go behind merely describing the sections of the First Amended Complaint to which they correspond. The State specifically addresses those headings and subheadings below.

it. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

2. This paragraph consists of prefatory language summarizing one of the plaintiffs' request for relief to which no response is necessary. If a response is deemed necessary, the State admits that the plaintiffs seek a permanent injunction in relation to the State's education-funding system and have included a catchall request for all other relief "as is just and proper." If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

3. The State lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

4. The State lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

5. The State lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

6. The State lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

7. The State lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

8. This paragraph contains statements of law or legal conclusions to which no response is necessary. If a response is deemed necessary, the State admits that it is a "governmental body." The State further admits that it "may sue" or "be sued" in certain circumstances prescribed in the law, but denies this statement to the extent it is inconsistent with sovereign immunity or any other limitation on the ability to recover from the State. The State

further admits that the New Hampshire Supreme Court has held “that part II, article 83 imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding.” *Claremont Sch. Dist. v. Governor*, 138 N.H. 183, 184 (1993) (“*Claremont I*”). The State further admits that the New Hampshire Supreme Court has held:

Part II, article 5 of the State Constitution provides that the legislature may impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state. This article requires that all taxes be proportionate and reasonable—that is, equal in valuation and uniform in rate.

Claremont Sch. Dist. v. Governor, 142 N.H. 462, 468 (1997) (“*Claremont II*”) (citations and quotation marks omitted). To the extent the statements in this paragraph are inconsistent with the New Hampshire Supreme Court’s school-funding jurisprudence or seek to expand the rights and remedies available under the jurisprudence, those statements are denied. The State admits, as a general matter, that it 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,” but lacks information or knowledge sufficient to know what specific laws, rules, and practices this generalized statement is referring to.

Section III, Subheading A: Section III, subheading A of the First Amended Complaint contains statements of law and legal conclusions to which no response is necessary. If a response is deemed necessary, the State admits these statements and conclusions only insofar as they are consistent with New Hampshire Supreme Court precedent, and denies them to the extent they reflect an attempt to expand the rights and remedies available under the jurisprudence.

9. This paragraph characterizes and quotes from a judicial opinion that speaks for itself. If a response is deemed necessary, the State admits that the plaintiffs have accurately quoted excerpts from page 465 of the New Hampshire Supreme Court’s decision in *Claremont*

II. The State further admits that in *Claremont II*, the New Hampshire Supreme Court held at the time that “the property tax levied to fund education is, by virtue of the State’s duty to provide a constitutionally adequate public education, a State tax and as such is disproportionate and unreasonable in violation of part II, article 5 of the New Hampshire Constitution.” 142 N.H. at 466. The State further admits that the Court allowed the challenged “funding mechanism may remain in effect through the 1998 tax year.” *Id.* at 476–77. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

10. This paragraph characterizes and quotes from a judicial opinion that speaks for itself. If a response to this paragraph is deemed necessary, the State admits that the plaintiffs have accurately quoted excerpts from page 469 of the New Hampshire Supreme Court’s decision in *Claremont II*. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

11. This paragraph characterizes and quotes from a judicial opinion that speaks for itself. If a response to this paragraph is deemed necessary, the State admits that the plaintiffs have accurately quoted an excerpt from 471 of the New Hampshire Supreme Court’s decision in *Claremont II*, save that the emphasis in the quotation has been added by the plaintiffs. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

12. This paragraph characterizes and quotes from a judicial opinion that speaks for itself. If a response to this paragraph is deemed necessary, the State admits that the plaintiffs have accurately quoted an excerpt from 471 of the New Hampshire Supreme Court’s decision in *Claremont II*. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

Section III, Subheading B: Section III, subheading B of the First Amended Complaint contains a statement of law to which no response is necessary. If a response is deemed necessary, the State admits these statements and conclusions only insofar as they are consistent with New Hampshire Supreme Court precedent, and denies them to the extent they reflect an attempt to expand the rights and remedies available under the jurisprudence.

13. This paragraph contains statements of law, legal conclusions, and characterizations of and quotations from judicial decisions to which no response is necessary. If a response is deemed necessary, the State admits that the language in the New Hampshire Constitution from which the New Hampshire Supreme Court derived in *Claremont I* an affirmative duty to provide the opportunity for a constitutionally adequate education has existed in the State Constitution since 1784. The State denies that this affirmative constitutional duty had been recognized before that decision. The State admits that the plaintiffs have accurately quoted excerpts from the *Claremont I* decision. The State further admits that the New Hampshire Supreme Court has held:

Part II, article 5 of the State Constitution provides that the legislature may impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state. This article requires that all taxes be proportionate and reasonable—that is, equal in valuation and uniform in rate.

Claremont II, 142 N.H. at 468. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied. Footnote one contains the plaintiffs' own characterization of the focus of their First Amended Complaint to which no response is necessary. If a response to footnote one is deemed necessary, the State denies that the plaintiffs have identified any unconstitutional lack in uniformity in tax rates in their First Amended Complaint.

14. The State admits the first sentence of this paragraph. With respect to the second sentence of this paragraph, the State admits only that the document available at the link cited in this paragraph reflects that during the 2020-2021 school year “equitable education aid” accounted for approximately 28.6% of school districts’ total net revenues. The State denies all other allegations, characterizations, or assertions contained in the second sentence of this paragraph. The State further denies that a school district’s total actual expenditures in any way reflect the cost of delivering a constitutionally adequate education.

15. The statements in this paragraph and footnote 2 are admitted. The State further admits that the values contained in the second column of Table B, contained in the appendix of the First Amended Complaint, are accurate for the fiscal year beginning July 1, 2021. The State further admits that these values are reflected in the chart available at the link cited in footnote 10.

16. Denied.

17. The State admits that with differentiated aid included, the State provided school districts with adequacy aid in an amount of \$4,597.82 per pupil during the 2020-2021 school year. The State admits that the state average total actual operating expenses of all elementary, middle, and high schools in New Hampshire was \$18,434.21 per pupil during the 2020-2021 school year. The statement in footnote three is admitted. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

18. The State admits only that the document cited and linked in this paragraph reflects that the total expenditures for elementary and secondary education in New Hampshire during the 2020-2021 school years was \$21,762.96 per pupil and that this number is approximately \$3,300 higher per pupil than the total actual operating expenses addressed in paragraph 17 of the First Amended Complaint. If this paragraph contains any other allegations to which a response is

deemed necessary, those allegations are denied. The State admits the allegations in footnote four only insofar as the costs referenced do not fall within the definition of an adequate education.

Footnote four is otherwise denied.

19. The State admits that the Statewide Education Property Tax (SWEPT) is collected and distributed at a local level and raises funds used to meet the cost of an adequate education. The State admits that for the fiscal year starting July 1, 2022, the SWEPT will account for approximately 7% of the total actual expenditures for public elementary and secondary education in New Hampshire. The State admits that for the fiscal year starting July 1, 2022, the SWEPT will raise \$263 million. If this paragraph or footnote five contains any other allegations to which a response is deemed necessary, those allegations are denied.

20. The State admits that that during the 2020-2021 fiscal year, the amount raised by the SWEPT accounted for approximately 10% of total net revenues for education, as reflected in the document cited and linked in footnote six. The State admits that the total amount raised by the SWEPT is slated to return to \$363 million during the fiscal year starting July 1, 2023. The State otherwise lacks information or knowledge sufficient to form a belief as to the truth of the allegations in this paragraph.

21. The State admits that it provided school districts with adequacy aid in an amount of \$4,597.82 per pupil during the 2020-2021 school year and that in some communities the amount raised by the SWEPT exceeds the total amount of adequacy aid provided to those communities. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

22. The State admits that since 2011, communities for which the amount raised by the SWEPT exceeds the total amount of adequacy aid paid by the State have been permitted to retain

the excess amounts raised by the SWEPT. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

23. The State admits that during the 2020-2021 fiscal year, local taxation accounted for 60.7% of the total net revenues for New Hampshire public school districts as reflected in the document cited and linked in this paragraph. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

24. The State admits that local education tax rates vary from community to community. All other allegations in this paragraph are denied.

25. Denied.

26. The State admits only that the quotation in the parenthetical citation in this paragraph is an excerpt from the document cited and linked in this paragraph. The State otherwise lacks information or knowledge sufficient to form a belief as to the truth of the allegations in this paragraph.

Section V: The header for Section V of the First Amended Complaint contains a statement of law to which no response is necessary. If a response is deemed necessary, the header for Section V of the First Amended Complaint is denied.

27. Denied.

Section V, Subheading A: Section V, subheading A of the First Amended Complaint contains a statement of law to which no response is necessary. If a response is deemed necessary, Section V, Subheading A of the First Amended Complaint is denied.

28. The text of this paragraph is admitted. The first sentence of footnote seven is admitted. The second sentence of footnote seven is admitted insofar as page 148 of the document cited and linked in that sentence contains the described footnote. The State lacks information or

knowledge sufficient to form a belief as to what the word “must” means as used in the second sentence of footnote seven.

29. Admitted.

30. Admitted.

31. The State lacks information or knowledge sufficient to know what the word “eliminated” means as used in this sentence. The State admits that the reduction in the total amount collected by the SWEPT during the 2022-2023 fiscal year resulted in fewer communities retaining excess SWEPT funds.

32. The State admits that for the fiscal year starting July 1, 2023, the amount collected by the SWEPT is scheduled to return to \$363 million. The State further admits this paragraph insofar as it alleges that it is likely that during the fiscal year starting July 1, 2023, there will be communities in which the amount raised by the SWEPT exceeds the total amount of adequacy aid paid to those communities. This paragraph is otherwise denied.

33. The State admits this paragraph only insofar as it alleges that it is likely that during the fiscal year starting July 1, 2023, there will be communities in which the amount raised by the SWEPT exceeds the total amount of adequacy aid paid to those communities. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

34. The State admits only that since 2011, communities for which the amount raised by the SWEPT exceeds the total amount of adequacy aid paid by the State have been permitted to retain the excess amounts raised by the SWEPT. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

35. The State admits that a small number of towns have set negative local education tax rates. The State lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

36. The State admits that the tax rates asserted in this paragraph accurately reflect New Hampshire Department of Education reported “equalized” tax rates for Hale’s Location for the 2020-2021 school year, as reflected in the chart available at https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/values-2020-revised_0.pdf. The State admits that the difference between +\$1.85/\$1,000 and -\$1.84/\$1,000 is +\$0.01/\$1,000. To the extent this paragraph contains additional allegations to which a response is deemed necessary, those allegations are denied.

37. The State admits that the values contained in the second and third columns of Table C, contained in the appendix to the First Amended Complaint, are accurate equalized tax rates for the 2020-2021 school year and that they are reflected in the document available at the link cited in footnote 11. This paragraph contains a statement as to the plaintiffs’ expectations to which no response is necessary. If a response is deemed necessary, the State lacks information or knowledge sufficient to form a belief as to the truth of the statements in this paragraph.

38. This paragraph contains a legal conclusion to which no response is necessary. If a response is deemed necessary, the State denies the allegations in this paragraph.

39. Denied.

Section V, Subheading B: Section V, subheading B of the First Amended Complaint contains a statement of law to which no response is necessary. If a response is deemed necessary, Section V, Subheading B of the First Amended Complaint is denied.

Section V, Subheading B.i.: Section V, subheading B.i. of the First Amended Complaint contains a statement of law to which no response is necessary. If a response is deemed necessary, Section V, Subheading B.i. of the First Amended Complaint is denied.

40. This paragraph contains a series of legal conclusions and statements of law to which no response is necessary. If a response is deemed necessary, this paragraph is admitted only insofar as it contains accurate parenthetical quotations of excerpts from the decisions cited in the paragraph and the State agrees that the New Hampshire Supreme Court has not itself defined the components of a constitutionally adequate education in its prior school-funding decisions and left this task to the legislature. All other allegations in this paragraph are denied.

41. Admitted.

42. The State lacks information or knowledge sufficient to know what the plaintiffs mean by “de minimis” as used in the first sentence of this paragraph. The State admits that during the 2016 fiscal year, base adequacy was \$3,561.27 per pupil.

43. Admitted.

44. Admitted

45. Denied.

46. The State admits only that this paragraph accurately quotes an excerpt from the cited opinion, save that the emphasis in the quote has been added. The remainder of this paragraph is denied.

47. This paragraph contains a statement of a legal contention made by the plaintiffs in this case to which no response is necessary. If a response to that contention is deemed necessary, this paragraph is denied in its entirety.

48. The first sentence of this paragraph is admitted. The second sentence is admitted insofar as it alleges that the per-pupil costs referenced in this paragraph do not contain capital or transportation costs, but is otherwise denied. The third sentence is admitted.

49. The State lacks information or knowledge sufficient to form a belief as to the truth of the allegations in this paragraph as worded.

50. The State lacks information or knowledge sufficient to form a belief as to the truth of the allegations in this paragraph.

51. The first sentence of this paragraph is admitted. The State admits that the document cited and linked in footnote eight reflects that the total actual per pupil expenditures of expenditures of school districts within New Hampshire exceed the amount of per pupil adequacy aid received from the State. The State denies that it is obligated to fund any school district's actual costs or that constitutional adequacy is determined by any school district's actual costs.

52. Denied.

Section V, Subheading B.ii.: Section V, subheading B.ii. of the First Amended Complaint contains a statement of law to which no response is necessary. If a response is deemed necessary, Section V, Subheading B.ii. of the First Amended Complaint is denied.

53. The first three sentences of this paragraph are statements of law to which no response is necessary. If a response is deemed necessary, the State admits that the first three sentences of this paragraph appear to be accurate statements of New Hampshire Supreme Court precedents. The fourth sentence is denied.

54. The State admits that the reported state average equalized valuation per pupil during the 2020-2021 school year was \$1,346,793. The State further admits that the equalized valuation per pupil is derived by taking the total equalized value and dividing it by the number of

pupils that reside in the district and are the financial responsibility of the district. This paragraph is otherwise denied.

55. Admitted.

56. Admitted.

57. The State admits that Portsmouth had an equalized valuation per pupil of \$3,399,350. The State denies that this is “just shy of three times the state average.”

58. The State lacks information or knowledge sufficient to form a belief as to where petitioner Steven Rand lives. The State admits that the reported equalized valuation per pupil in Plymouth during the 2020-2021 school year was \$942,652. The State admits that \$942,652 is roughly 70% of \$1,346,793. This paragraph is otherwise denied.

59. The State admits that Plymouth had an equalized valuation per pupil during the 2015-2016 school year of \$826,496, that the state average valuation per pupil that school year was \$939,001, and that the former is roughly 88% of the latter. This paragraph is otherwise denied.

60. The first sentence of this paragraph is admitted to the extent it refers to public school students. The second sentence of this paragraph is admitted. The third sentence of this paragraph is admitted. The fourth sentence, contained in parentheses, is denied insofar as it tries to redefine what constitutes the Pemi-Baker Cooperative School District.

61. The State lacks information or knowledge sufficient to form a belief as to the truth of the allegations in this paragraph.

62. The State admits only that the equalized valuations asserted in this paragraph are accurate. The allegations in this paragraph are otherwise denied.

63. The State denies that Ellsworth and Waterville Valley are part of the Pemi-Baker Cooperative School District. The State admits that the equalized valuations per pupil contained in the second and third columns of Table D, attached to the First Amended Complaint as an appendix, are accurate and are reflected in the charts available at the links cited in footnotes 12 and 13, respectively.

64. The State lacks information or knowledge sufficient to form a belief as to where the three plaintiffs identified in this paragraph live. The State also lacks information or knowledge sufficient to form a belief as to the remaining allegations in this paragraph, which consist entirely of generalized statements.

65. The State lacks information or knowledge sufficient to form a belief as to where plaintiff James Lewis lives. The State admits that the equalized valuations in this paragraph are accurate and that \$941,727 is roughly 69.9% of \$1,346,793. All other allegations in this paragraph are denied.

66. The State admits that Hopkinton had an equalized valuation per pupil of \$711,379 during the 2015-2016 school year, that the state average equalized valuation per pupil during that school year was \$939,001 and that the former is roughly 75.7% of the latter. All other allegations in this paragraph are denied.

67. The State lacks information or knowledge sufficient to form a belief as to where plaintiff John Lunn lives. The State admits that the equalized valuations in this paragraph are accurate and that \$649,873 is roughly 48.2% of \$1,346,793. All other allegations in this paragraph are denied.

68. The State admits that Newport had an equalized valuation per pupil of \$503,931 during the 2015-2016 school year, that the state average equalized valuation per pupil during that

school year was \$939,001, and that the former is roughly 53.7% of the latter. All other allegations in this paragraph are denied.

69. The State admits that Penacook had a equalized valuation per pupil of \$654,006 during the 2020-2021 school year and that this is roughly 48.6% of the state average equalized valuation per pupil and roughly 57% of the equalized valuation per pupil of Concord, as reflected in the chart available at the following link https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/EVPP-FY-2021-PDF_0.pdf. To the extent this paragraph contains other allegations to which a response is deemed necessary, those allegations are denied.

70. The State admits that Penacook had an equalized valuation per pupil of \$468,614 during the 2015-2016 school year, which was roughly 50% of the state average during that school year. All other allegations in this paragraph are denied.

71. This paragraph contains the plaintiffs' own summary of what they purportedly allege in the following paragraphs of their complaint to which no response is necessary. If a response is deemed necessary, the State denies that the manner in which the plaintiffs characterize or use the SWEPT and equalized school tax rates in their complaint is relevant to any claim they bring in this case.

72. The State lacks information or knowledge sufficient to form a belief as to where plaintiff Steven Rand lives. The State admits that Plymouth is part of the Pemi-Baker Regional Cooperate School District. The State denies that Waterville Valley is part of the Pemi-Baker Regional Cooperate School District. Subject to an understanding that the plaintiffs derived the combined the equalized tax rates alleged in this paragraph by adding the values in columns 12 and 14 in the chart available at https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/values-2020-revised_0.pdf, the State admits that the equalized tax

rates alleged in this paragraph are accurate for the 2020-2021 school year. Subject to that same understanding, the State admits that the equalized tax rates included in the chart appended to the First Amended Complaint as Table E are accurate. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

73. Subject to an understanding that the plaintiffs derived the combined the equalized tax rate alleged in this paragraph by adding the values in columns 12 and 14 in the chart available at https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/values-2020-revised_0.pdf, the State admits that the equalized tax rate alleged in this paragraph is accurate for the 2020-2021 school year. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

74. The State lacks information or knowledge sufficient to form a belief as to where the plaintiffs identified in this paragraph live. The State admits that Penacook is part of the Merrimack Valley School District. Subject to an understanding that the plaintiffs derived the equalized SWEPT and local education tax rates alleged in this paragraph from columns 12 and 14 in the chart available at https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/values-2020-revised_0.pdf, and the combined equalized tax rates by adding those two columns together, the State admits that the equalized tax rates alleged in this paragraph are accurate for the 2020-2021 school year. If this paragraph contains any other allegations to which a response is deemed necessary, those allegations are denied.

75. The State lacks information or knowledge sufficient to form a belief as to where plaintiff James Lewis lives. Subject to an understanding that the plaintiffs derived the equalized SWEPT and local education tax rates alleged in this paragraph from columns 12 and 14 in the chart available at <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline->

[documents/sonh/values-2020-revised 0.pdf](#), and the combined equalized tax rates by adding those two columns together, the State admits that the equalized tax rates alleged in this paragraph are accurate for the 2020-2021 school year.

76. The State lacks information or knowledge sufficient to form a belief as to where plaintiff John Lunn lives. Subject to an understanding that the plaintiffs derived the equalized SWEPT and local education tax rates alleged in this paragraph from columns 12 and 14 in the chart available at <https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/values-2020-revised 0.pdf>, and the combined equalized tax rates by adding those two columns together, the State admits that the tax rates alleged in this paragraph are accurate for the 2020-2021 school year.

77. The State admits that the equalized tax rates alleged in the paragraphs 72 through 76 are contained in or derived from the chart available at the link cited in this paragraph. The remainder of this paragraph is denied.

78. Denied.

Header VI: To the extent a response to this header is deemed necessary, the State denies that the plaintiffs have any viable cause of action in this case.

79. The State adopts and incorporates by reference every preceding paragraph in this answer as if fully set forth herein.

80. This paragraph contains a statement of declaratory relief requested by the plaintiffs to which no response is necessary. If a response is deemed necessary, the State denies that the plaintiffs are entitled to any relief in this case, declaratory or otherwise. The State further denies each of the specific statements made in the three underlined sentences contained in this paragraph.

81. This paragraph contains a statement of injunctive relief requested by the plaintiffs to which no response is necessary. If a response is deemed necessary, the State denies that the plaintiffs are entitled to any relief in this case, injunctive or otherwise. The State further denies each of the specific statements made in this paragraph.

82. This paragraph contains a statement of relief requested by the plaintiffs to which no response is necessary. If a response is deemed necessary, the State denies that the plaintiffs are entitled to any relief in this case. The State further denies the specific relief requested in this paragraph.

Header VII: To the extent a response to this header is deemed necessary, the State denies that the plaintiffs are entitled to any relief in this case.

Prayer A: The State denies that the plaintiffs are entitled to any declaratory relief in this case.

Prayer B: The State denies that the plaintiffs are entitled to any injunctive relief in this case or that the State has violated the Constitution.

Prayer C: The State denies that the plaintiffs are entitled to any order requiring the State to revise its cost determination or that the manner in which the State costs and funds public education violates the Constitution.

Prayer D: The State denies that the plaintiffs are entitled to an award of costs and attorney fees in this case.

Prayer E: The State denies that the plaintiffs are entitled any other relief in this case.

Appendix to Complaint: The plaintiffs have attached several tables to their First Amended Complaint as an appendix. It is the State's position that these tables are not part of the

body of the complaint and that no response is therefore required. If a response is deemed required, the State specifically responds as follows:

Table A: The State lacks information or knowledge sufficient to form a belief as to the truth of the statements in this table.

Table B: The State admits that the values contained in the second column of this table are accurate for the fiscal year beginning July 1, 2021. The State further admits that these values are reflected in the chart available at the link cited in footnote 10.

Table C: The State admits that the values contained in the second and third columns of this table are accurate equalized tax rates for the 2020-2021 school year and that they are reflected in the chart available at the link cited in footnote 11.

Table D: The State denies that Ellsworth and Waterville Valley are part of the Pemi-Baker Cooperative School District. The State admits that the equalized valuations per pupil contained in the second and third columns of this chart are accurate and are reflected in the charts available at the links cited in footnotes 12 and 13, respectively.

Table E: The State denies that Ellsworth and Waterville Valley are part of the Pemi-Baker Cooperative School District. The State admits that the equalized tax rates contained in this chart are accurate, that the values contained in the second and third columns of this chart are reflected in the chart available at the link cited in footnote 14, and that the values contained in the fourth column of this chart reflect the total of the values contained in the second and third columns.

AFFIRMATIVE DEFENSES

First Affirmative Defense

One or more of the counts contained in the complaint fail to state causes of action upon which relief can be granted as to one or more of the plaintiffs in the case.

Second Affirmative Defense

The State is entitled to assert all applicable immunities, including but not limited to sovereign immunity, official immunity, discretionary function immunity, and any other immunities that may apply.

Third Affirmative Defense

One or more requests for equitable relief may be barred by the doctrine of separation of powers.

Fourth Affirmative Defense

One or more requests for equitable relief may be barred in whole or in part by the doctrine of acquiescence.

Fifth Affirmative Defense

One or more requests for equitable relief may be barred in whole or in part by waiver or estoppel.

Sixth Affirmative Defense

One or more requests for equitable relief may be barred by laches.

Seventh Affirmative Defense

One or more claims in this case may be barred in whole or in part by the statute of limitations.

Eighth Affirmative Defense

The State alleges that school districts expend significant funds due to the provision of constitutionally unnecessary programs and services, that school districts expend significant funds on matters of local district choices, local district philosophies, and local district accounting practices, and/or that school districts expend significant funds on infrastructure and other resources that are not needed or are inefficient and/or obsolete.

Ninth Affirmative Defense

The State allege that this Court lacks jurisdiction to award any relief to the plaintiffs other than a simple declaration that the State is, or is not, complying with its constitutional duties. The means of satisfying its constitutional duties rest with the New Hampshire legislature. Among other things, the New Hampshire legislature possesses the exclusive discretion to determine what programs and what levels of funding are necessary and appropriate and the current statutes, programs, and funding meet those constitutional obligations.

Tenth Affirmative Defense

This case presents one or more non-justiciable political questions due to a lack of judicially discoverable and manageable standards, the impossibility of deciding the issues without making policy determinations of a kind clearly reserved to nonjudicial discretion, and the State Constitution itself textually commits the issues to the other branches of state government.

RESERVATION OF RIGHTS

The defendants presently have insufficient knowledge or information upon which to form a belief as to whether they may have other, as yet unstated, defenses or affirmative defenses. The defendants reserve the right to assert any additional defenses or affirmative defenses that

discovery indicates may be appropriate. The defendants reserve the right to amend or to seek to amend this answer or the defenses asserted herein.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: September 7, 2022

/s/ Samuel Garland
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Certificate of Service

I hereby certify that a copy of the foregoing was served this day on all counsel of record using the Court's electronic-filing system.

Date: September 7, 2022

/s/ Samuel Garland
Samuel R.V. Garland