

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT

213-2019-CV-00069

Contoocook Valley School District, et al.

v.

State of New Hampshire, et al.

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**ANSWER TO THIRD AMENDED PETITION FOR  
DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND DAMAGES**

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The defendants, the State of New Hampshire, the New Hampshire Department of Education, Christopher T. Sununu, in his official capacity as Governor of the State of New Hampshire, and Frank Edelblut, in his official capacity as Governor of the State of New Hampshire, hereby answer the Third Amended Petition for Declaratory Judgment, Injunctive Relief and Damages of the plaintiffs.

**INTRODUCTION**

The Introduction contains statements and conclusions of law to which no response is required. To the extent a response is required, the defendants deny the allegations in the Introduction.

**PARTIES**

1. Admitted.
2. The defendants lack knowledge or information sufficient to form a belief of the truth of the allegations in this paragraph.
3. The defendants lack knowledge or information sufficient to form a belief of the truth of the allegations in this paragraph.

4. The defendants lack knowledge or information sufficient to form a belief of the truth of the allegations in this paragraph.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

**VENUE AND JURISDICTION**

15. Admitted.

16. Admitted.

**FACTS**

17. The allegations in this paragraph constitute a conclusion of law to which no response is required. To the extent a response is required, the defendants deny the allegations. The defendants further deny footnote 1 and do not rely on it to establish a uniform meaning consistent with the substance of the Third Amended Petition because the Third Amended Petition does not use the term “State” consistently throughout with the definition ascribed to it in footnote 1. Thus, when the term “State” is used in the Third Amended Petition, the defendants will treat the reference as referring solely to the “State” and, through this answer, expressly deny

any broader interpretation of that term, no matter which paragraph in the Third Amended Petition the term “State” appears.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Denied.

23. This paragraph contains solely statements and conclusions of law to which no response is require. To the extent a response is required, the allegations are denied and it is further noted that the decision cited constitute advisory, non-precedential advice.

24. Denied.

25. The first sentence of this paragraph is denied. The second sentence of this paragraph does not appear to be an allegation of fact and is, therefore, denied.

26. The defendants lack knowledge or information sufficient to form a belief of the truth of the allegations in this paragraph. The defendants admit footnote 2.

27. Denied. The first, second, and fourth sentences in footnote 3 are admitted. The third sentence in footnote 3 is denied.

28. Admitted.

29. Denied. Footnote 4 does not appear to contain allegations of fact or law to which a response is a required; however, to the extent a response is required, the defendants lack knowledge or information sufficient to form a belief regarding that statement. Footnote 5 refers to footnote 3, the defendants’ response to which is contained above in paragraph 27.

30. The defendants admit only that the 2008 Spreadsheet utilizes certain information to determine the universal cost of providing the opportunity for an adequate education as defined by RSA 193-E:2-a for the Joint Legislative Oversight Committee’s purposes and that the 2008 Spreadsheet otherwise speaks for itself. The defendants deny any and all other allegations in this paragraph.

31. Denied.

32. Denied.

### **TRANSPORTATION COSTS**

33. Denied. The defendants further deny that transportation costs are part of the definition of a constitutionally adequate education as set forth in RSA 193-E:2 and RSA 193-E:2-a that the State is required to fund.

34. The defendants are unclear as to what the terms “[c]urrent state funding” and “base universal transportation cost” mean in this paragraph. The defendants therefore lack knowledge or information sufficient to form a belief regarding the truth of the allegations contained in this paragraph.

35. The defendants receive from the school districts self-reported, unaudited transportation costs. The defendants do not know the accuracy of that data or whether true transportation costs have been included in that data. Moreover, Exhibit B appears to contain school districts with 10 or more pupils that have self-reported transportation costs of less than \$400 per pupil. The defendants therefore lack knowledge or information sufficient to form a belief regarding the truth of the allegations contained in this paragraph.

36. The defendants lack knowledge or information sufficient to form a belief regarding the truth of the allegations contained in this paragraph.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

### **TEACHER STUDENT RATIOS**

43. Denied.

44. Admitted.

45. Denied.

46. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

47. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

48. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

49. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

50. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

51. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

52. The Department of Education receives from the school districts self-reported, unaudited data on teacher to student ratios and the Department of Education publishes it. The State has not itself independently verified or otherwise validated this self-reported data on teacher to student ratios and computed the average teacher to student ratio for each year for at least the past 10 years from that verified data. The defendants therefore deny the allegations contained in this paragraph.

53. Denied.

54. Denied.

55. The Department of Education receives from the school districts self-reported, unaudited data on teacher to student ratios and the Department of Education publishes it. The State has not itself independently verified or otherwise validated this self-reported data on teacher to student ratios and computed the average teacher to student ratio for each year for at least the past 10 years from that verified data. The defendants therefore deny the allegations contained in this paragraph. For the foregoing reasons, footnote 6 is also denied.

56. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

57. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

58. Denied.

## TEACHER BENEFITS

59. The defendants lack knowledge or information sufficient to form a belief in the truth of the allegations in this paragraph.

60. The defendants admit that the 2008 Spreadsheet appears to use a benefit cost of 33% or \$11,728 per teacher.

61. The defendants lack knowledge or information sufficient to form a belief in the truth of the allegations in this paragraph.

62. The Department of Education receives from the school districts self-reported, unaudited data on teacher salaries and publishes it. The State has not itself independently verified or otherwise validated this self-reported data. The defendants admit that the Department of Education has published this self-reported, unverified data on its website, but lacks knowledge or information sufficient to form a belief about the truth or accuracy of that data.

63. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

64. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

65. Admitted.

66. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

67. The defendants admit that the State requires school districts to provide workers compensation coverage and unemployment insurance. The defendants lack knowledge or information sufficient to form a belief about the truth or accuracy of the assertion that those costs “total at least \$150 per teacher per year.”

68. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

69. It is not clear to the defendants what the term “employees” means or what type of “employees” the term is meant to encompass. The defendants therefore lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

70. Denied.

**SCHOOL NURSES, SUPERINTENDENT SERVICES AND FOOD SERVICES**  
**MANDATED BY THE STATE**

71. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

72. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

73. Denied.

74. Denied.

75. Admitted.

76. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

77. The survey referenced in Paragraph 77 is not a survey conducted or created by the Department of Education. The defendants therefore lack the knowledge or information sufficient to form a belief about the truth or accuracy of the allegations in this paragraph and the information in the survey.

78. Denied.

79. Admitted.

80. Denied.

81. Denied.

82. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

83. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

84. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

85. Denied.

86. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

87. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

88. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

89. Denied.

#### **FACILITIES OPERATION AND MAINTENANCE**

90. Denied. The defendants further deny that facilities operation and maintenance costs are part of the definition of a constitutionally adequate education as set forth in RSA 193-E:2 and RSA 193-E:2-a that the State is required to fund.

91. The defendants admit only that a learning environment generally requires things like light and heat and snowplowing may need to occur in certain instances for the learning

environment to be accessed. The defendants otherwise deny the allegations contained in this paragraph.

92. The defendants admit that the 2008 Spreadsheet appears to attribute \$195 per pupil for facilities operation and maintenance.

93. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

94. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph. The defendants also lack knowledge or information sufficient to form a belief about the truth or accuracy of footnote 7.

95. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

96. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

97. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

98. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

99. Denied.

100. Denied.

**BASE ADEQUACY CAN BE COMPUTED USING THE STATE'S OWN DATA**

101. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

102. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

103. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

104. Denied.

105. Denied.

106. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

107. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

108. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

109. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

110. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

111. Admitted.

112. Denied. The defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of footnote 8.

113. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

114. Admitted.

115. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

116. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

117. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

118. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

119. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

120. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

121. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in the first sentence of this paragraph. The defendants deny the second sentence of this paragraph.

122. Denied.

123. Denied.

124. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

125. The defendants admit only that the SWEPT rate has decreased before. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the remaining allegations in this paragraph.

126. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

127. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

**2019 Fiscal Year**

128. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph and footnote 9.

129. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

130. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

131. Denied.

132. Admitted.

133. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

134. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

135. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

136. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

137. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

138. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

139. Denied.

140. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

141. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

142. Denied.

143. The defendants admit that, in fiscal year 2019, Monadnock received base adequacy aid at a rate of \$3,636.06 per public. All other allegations contained in this paragraph are denied.

144. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

145. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

146. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

147. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

148. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

149. Denied.

150. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

151. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

152. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

153. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

154. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

155. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

156. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

157. Denied.

158. Denied. Regarding footnote 10, the first sentence is admitted; the second sentence is denied; with respect to the third sentence, the defendants admit only that they could advance various legal arguments in this case and otherwise deny the allegations contained in this sentence; the fourth, fifth, and sixth sentences are denied.

159. The defendants admit that RSA 198:42, II provides, in part, the quoted language in this paragraph. Other language exists in RSA 198:42, II that has not been quoted.

160. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

161. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

**2020 Fiscal Year**

162. Admitted.

163. Admitted.

164. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

165. The defendants lack knowledge or information sufficient to form a belief in the truth or accuracy of the allegations in this paragraph.

166. This paragraph contains solely statements and conclusions of law to which no response is require. To the extent a response is required, the allegations are denied and it is further noted that the decision cited constitute advisory, non-precedential advice.

167. Denied.

168. Denied.

169. Denied.

170. Denied.

171. Denied.

172. Admitted.

173. Denied.

174. Denied.

175. Denied.

176. Denied.

177. Denied.

178. This paragraph contains solely statements and conclusions of law to which no response is required. To the extent a response is required, the allegations are denied and it is further noted that the decision cited constitute advisory, non-precedential advice.

179. Denied.

## **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 defendants are 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**

Defendants allege 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, inefficient, and/or obsolete.

### **NINTH AFFIRMATIVE DEFENSE**

Defendants allege that this Court lacks jurisdiction to award any relief to 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,

STATE OF NEW HAMPSHIRE, *et al.*

By their attorneys,

JOHN M. FORMELLA, ATTORNEY  
GENERAL

Date: June 21, 2021

By: /s/ Anthony J. Galdieri  
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Answer to Third Amended Petition for Declaratory Judgment, Injunctive Relief and Damages was served this 21<sup>st</sup> day of June, 2021, on all counsel of record via the court's electronic filing system.

*/s/ Anthony J. Galdieri*  
Anthony J. Galdieri