THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

ROCKINGHAM, SS. SUPERIOR COURT

Steven Rand, et al.

v.

The State of New Hampshire

No. 215-2022-CV-00167

ORDER ON THE MERITS

In this case, the plaintiffs—a group of New Hampshire property owners and taxpayers—claim that by underfunding the delivery of a constitutionally adequate education, the State forces school districts to make up the difference via local property taxes assessed at varying rates, in violation of Part II, Article 5. The Court has carefully considered the evidence presented at trial, the parties' written and oral arguments, and the applicable law. See Doc. 151 (Pls.' Post-Tr. Mem.); Doc. 153 (State's Reply); Doc. 150 (State's Post-Tr. Mem.); Doc. 152 (Pls.' Reply); see also Doc. 138 (Pls.' Pre-Tr. Mem.). As explained below, the Court GRANTS the Petition in part and DENIES it in part. After review, the Court finds and rules as follows.

Background

Part II, Article 83 of the New Hampshire Constitution ("Part II, Article 83") "imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools . . . and to guarantee adequate funding." Claremont Sch. Dist. v. Governor, 138 N.H. 183, 184 (1993) ("Claremont I"). To comply with that duty, the State must "define an adequate education, determine the cost, fund it with

constitutional taxes, and ensure its delivery through accountability." Londonderry Sch. Dist. v. State, 154 N.H. 153, 155–56 (2006) ("Londonderry I") (quotation omitted). With respect to the "constitutional taxes" requirement, Part II, Article 5 mandates that such 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 quotations omitted)).

Over time, the legislature has crafted several tax schemes aimed at complying with the State's constitutional school funding obligations. As of December 1997, the State taxed properties at whatever rate was necessary to "meet the obligations of the [local] school budget[.]" See id. at 467 (explaining the Department of Revenue Administration ("DRA") set unique property tax rates for each school district). In Claremont II, a group of plaintiffs successfully challenged this tax scheme. See id. at 465. As relevant here, the Claremont II court concluded that because "the purpose of the school tax" was "overwhelmingly a State purpose"—i.e., fulfilling the State's duty "to provide a constitutionally adequate education . . . and to guarantee adequate funding"—it constituted a State tax. Id. at 469. The court further concluded that because the State relied on local property taxes assessed at varying rates to meet its constitutional school funding obligations, the tax scheme was not "proportional and reasonable throughout the State in accordance with" Part II, Article 5. Id. at 470–71. Given these conclusions, the court explained, "[t]o the extent . . . the property tax is used . . . to fund the provision of an adequate education, the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State." Id. at 471 ("There is nothing fair or just about taxing . . . real estate in one town at four times the rate that

similar property is taxed in another town to fulfill the same purpose of meeting the State's educational duty . . . . We hold, therefore, that the varying property tax rates across the State violate [Part II, Article 5] in that such taxes, which support the public purpose of education, are unreasonable and disproportionate.").

In 2007, in an effort to fulfill the State's constitutional obligation to "define an adequate education," see Londonderry I, 154 N.H. at 155, the legislature enacted RSA 193-E:2-a. RSA 193-E:2-a provides that "the specific criteria and substantive educational program that deliver the opportunity for an adequate education shall be defined and identified as the school approval standards in the following learning areas":

(1) English/language arts and reading.
(2) Mathematics.
(3) Science.
(4) Social studies, including civics, government, economics, geography, history, and Holocaust and genocide education.
(5) Arts education, including music and visual arts.
(6) World languages.
(7) Health and wellness education. . . .
(8) Physical education.
(9) Engineering and technologies including technology applications.
(10) Personal finance literacy.
(11) Computer science.

RSA 193-E:2-a, I (also requiring that teachers integrate "[c]omputer use and digital literacy" and "[l]ogic and rhetoric" into the enumerated learning areas).

At present, State funding for the provision of an adequate education includes "base adequacy aid" and "differentiated aid" (collectively and hereinafter, "Adequacy Funding"). See RSA 198:40-a, III (providing that the "sum total" of base adequacy aid and differentiated aid, if any, "shall be the cost of an adequate education"). The State provides base adequacy aid for each pupil in the average daily membership in residence ("ADMR"), and the State provides differentiated aid for certain pupils who

meet statutory criteria. See RSA 198:40-a, II. Effective July 1, 2023, the legislature amended RSA 198:40-a to provide for base adequacy aid of $4,100 per pupil in the ADMR, and differentiated aid of $2,300 for each pupil in the ADMR who is eligible for a free or reduced price meal, $800 for each pupil in the ADMR who is an English language learner, and $2,100 for each pupil in the ADMR who receives special education services. See id.

On July 1, 2025, in Contoocook Valley Sch. Dist. v. State, 2025 N.H. 29, the New Hampshire Supreme Court ruled that the "base adequacy aid" amount was unconstitutional.

Claim Presented

In this case, the plaintiff's claims that the combined amount of "base adequacy aid" and "differential aid" – "Adequacy Funding" – is unconstitutional. The Court agrees.

Plaintiffs contend that despite the provision in RSA 198:40-a, III, reflecting that Adequacy Funding "shall be the cost of an adequate education," current Adequacy Funding levels are insufficient for any New Hampshire school district to provide students with educational programs "that deliver the opportunity for an adequate education," as defined in RSA 193-E:2-a (hereinafter "Constitutional Adequacy"). See Doc. 17. The plaintiffs further contend that the current scheme requires school districts to make up for this shortage by supplementing Adequacy Funding with local property tax revenues. See id. Noting that local property tax rates are not uniform throughout the State, the plaintiffs argue that this scheme violates their rights under Part II, Article 5, because a portion of their local property taxes is, in effect, a State tax assessed at differing rates. See id. ¶ 80; see also Claremont II, 142 N.H. at 469.

Standing, Standard of Review, and Burden of Proof

Before turning to the merits of the plaintiffs' claim, the Court must first resolve the State's contention that the plaintiffs lack standing to pursue that claim. See Doc. 150 at 3. If the plaintiffs have the necessary standing, then the Court must determine the applicable standard of review and burden of proof.

I. Standing

When evaluating whether a party has standing, New Hampshire courts focus on whether the party suffered a legal injury against which the law was designed to protect. See Conduent State & Local Sols., Inc. v. N.H. Dep't of Transp., 171 N.H. 414, 418 (2018). Neither an abstract interest in ensuring that the State Constitution is observed nor an injury indistinguishable from a generalized wrong allegedly suffered by the public at large is sufficient to constitute a personal, concrete interest. Id. Rather, the party must show that the party's own rights have been or will be directly affected. Id.

In arguing that the plaintiffs lack standing to pursue their Adequacy Funding-related taxation claim, the State characterizes that claim as advancing "a shared interest" in how the State "cost[s] and fund[s] public schools[.]" Doc. 150 at 3. The plaintiffs counter that because they own and pay taxes on properties located in areas with relatively high local tax rates, they are uniquely harmed in connection with that portion of their local taxes used to bridge the gap between Adequacy Funding levels and costs associated with Constitutional Adequacy. See Doc. 152 at 2–7.[1]

[1] The plaintiffs argue in the alternative that they have taxpayer standing pursuant to Part I, Article 8 of the State Constitution. See Doc. 152 at 7–9. Because the Court agrees with the plaintiffs that their claim concerns concrete and personal injuries, the Court need not reach their alternative assertion of taxpayer standing. Cf. Canty v. Hopkins, 146 N.H. 151, 156 (2001) (declining to reach arguments that would not alter the court's conclusion).

Upon review, the Court agrees with the plaintiffs that their claims concern concrete, personal injuries. As set forth above, Part II, Article 5 requires that "constitutional taxes" be "equal in valuation and uniform in rate." Claremont II, 142 N.H. at 468 (citations and quotations omitted)). In this case, the plaintiffs contend that by setting insufficient Adequacy Funding amounts, the State has effectively returned to a version of the funding scheme struck down in Claremont II: a system that relies on local property tax revenues, assessed at varying rates, to satisfy a portion of the State's constitutional school funding obligations. See id. at 470–71; see also Doc. 17.

At trial, the plaintiffs established that they own and pay taxes on properties that are assessed with relatively high equalized local school tax rates. Compare Pls.' Exs. 90–94 (indicating the plaintiffs pay taxes on properties located in Plymouth, Penacook, Hopkinton, and Newport) with Pls.' Ex. 38-D (2023 DRA Equalization Report) (reflecting equalized local school tax rates of 10% for Plymouth, 8.58% for Penacook, 14.09% for Hopkinton, and 11.41% for Newport, as compared to, e.g., 0.19% for New Castle and 2.43% for Rye). Thus, if Adequacy Funding levels are constitutionally insufficient, this results in unique and concrete harm to the plaintiffs: i.e., a portion of their local property tax revenues is effectively converted into a State tax assessed to the plaintiffs at disproportionately high rates. For this reason, the Court concludes that the plaintiffs have standing to pursue their Adequacy Funding-related taxation claim. See Conduent State & Local Sols., 171 N.H. at 418; see also Sirrell v. State, 146 N.H. 364, 370 (2001) (explaining that because one taxpayer's "payment of less than his share leaves more than their shares to be paid by his neighbors, his non-payment of his full share is a violation of their constitutional right" (citation and quotations omitted)).

II. Standard of Review and Burden of Proof

Having concluded that the plaintiffs have standing to pursue their Adequacy Funding-related taxation claim, the Court must next determine the applicable standard of review and burden of proof. In addressing these issues, the State argues that the Court must presume the current Adequacy Funding levels set forth in RSA 198:40-a are constitutional. See Doc. 150 at 9 (quoting Contoocook Valley Sch. Dist. v. State, 174 N.H. 154, 161 (2021) ("ConVal") for the proposition that the Court must not declare the statute invalid except on "inescapable grounds"). Relying on such a presumption, the State further argues that the plaintiffs must establish a clear and substantial conflict between the Adequacy Funding levels set forth in RSA 198:40-a and the State Constitution.[2] Id. The State acknowledges, however, that if the plaintiffs prove such a clear and substantial conflict, then the burden shifts to the State to justify the existing school funding system under strict scrutiny. Doc. 150 at 11; see also id. at 8 (citing Akins v. Sec'y of State, 154 N.H. 67, 71 (2006) in support of the proposition that a claim is entitled to review under strict judicial scrutiny when governmental action impinges on a fundamental right). The plaintiffs agree that the burden-shifting framework described by the State applies here. See Doc. 151 at 4–5.

[2] The State's post-trial filings suggest that the plaintiffs' claim, as pled, is not clearly tethered to the Adequacy Funding amounts set forth in RSA 198:40-a. See, e.g., Doc. 153 at 4. The State's filings further suggest that the plaintiffs have recently shifted their focus to RSA 198:40-a, causing unfair surprise to the State. See id. at 4–5. Upon review, the Court is unpersuaded by this characterization. Although the plaintiffs' Amended Complaint indicates that "New Hampshire's education funding system has multiple components," see Doc. 17 ¶ 14, the pleading thereafter focuses on the insufficiency of Adequacy Funding. See, e.g., id. ¶¶ 14–17 (describing Adequacy Funding levels and asserting said levels are insufficient). Read in context, the plaintiffs' request for declaratory relief—i.e., that the Court "find[] and declare[]" that "[t]he State does not currently guarantee funding sufficient to cover the cost of an adequate education" and violates Part II, Article 5 by relying on local property taxes to "bridge the gap"—is plainly tethered to RSA 198:40-a. See id. ¶ 80. The plaintiffs' focus at trial on the sufficiency of Adequacy Funding should therefore have come as no surprise to the State.

Upon review, the Court concludes that determining the applicable standard of review and burden of proof is more nuanced than the parties suggest. The State's filings focus on the standard of review applicable to a claimed violation of Part II, Article 83, and do not analyze the standard that applies where, as here, the plaintiffs allege a violation of Part II, Article 5 arising out of an alleged violation of Part II, Article 83. See, e.g., Doc. 150. For their part, the plaintiffs contend that strict scrutiny applies to claimed violations of Part II, Article 5, but they base that contention on their undeveloped argument that "the right to pay constitutional taxes is a fundamental right." See Doc. 151 at 7 (quoting Claremont Sch. Dist. v. Governor (Costs and Attorney's Fees) ("Claremont VIII"), 144 N.H. 590, 596 (1999) for the proposition that proportional "and reasonable taxation is one of the core constitutional foundations of this State"); but see Claremont VIII, 144 N.H. at 596 (characterizing "a constitutionally adequate public education" as "a fundamental right," but not assigning that characterization to "proportional and reasonable taxation").

Upon review, the Court observes that the New Hampshire Supreme Court's decision in Akins offers some guidance on the appropriate standard of review and burden of proof to apply here. See 154 N.H. at 71–72. In Akins, the court considered whether, like the right to vote, the equal right to be elected is a fundamental right. See id. (noting the supreme court had not previously "expressly determined the classification of the equal right to be elected"). In analyzing this issue, the Akins court noted that "the right to vote and the equal right to be elected are closely connected." Id. at 71 (citation and quotations omitted). Relying in part on that close connection, the Akins court concluded that the equal right to be elected is also fundamental right:

> Because the equal right to be elected operates so closely with the fundamental right to vote, and because of the importance that both rights have in our democratic system of government, and because Part I, Article 11 expressly so provides for the equal right to be elected, we conclude that every New Hampshire inhabitant's equal right to be elected into office under Part I, Article 11 is a fundamental right.

Id.

In the school funding context, the Part II, Article 5 right to proportional and reasonable taxation operates closely with the fundamental Part II, Article 83 right to a State-funded constitutionally adequate education: that is, any failure by the State to provide constitutionally sufficient school funding forces school districts to make up for the shortfall via local taxes assessed at differing rates, thereby violating Part II, Article 5. Further, like the equal right to be elected, the right to proportional and reasonable taxation is expressly provided for in our State Constitution. Applying the logic of the Akins court, this suggests that at least in the education funding context, the right to proportional and reasonable taxation is also a fundamental right.

Even if the Court were to conclude that the plaintiffs' claim implicates a fundamental right, however, this would not necessarily settle the question of which standard of review applies here. See id. at 72 (adopting United States Supreme Court's analytical framework, pursuant to which an election law that "subjects the plaintiff's rights to severe restrictions . . . must withstand strict scrutiny," but when such a law "imposes only reasonable, nondiscriminatory restrictions" then "the State's important regulatory interests are generally sufficient to justify the restrictions" (citations and quotations omitted)). Moreover, the Court assigns significance to the fact that in ruling on a prior challenge to the State's education funding tax scheme, the New Hampshire Supreme Court described the applicable standard of review as "whether, on its face, the

justification for disparate tax treatment is rational and supported by appropriate findings and whether the relief granted is reasonably related to the underlying purpose of the" disparate tax treatment. Claremont Sch. Dist. v. Governor, 144 N.H. 210, 216 (1999) ("Claremont III") (citations and quotations omitted). The standard articulated and applied in Claremont III is akin to the then-existing intermediate scrutiny standard. See Cmty. Res. for Just., Inc. v. City of Manchester, 154 N.H. 748, 758–62 (2007) (explaining that prior intermediate scrutiny standard required that challenged legislation "be reasonable, not arbitrary" and "rest upon some ground of difference having a fair and substantial relation to the object of the legislation," adopting new intermediate scrutiny standard requiring "that the challenged legislation be substantially related to an important governmental objective," and clarifying that the "burden to demonstrate that . . . challenged legislation meets this [new] test rests with the government").

If the lesser standard of intermediate scrutiny is the appropriate standard to apply here, that would mean that the State bears the initial burden of demonstrating that any insufficiency in Adequacy Funding levels, and the resulting violation of Part II, Article 5, is "substantially related to an important governmental interest." See id. As explained below, however, the State made no attempt to justify current Adequacy Funding levels at trial, opting instead to challenge the sufficiency of the plaintiffs' evidence under the strict scrutiny standard of review. See Doc. 150 at 11 (arguing there is "no legal basis to suggest that the State bears the burden to disprove the plaintiffs' claims" and that "because the plaintiffs have failed to prove a clear conflict, their claims fail"). For that reason, if the Court were to apply intermediate scrutiny here, the plaintiffs would necessarily prevail. Cf. Cmty. Res. for Just., 154 N.H. at 762.

Given: 1) the parties' apparent agreement that strict scrutiny applies; 2) the nature of and interplay between the Part II, Article 5 right to proportional and reasonable taxation and the Part II, Article 83 right to a State-funded constitutionally adequate education; 3) the reasoning in Akins; and 4) the reality that the State has made no attempt to meet the burden it would bear under the intermediate scrutiny standard, the Court will assume that strict scrutiny applies here. As a result, the Court must first analyze whether the plaintiffs have established a clear and substantial conflict between current Adequacy Funding levels and Part II, Articles 5 and 83. See ConVal, 174 N.H. at 161 ("In reviewing a legislative act, we presume it to be constitutional and will not declare it invalid . . . unless a clear and substantial conflict exists between it and the constitution." (citation omitted)); Working Stiff Partners, LLC v. City of Portsmouth, 172 N.H. 611, 622 (2019) (explaining a facial challenge is "an assertion that the challenged statute violates the Constitution in all, or virtually all" applications). If so, then under the aforementioned burden shifting framework, the Court's next task will be to analyze whether the State established that any insufficiency in existing funding levels is "necessary to achieve a compelling government interest, and is narrowly tailored to meet that end." See State v. Mack, 173 N.H. 793, 815 (2020) (citation omitted) (describing burden shifting under strict scrutiny standard).[3]

[3] As noted, the State failed to admit a scintilla of evidence at trial to justify existing Adequacy Funding levels. Accordingly, if the Court determines that the plaintiffs established a clear and substantial conflict between current Adequacy Funding levels and Part II, Articles 5 and 83, then the plaintiffs will prevail. See Mack, 173 N.H. at 815.

Relevant Funding Sources

The last preliminary issue the Court must resolve concerns the scope of relevant education funding sources. It is undisputed that New Hampshire's public schools receive funding from several sources, including the federal government. It is also undisputed that in addition to Adequacy Funding, the State provides various grants and other types of aid to many public schools. The final preliminary question before the Court is whether revenue sources outside of Adequacy Funding are relevant to the Court's analysis of the plaintiffs' claim.

Upon review, the Court concludes that such revenue sources have minimal relevance here. As set forth above, the State has a constitutional obligation to "define an adequate education, determine the cost, fund it with constitutional taxes, and ensure its delivery through accountability." Londonderry I, 154 N.H. at 155–56 (quotation omitted). The legislature has attempted to fulfill its costing and funding obligations via RSA 198:40-a, which expressly provides that Adequacy Funding—i.e., the "sum total" of base adequacy aid and differentiated aid, if any—"shall be the cost of an adequate education." RSA 198:40-a, III. By its terms, RSA 198:40-a, III, plainly and expressly contemplates gauging the State's compliance with its constitutional education funding obligations based solely on Adequacy Funding.[4]

In the Court's view, the legislature wisely and appropriately drew clear lines with respect to which funding sources are intended to fulfill the State's constitutional education funding obligations. See id. Those clear lines empower this Court and all

[4] "In no uncertain terms, the emphasized language states that the sum of the amounts listed in subparagraphs (a) through (d) of paragraph II constitutes the cost of an adequate education." Contoocook Valley Sch. Dist. v. State, No. 2024-0121, 2025 N.H. LEXIS 170, at *61 (July 1, 2025)(Countway and Donovan, dissenting).

New Hampshire citizens to meaningfully and reliably gauge whether the State is fulfilling its constitutional obligations: an outcome essential to maintaining our open and accountable system of government. See N.H. CONST. pt. I, art. 8 (memorializing the public's "right to an orderly, lawful, and accountable government"); Censabella v. Hillsborough Cnty. Att'y, 171 N.H. 424, 426 (2018) (explaining RSA chapter 91-A, the Right-to-Know Law, is intended to ensure government accountability); see also Fischer v. Superintendent, Strafford Cnty. House of Corr., 163 N.H. 515, 518 (2012) ("Separation of powers is an integral part of our governmental system of checks and balances"). By contrast, any consideration of revenue sources outside of Adequacy Funding would inject uncertainty into the analysis. Moreover, as the plaintiffs emphasized at trial, State grants and other similar revenue streams are not always predictable, and receipt of such funds is neither uniform throughout the State nor guaranteed from year to year.[5]

Considering the foregoing, the Court will not ignore the plain language of RSA 198:40-a, III, which provides that Adequacy Funding "shall be the cost of an adequate education." Rather, given the language used in RSA 198:40-a, III, and the compelling interests served thereby, the Court concludes that education revenue streams outside of Adequacy Funding are not relevant to the plaintiffs' claim that insufficient Adequacy Funding results in systemic violations of Part II, Article 83. Rather, such additional funding sources are only relevant to the plaintiffs' claim that those violations force New Hampshire school districts to rely on local property taxes, assessed at varying rates, to

[5] Notably, one of the State's experts, Dr. James Shuls, emphasized the importance of stable funding sources for education. This testimony also counsels against the consideration of unstable sources like State grants when assessing whether the State is sufficiently funding Constitutional Adequacy.

bridge the gap between Adequacy Funding levels and necessary costs of meeting Constitutional Adequacy. Having resolved this final preliminary issue, the Court now turns to the merits of the plaintiffs' claim.

Factual Findings

During trial, the Court heard testimony from several witnesses.

I. Jessica Wheeler Russell

The plaintiffs first presented testimony from Jessica Wheeler Russell, a named plaintiff who owns and pays taxes on property located in Penacook. During her testimony, Ms. Russell described the tension she felt in her capacity as a member of her local school board when attempting to balance necessary school spending—for example, a need to raise paraprofessional wages because existing amounts were proving inadequate to attract and retain requisite staff members—with the increase in local property taxes that would result. Ms. Russell's brief testimony established the theme of the plaintiffs' case: that any shortage in Adequacy Funding forces school districts to make up the difference with local property tax revenues, causing unique harm to taxpayers in property poor communities with higher local tax rates. On cross-examination, Ms. Russell acknowledged that she could not be certain an increase in Adequacy Funding would reduce the local property tax burden for individuals who live in property poor taxing districts. For the reasons articulated in the Court's standing analysis, supra, however, the Court concludes that Ms. Russell's testimony is credible and supports the plaintiffs' claim that any shortage in Adequacy Funding results in a violation of Part II, Article 5, to the detriment of property owners like the plaintiffs who pay disproportionately high local equalized school tax rates.

II. Dr. John Freeman

Dr. John Freeman served as a school principal in Barrington, Seabrook, and Pittsfield (as well as two schools in Massachusetts) and as a superintendent of schools in Barrington, Pittsfield, and Strafford. Among other things, Dr. Freeman credibly testified that his superintendent work required him to review budget data and other information related to school spending—both for his own school district and others in New Hampshire—in preparing a school budget each year. Based in part on those experiences, the Court certified Dr. Freeman as an expert in school operations, budgeting, finance, and education.

Despite his varied professional experiences in the field of education, most of Dr. Freeman's testimony focused on his experiences in Pittsfield. During his testimony, Dr. Freeman credibly characterized Pittsfield as a relatively poor community, explaining that during his tenure over 40% of Pittsfield's students consistently qualified for free or reduced lunch.[6] Dr. Freeman further explained that local poverty rates informed his work as superintendent. Among other things, he noted that in overseeing the annual school budgeting process he routinely received guidance from the local school board to the effect that he should try to maintain programs without causing local tax rates to increase. This posed a challenge because, after factoring in the updated costs of salaries and benefits, requests for textbooks and other supplies, and facilities needs, each year's "first draft" budget generally exceeded the preceding year's final budget.

Given the pressure he felt to keep the school budget and resulting local property tax rates low, Dr. Freeman was diligent during his tenure at Pittsfield to run the most

[6] Dr. Freeman could not recall the particulars, but confidently and credibly testified that a 40% student eligibility rate for free or reduced lunch is above the State average.

efficient school program possible. The school district costs during that time reflect that Dr. Freeman's efforts proved successful: from 2008 to 2018, the Pittsfield School District budget increased by a total of only 3.45%, well below other school district increases. Dr. Freeman's success at keeping the budget low came at a systemic cost, however: he had to reduce programming options such as woodshop and machine shop, cut back from 2 foreign language options to 1, and otherwise cut services and personnel that were not strictly essential to meeting Constitutional Adequacy. He explained that such measures were necessary because he had little to no control over cost drivers such as employee health insurance, mandatory employer contributions to the New Hampshire Retirement System, teacher salaries (pursuant to the applicable collective bargaining agreement), and energy costs. He further explained that as those costs increased each year, he had to find ways to offset those increases.

A. Dr. Freeman's Analysis of Adequacy Funding

Dr. Freeman's struggle to balance the needs of Pittsfield's schools and students with the interests of local property owners led him to conduct an analysis regarding the sufficiency of Adequacy Funding.

i. Dr. Freeman's Methodology

Using actual Pittsfield data for the 2018-2019 school year, Dr. Freeman made additional cuts to what he believes was already an efficient, thread-bare budget—a budget costing approximately $10 million—with the goal of preparing a mock budget that could be met solely with the approximately $2.7 million in Adequacy Funding Pittsfield received for the 2018-2019 school year. Dr. Freeman wanted to determine what he could fund and what must be cut to operate solely on the $2.7M received in

Adequacy Funding. He explained that as he worked to carve out this mock budget from the actual 2018-2019 budget, he focused on maintaining staff and other resources unquestionably necessary to achieving what he believes to be required under RSA 193-E:2-a and related Department of Education ("DOE") rules.

Dr. Freeman credibly testified that he quickly abandoned his original goal for this experiment, having reached the conclusion that the approximately $2.7 million Pittsfield received in Adequacy Funding for the 2018-2019 school year could not, standing alone, fund Constitutional Adequacy. After reaching that conclusion, Dr. Freeman set a new mock budget target of approximately $5.3 million: a figure that was nearly twice the amount of Adequacy Funding Pittsfield received for 2018-2019, and that included additional State funding as well as federal funding administered through the State. Notably, even this adjusted target figure only amounted to approximately half of the actual 2018-2019 Pittsfield budget. Ultimately, although Dr. Freeman was able to create a mock budget that met his adjusted target figure, he credibly opined that such a budget would not meet Constitutional Adequacy.

Dr. Freeman's decision-making process for this mock budget exercise was the subject of much debate before, during, and after trial. In particular, the State argued that Dr. Freeman's opinions were not properly supported by sufficient facts or data and were not the product of reliable principles or methods. See, e.g., Doc. 117 (State's Mot. Exclude Dr. Freeman). In the Court's view, however, Dr. Freeman's testimony was properly supported by his years of experience as a school administrator and by data submitted to and collected by the DOE.[7] Moreover, Dr. Freeman's methodology in

[7] As explained more fully below, based on the evidence presented at trial, the Court finds that school budget data collected by the DOE is credible.

creating his mock budget was to eliminate cost drivers he believed to be nonessential to Constitutional Adequacy. When that resulted in a budget level above his target figure, Dr. Freeman made additional cuts of what he believed were essential cost drivers to demonstrate that his target budget level would not support Constitutional Adequacy. As the State's cross-examination of Dr. Freeman made clear, his methodology can be tested by going through each item he chose to retain in his mock budget and verifying whether that item is truly essential to meeting Constitutional Adequacy. For these reasons, the Court remains convinced that Dr. Freeman appropriately offered expert testimony concerning the items included and excluded from his mock budget, and the role those items play in meeting Constitutional Adequacy. See Doc. 130 (Sep. 12, 2024 Order) (outlining the requirements of New Hampshire Rule of Evidence 702 and RSA 516:29-a, and concluding that Dr. Freeman's proposed trial testimony satisfied those requirements).

During his testimony, Dr. Freeman described with specificity which costs he cut from Pittsfield's actual budget to create his mock budget. That information is also set out in the notes included in Exhibit 2-A, a spreadsheet containing Dr. Freeman's mock budget. While the Court need not reiterate all of Dr. Freeman's testimony here, there are a few aspects that warrant special mention.

a. Teachers

There can be no meaningful dispute that schools need teachers to meet Constitutional Adequacy. In addressing the teacher salary and benefit levels utilized in his mock budget, Dr. Freeman credibly explained that Pittsfield's teacher compensation levels are some of the lowest in the State, making it extremely difficult for Pittsfield to

attract and retain qualified teaching staff. Accord Pls.' Ex. 10-F (indicating that for the 2018-2019 school year, Pittsfield's average teacher salary was $41,717, whereas the statewide average was $59,198.20). Indeed, Dr. Freeman noted that one year all of Pittsfield's elementary school teachers left, causing negative impacts for school administration and students. Given Dr. Freeman's testimony concerning the difficulty Pittsfield experienced in attracting and retaining qualified teachers at existing compensation levels, the Court finds that Pittsfield's teacher compensation levels provide a reasonable and appropriate gauge for assessing the sufficiency of Adequacy Funding.

On cross-examination, the State asked Dr. Freeman why the teacher-to-student ratio in his mock budget is lower than State-imposed maximum class sizes. In discussing this issue, Dr. Freeman explained that school districts must meet the needs of the students who actually enroll each year. Among other things, this makes it difficult for school districts to fill every seat in a classroom. For example, if a school has 26 second graders, that school will need two second grade teachers (with a teacher-to-student ratio of 1:13) even though the applicable maximum class size is 25 students. Dr. Freeman explained that during his tenure as superintendent Pittsfield worked to combat the increased costs associated with this issue by creating several multi-grade classes. Nevertheless, he credibly opined that this issue makes it difficult for schools to attain teacher-to-student ratios that equate to State-imposed maximum class sizes.

Relatedly, Dr. Freeman also noted that particularly at the high school level, it is rare for a teacher to be qualified to teach multiple subjects and/or the same subject across different grade levels. For example, a teacher qualified to teach high school

physics may not be qualified to teach high school chemistry. Dr. Freeman accounted for this reality in his mock budget, allocating 1 middle or high school teacher per two grades for each of four core subjects (English, Math, Science, and Social Studies).

Upon review, the Court finds that Dr. Freeman included an appropriate number of teachers in his mock budget, and that the costs associated with those teachers provide a reasonable gauge for assessing the sufficiency of Adequacy Funding.[8]

b. Non-Teacher Cost Drivers

Another noteworthy aspect of Dr. Freeman's mock budget concerns his effort to retain non-teacher cost drivers such as transportation, facilities costs, custodial services, nurse services, superintendent services, principal services, and administrative assistant services. The State argues that these cost drivers fall outside the scope of RSA 193-E:2-a, and thus the State has no obligation to provide for these cost drivers via Adequacy Funding. See Doc. 150 at 23–25. During his trial testimony, however, Dr. Freeman credibly opined that without each of these cost drivers in place, school districts cannot function, and thus each cost driver is essential to meeting the requirements of Constitutional Adequacy. Dr. Freeman explained that without paying for student transportation, schools could not safely and reliably get students into classrooms. Without heat, electricity, and custodial services, schools could not safely house students within classrooms. Without nursing services, schools could not meet the needs of students who require daily medication or other skilled medical interventions (such as feeding tube assistance), and schools also could not appropriately respond to student

[8] In addition to cross-examining Dr. Freeman, the State also presented expert opinion testimony from Dr. Jay Greene who offered various criticisms of Dr. Freeman's methodology and resulting expert testimony. The Court addresses those criticisms below.

injuries or illnesses. Without a superintendent, principal, or other administrator tasked with hiring and supervising teachers and other staff, managing curricula from grade to grade, and overseeing student discipline, schools would not have the resources necessary to provide students with a constitutionally adequate education.[9] Lastly, absent administrative support staff, schools would require additional administrators, at a higher cost, to complete necessary administrative work.

Based on Dr. Freeman's testimony concerning the necessity of these cost drivers, the Court finds that Dr. Freeman appropriately attempted to include them in his mock budget. Further, given Dr. Freeman's credible testimony concerning his efforts to run the Pittsfield School District as efficiently as possible, the Court concludes that the non-teacher costs Dr. Freeman included in his mock budget are conservative, and thus provide a reasonable gauge for assessing the sufficiency of Adequacy Funding.

c. Special Education Costs

Notably, Dr. Freeman's mock budget contemplated substantial cuts to Pittsfield's existing special education budget. For example, Dr. Freeman cut from his mock budget numerous paraprofessional positions as well as occupational and physical therapy, even though those cost drivers were required under the Individualized Education Plan ("IEP") for certain students. Dr. Freeman opined at trial that such cuts would prevent Pittsfield from meeting Constitutional Adequacy with respect to those students who qualify for special education services. He explained, however, that he made these cuts during his mock budget exercise because, even with his adjusted target figure of approximately twice the applicable Adequacy Funding levels, Pittsfield could not meet

[9] Among other things, in the absence of an available administrator, teachers would be forced to suspend classroom instruction while addressing ongoing disciplinary issues.

general Constitutional Adequacy requirements and also provide all necessary special education staff and supports to its students.

ii. Dr. Freeman's Conclusions

In short, Dr. Freeman was not able to fund all cost drivers he believes to be essential for meeting Constitutional Adequacy via his mock budget target figure of approximately $5.3 million. Rather, after cutting what he believes to be nonessential costs, Dr. Freeman made additional cuts to get to his target figure. Although Dr. Freeman characterized his decisions as to which essential cost drivers he cut from his mock budget as "arbitrary," throughout his testimony he provided detailed and rationale explanations for those decisions. For example, while art programming is required under RSA 193-E:2-a, Dr. Freeman cut art from his mock budget because he felt it was more important to retain core classroom teachers. In light of Dr. Freeman's detailed explanations concerning the conservative figures he used in his mock budget, and because Dr. Freeman's adjusted mock budget target of approximately two times applicable Adequacy Funding levels still could not fund all costs associated with Constitutional Adequacy, Dr. Freeman's testimony lends substantial support to the plaintiffs' claim that school districts must fund a portion of the costs associated with meeting Constitutional Adequacy via local property tax revenues because existing Adequacy Funding levels are constitutionally insufficient.[10]

[10] In reaching this conclusion, the Court is not persuaded by the State's suggestion that Dr. Freeman's analysis is too outdated. The evidence presented at trial confirms that since Dr. Freeman conducted his mock budget exercise, the cost of providing a constitutionally adequate education has risen far more than the intervening increase in Adequacy Funding levels. Indeed, Dr. Freeman directly addressed this issue during his trial testimony, credibly opining that modern Adequacy Funding levels remain insufficient.

III. Dr. Corrinne Cascadden

Like Dr. Freeman, Dr. Corrinne Cascadden has decades of experience serving as a principal and school superintendent within New Hampshire school districts, to include Berlin, NH. In addition, in 2020, Dr. Cascadden served on the legislature's Commission to Study School Funding: work that required her to review financial data from every school district in New Hampshire. Based on her substantial experience, the Court certified Dr. Cascadden as an expert in school operations, school finance, and budgeting. During her trial testimony, Dr. Cascadden echoed Dr. Freeman's opinion that no New Hampshire school district can provide a constitutionally adequate education based solely on existing Adequacy Funding levels. In support, Dr. Cascadden relied on her knowledge of statewide school financial data as well as her own experience in attempting to balance the budget in the Berlin School District, particularly with respect to fiscal year 2020.

Like Dr. Freeman, Dr. Cascadden testified to significant local pressure for keeping the school budget low. Indeed, Dr. Cascadden explained that for fiscal year 2020, she and her staff went through multiple rounds of budget cuts to reduce reliance on local property tax revenues. See Pls.' Ex. 41 (reflecting various budget cuts). As she described the protracted nature of that process and the details of the associated cuts—which she reasonably characterized as "nickel and dime" cuts—it was apparent that the challenges Dr. Cascadden faced during the budget process in Berlin were not

Relatedly, although Dr. Freeman's mock budget arguably retained some cost drivers that fall outside of the State's education funding obligations, the Court finds that any such concerns are vastly outweighed by those necessary cost drivers he cut from his mock budget (such as special education paraprofessionals, physical and occupational services, and art programming).

the product of extravagant local choices. Rather, Dr. Cascadden and her team worked to craft a "bare bones" budget that met the educational needs of Berlin's students while working within the constraints of existing infrastructure.

After successive rounds of cuts, Dr. Cascadden and her team were able to reduce Berlin's budget for the 2020 fiscal year to approximately $18 million. See id. Notably, however, Berlin received only $5,619,329.95 in Adequacy Funding for fiscal year 2020. See Pls.' Ex. 44-F-a. In other words, the gap between Berlin's skeletal budget for fiscal year 2020 and the amount of Adequacy Funding Berlin received for that same year was over $12 million. As Dr. Cascadden noted during her testimony, accounting for Berlin's fiscal year 2020 stabilization grants of approximately $5.5 million only reduces this gap to approximately $6.5 million. Given the exacting cuts Dr. Cascadden and her team made to the fiscal year 2020 budget, Dr. Cascadden credibly opined that Berlin could not have met the requirements of Constitutional Adequacy without relying on local property tax revenues. In the Court's view, Dr. Cascadden's credible testimony further supported the plaintiffs' claim that existing Adequacy Funding levels are not sufficient for New Hampshire school districts to meet the requirements of Constitutional Adequacy. Dr. Cascadden's testimony further supported the plaintiffs' claim that school districts must make up for at least a portion of this shortage by supplementing Adequacy Funding with local property tax revenues.

IV. Annette Blake

The plaintiffs offered testimony from Annette Blake in support of their claim that school counseling services are a necessary component of Constitutional Adequacy. Ms. Blake explained that in addition to tracking the academic progress of individual

students year to year, school counselors assist students as they navigate any mental health concerns that might impact academic performance. The Court credits Ms. Blake's testimony concerning the role of school counselors and finds that some amount of school counseling services is likely necessary for schools to meet the requirements of Constitutional Adequacy. Yet, as the plaintiffs emphasize in their post-trial briefing, Dr. Freeman's mock budget did not include such services. Considering the foregoing, the Court finds that Ms. Blake's testimony also supported the plaintiffs' claim that existing Adequacy Funding levels are insufficient.

V. Dr. Jennifer Dolloff

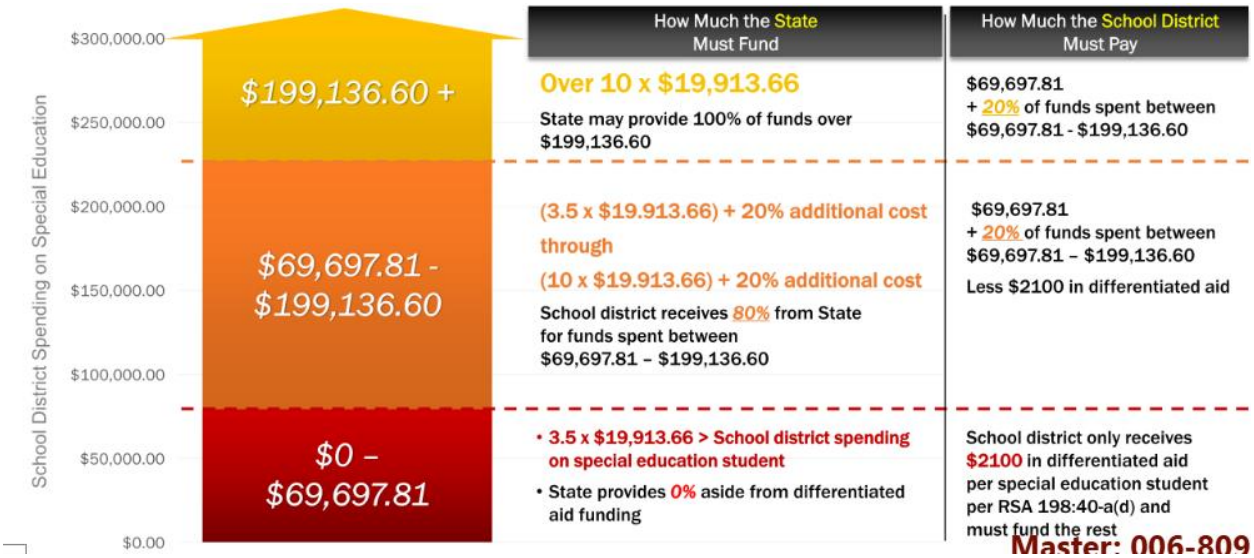
In addition to challenging the sufficiency of Adequacy Funding, in general, the plaintiffs offered testimony from Dr. Jennifer Dolloff in support of their claim that Adequacy Funding for students eligible for special education services (hereinafter "special education differentiated aid") is constitutionally insufficient. Dr. Dolloff has extensive experience with special education, including how New Hampshire school districts work to meet the needs of eligible children. In discussing the mechanics of serving students who qualify for special education services, Dr. Dolloff explained that special education team members must be afforded time to monitor and document student progress and participate in team meetings in addition to time spent directly providing services to eligible students.[11] Dr. Dolloff testified that school districts must often contract with outside service providers to meet student needs and, given the scarcity of available providers, schools have little control over the associated costs.

[11] Notably, the fact that special education students' general education teachers must participate in special education team meetings supports Dr. Freeman's claim that teacher-to-student ratios cannot equal maximum class sizes.

Dr. Dolloff testified at length about the wide-ranging costs of special education services, including the costs of paraprofessionals and other necessary staff, assistive devices, and transportation to and tuition for out-of-district placements. Among other things, Dr. Dolloff credibly testified that the cost of simply evaluating a student who may qualify for special education services is at least $5,000. She further noted that schools must reevaluate students who receive special education services at least every three years. Based on Dr. Dolloff's credible testimony, the Court finds that the evaluation and reevaluation process is a necessary component of meeting the requirements of Constitutional Adequacy with respect to students eligible for special education services. Further, given Dr. Dolloff's credible testimony concerning the relevant costs, the Court finds that New Hampshire school districts spend an average of $1,666.67 per year just on evaluating (or reevaluating) each student eligible for special education services. As the current special education differentiated aid figure is $2,100 per eligible pupil in the ADMR, see RSA 198:40-a, II, this leaves schools with an average of only $433.33 per eligible student, per year, to fund *all the rest* of special education services. The math does not lie. Throughout her testimony, Dr. Dolloff repeatedly and credibly opined that this figure is woefully inadequate.

Notably, Dr. Dolloff did not attempt to identify an appropriate figure for special education differentiated aid. This is likely because, as the evidence presented at trial readily demonstrated, the relevant costs vary widely. In recognition of that fact, in addition to special education differentiated aid, the State has developed a graduated approach to reimbursing school districts for special education costs. See RSA 186-C:18. Under this scheme, apart from their receipt of special education differentiated aid,

school districts are "liable for 3 ½ times the estimated state average expenditure per pupil . . . plus 20 percent of [any] additional cost, up to 10 times the estimated state average expenditure." Id. The following demonstrative illustrates how this reimbursement scheme applied to the 2023 fiscal year:



See RSA 186-C:18. Dr. Dolloff opined that this scheme imposes an unfair burden on local property owners to fund a substantial portion of the costs associated with special education services via local property taxes.

In response to Dr. Dolloff's testimony, the State questioned whether Adequacy Funding must pay for *all* costs associated with meeting federal special education standards. See Doc. 150 at 30–40. Upon review, however, this issue quickly proves to be a red herring. Even if the State is not responsible for funding compliance with all applicable federal standards, Dr. Dolloff's testimony established that existing special education differentiated aid levels fall far short of the State's obligation to fund Constitutional Adequacy with respect to students eligible for special education services. Indeed, as the demonstrative makes clear, a school district that spends $69,697.81 on special education services for a particular student will only receive $2,100 in State

funding for those expenses (in the form of special education differentiated aid). Whatever differences may exist between federal requirements and State funding obligations, the evidence presented at trial in no way suggests that those differences justify such a large gap between special education costs and applicable State funding.

Consistent with the foregoing, the Court finds that Dr. Dolloff's testimony supports the plaintiffs' claim that existing special education differentiated aid levels are constitutionally insufficient.

VI. Mark Manganello

The plaintiffs and the State each called Mark Manganello as a trial witness. During his testimony, Mr. Manganello described how the DOE processes school district financial data, as reflected on a financial report known as a DOE 25: reports Dr. Freeman and Dr. Cascadden relied on in offering their expert testimony in this matter. In summary, Mr. Manganello explained that school boards submit DOE 25s to the DOE under the pains and penalties of perjury. Once the DOE receives a particular DOE 25, DOE staff members use automated systems and independent judgment to gauge whether there are any errors or issues with the reported data. Among other things, the DOE considers whether a particular DOE 25 reflects a substantial deviation from the prior year, and whether there are any internal inconsistencies. After resolving any concerns with the applicable school district, the DOE sends DOE 25 data to the DRA for use in setting tax rates, and the also provides DOE 25 data to the federal government.

Given the importance of the data reflected in DOE 25s, Mr. Manganello credibly testified that he and his colleagues diligently locate and resolve any errors before DOE 25 data is finalized. Mr. Manganello also credibly testified that although he has caught

mistakes in DOE 25 data during his tenure, he has never suspected that a school district intentionally submitted false data to the DOE. Considering Mr. Manganello's credible testimony, the Court finds that the data reflected on DOE 25s is generally credible. In particular, the system of checks and balances the DOE has in place to vet DOE 25 data effectively corrects for any inadvertent errors. Accordingly, because the plaintiffs' claims in this matter rely in part on the credibility of DOE 25 data, Mr. Manganello's testimony supported those claims.

For its part, the State solicited testimony from Mr. Manganello to the effect that although public school student enrollment numbers have been decreasing over time, school district spending continues to rise.[12] This testimony was intended to support the State's theory that Adequacy Funding levels should not be measured against actual spending: a measure the State argues is universally inflated by local choice. In addition, the State questioned Mr. Manganello regarding the availability of State funding sources for education outside of Adequacy Funding, such as "hold harmless" and "extraordinary needs" grants. As explained above, however, the Court finds that such funding sources are not relevant to the question of whether Adequacy Funding levels are constitutionally sufficient. Rather, such funding sources are only relevant to the issue of whether school districts must rely on local property tax revenues to make up for any shortage in Adequacy Funding.

[12] In discussing this issue, Mr. Manganello noted that homeschooled students sometimes attend discrete classes at a public school. In the Court's view, this testimony further supports Dr. Freeman's claim that teacher-to-student ratios cannot realistically equate to maximum class sizes: schools serving partially homeschooled students must reserve capacity within those classes the students attend at school, creating extra classroom capacity for those subjects the homeschooled students study at home.

VII. Kevin Clougherty

Kevin Clougherty, former Commissioner of the Department of Revenue Administration, offered testimony in support of the plaintiffs' claim that any reliance on local property tax revenues to fund the requirements of Constitutional Adequacy results in a violation of Part II, Article 5. Mr. Clougherty explained that although local taxing districts must reassess property values every five years, that process takes place on a staggered schedule such that one district might complete reassessments in year 1 whereas another might complete that process in year 5. To adjust for this reality, the DRA completes an "equalization" process that compares sales data to assessed value, thereby allowing for a meaningful comparison of local tax rates in different taxing districts.

As noted, the plaintiffs own and pay taxes on property located in areas with relatively high equalized local school tax rates. Compare Pls.' Exs. 90–94 (indicating the plaintiffs pay taxes on properties in Plymouth, Penacook, Hopkinton, and Newport) with Pls.' Ex. 38-D (2023 DRA Equalization Report) (reflecting 2023 equalized local school tax rates of 10% for Plymouth, 8.58% for Penacook, 14.09% for Hopkinton, and 11.41% for Newport, as compared to, e.g., 0.19% for New Castle and 2.43% for Rye). Accordingly, Mr. Clougherty's testimony supported the plaintiffs' claim that any insufficiency in Adequacy Funding results in a violation of Part II, Article 5, to the unique detriment of individuals like the plaintiffs who own and pay taxes on property located in property poor communities.

VIII. Jay Greene

The State presented testimony from Dr. Jay Greene, a Senior Research Fellow at the Heritage Foundation, who offered criticisms of the plaintiffs' evidence. During his testimony, Dr. Greene described his extensive work in (among other things) researching school spending, school funding, and educational outcomes. Given Dr. Greene's vast experience, the Court certified Dr. Greene as an expert in school funding and research methodology. Notably, Dr. Greene did not opine during his testimony that current Adequacy Funding levels are sufficient to meet the requirements of Constitutional Adequacy. Nor did he offer an opinion regarding the minimum cost of meeting those requirements. Instead, Dr. Greene's testimony largely focused on the methodologies employed and data relied on by Dr. Freeman and Dr. Cascadden.

Dr. Greene criticized Dr. Freeman's mock budget analysis on several fronts. Broadly speaking, Dr. Greene opined that Dr. Freeman's mock budget methodology was not "a reasonable method for determining a proper calculation of the cost of a constitutionally adequate education" because, in Dr. Greene's view, Dr. Freeman's process was not replicable, wide ranging, transparent, or rigorous. Dr. Greene further noted that Dr. Freeman's mock budget was based on the amount Pittsfield actually spent on certain cost drivers, and Dr. Greene emphasized that the amount one spends to achieve a particular outcome is not necessarily the same as the minimum cost necessary to achieve that outcome.[13]

In discussing Dr. Freeman's mock budget analysis, Dr. Greene opined that Dr. Freeman should have considered whether Pittsfield could achieve cost savings by

[13] Dr. Greene also opined that Dr. Cascadden's testimony conflated "amounts spent" with "minimum costs."

modeling itself after, for example, education systems in developing countries. Upon review, the Court does not find this criticism persuasive. Among other things, teacher salaries are a significant cost driver in this context, and there are obvious disparities in such salaries between developing countries and New Hampshire. In addition, the record contains no information concerning the educational standards or existing infrastructure in developing countries. For these reasons, the Court is not convinced that an analysis of developing countries would have proven beneficial. Indeed, Dr. Greene acknowledged near the end of his testimony that low-cost educational models that exist in other countries may not be appropriate for New Hampshire schools.

Dr. Greene also criticized Dr. Freeman because the teacher-to-student ratios included in his mock budget exceed maximum class sizes. In discussing this issue, Dr. Greene first suggested that special education teachers should be included in the calculation of teacher-to-student ratios and a comparison of those ratios to maximum class sizes. The Court finds this argument unpersuasive, as the evidence presented at trial demonstrated that special education teachers serve a different role than general classroom teachers. When questioned about this issue, Dr. Greene noted that even without including special education teachers, the teacher-to-student ratio in Dr. Freeman's mock budget was 1:23, whereas the applicable State-imposed maximum class sizes range from 25 to 30. Although Dr. Greene acknowledged Dr. Freeman's testimony about the difficulty in hiring teachers qualified to teach multiple subjects, Dr. Greene nevertheless suggested that Dr. Freeman should have cut more teaching positions from his mock budget.

In that same vein, Dr. Greene opined that Dr. Freeman's mock budget improperly assumed certain constraints based on Pittsfield's existing educational facilities and structure, when (for example) Dr. Freeman could have eliminated additional teaching positions from his mock budget by creating more multi-grade classrooms or otherwise tasking teachers with instructing multiple grade levels. Dr. Greene offered no specific insights, however, as to whether teachers could meet the educational or social-emotional needs of their students if schools routinely created classes spanning several grades.[14] In addition, Dr. Greene's testimony raised the issue of whether teachers can realistically provide classroom instruction during each period or "block" of the school day. While Dr. Greene suggested that affording teachers any "free" or planning blocks is a matter of "local choice," the evidence presented at trial established that teachers must be afforded time to complete tasks outside of classroom instruction, including participation in the IEP process for students who qualify for special education services. For these reasons, the Court is not persuaded by this aspect of Dr. Greene's testimony.

Dr. Greene also took issue with Dr. Freeman's opinion that average statewide education spending is a useful marker of the cost of Constitutional Adequacy. In particular, Dr. Greene noted that use of this metric would encourage schools to increase spending. On cross-examination, however, Dr. Greene acknowledged that in 2008 the legislature relied on average teacher salary data to determine Adequacy Funding levels.

Dr. Greene acknowledged that higher salary levels would attract more credentialed teachers. He opined, however, that teachers with more credentials do not

[14] Dr. Greene acknowledged during cross-examination that he has never worked in K-12 education, but rather has only studied that topic in academia. In the Court's view, this fact undermines the weight of Dr. Greene's suggested approach to achieving greater efficiencies within New Hampshire schools, in general, and Pittsfield, in particular.

necessarily provide a higher quality of education. Dr. Greene similarly opined that once teachers have a few years of experience, additional years of experience do not increase teacher quality. Near the end of Dr. Greene's testimony, he acknowledged that one need not determine a specific cost of providing New Hampshire students with Constitutional Adequacy to determine that a particular amount is insufficient.

After the parties finished questioning Dr. Greene, the Court asked him additional questions about his criticisms of Dr. Freeman's analysis. Specifically, the Court questioned Dr. Greene's suggestion that Dr. Freeman should have considered whether Pittsfield could have provided students with Constitutional Adequacy using existing Adequacy Funding levels by adopting a materially different educational model like those found in developing countries or charter schools. In discussing those issues, Dr. Greene acknowledged that New Hampshire's charter schools may not actually constitute low-cost models. Thereafter, the Court observed to Dr. Greene that New Hampshire schools must educate students today, using existing infrastructure and educational models: in other words, New Hampshire schools must "fight with the army [they've] got." Dr. Greene did not disagree with this observation but reiterated his view that Adequacy Funding levels should be gauged based on minimum necessary costs rather than statewide average expenses.

IX. Dr. James Shuls

The State's final trial witness was Dr. James Shuls. During his testimony, Dr. Shuls described his professional background, which includes significant analysis of education policy and finance within the State of Missouri. In discussing his experiences, Dr. Shuls acknowledged the significant impact compensation levels have on an

employer's ability to attract and retain necessary staff. Following Dr. Shuls' testimony concerning his professional experiences, the Court certified Dr. Shuls as an expert in education policy and finance.

Dr. Shuls testified with respect to three aspects of this case: (1) how New Hampshire is performing, as compared to other states, with regard to education funding and academic outcomes; (2) what nuances and considerations go into developing a state education funding system, and whether New Hampshire's system is an outlier as compared to other states; and (3) examining whether there are reasons why a state like New Hampshire might choose to rely on local property taxes as part of education funding. With respect to the first issue, Dr. Shuls noted that considering state, federal, and local funding sources, New Hampshire is performing relatively well in terms of education funding. However, Dr. Shuls acknowledged that nationwide, New Hampshire has one of the highest percentages of education revenue derived from local funding sources.[15]

With respect to student performance, Dr. Shuls noted that New Hampshire students are performing at a relatively high level. In explaining the metrics he used to analyze this issue, which included a comparison of SAT scores, Dr. Shuls quoted his college track coach for the proposition that "You have to dance with the girls you came with." Dr. Shuls thereafter explained that SAT scores are an imperfect metric for comparing student performance because not every student in every state will elect to take the SAT. Nevertheless, because New Hampshire administers the SAT (as

[15] The total amount spent by school districts – and whether an adequate education is provided in the abstract – is NOT disputed in this case. The issue in this case to be resolved is what portion of the amount spent is the State's exclusive obligation to pay. Thus, Dr. Shuls testimony misses the mark and does not assist that Court in resolving that issue.

opposed to the ACT) to many high school students, Dr. Shuls relied on nationwide SAT scores as part of his analysis of the academic strength of New Hampshire students.

In discussing the second question, Dr. Shuls referenced several policy considerations relevant to the development of a state education funding system. For example, Dr. Shuls indicated that the unique needs and demographics of the target population should be considered, and thus there is no perfect or one size fits all model. Dr. Shuls opined, however, that it is reasonable to fund an education system via property taxes because such funding sources are relatively stable, and the stability of education funding sources is an important consideration.

Lastly, in discussing the third question, Dr. Shuls noted that by relying in part on local tax revenues to fund education, states like New Hampshire encourage local control, thereby allowing individual school districts to meet the unique needs and serve the specific goals of the local community. Dr. Shuls further opined that reliance on local tax revenues holds school districts accountable such that they have less incentive to overspend. He acknowledged, however, that there is an inherent tension between local control and statewide educational equity.

During cross-examination, Dr. Shuls discussed the concepts of vertical equity and horizontal equity. He explained that vertical equity focuses on providing additional resources to educate those students whose unique characteristics make them harder, and thus more expensive, to educate. By contrast, horizontal equity focuses on providing the same level of resources to all students across a particular education system. Dr. Shuls opined that education systems should balance these two concepts to

properly support individual students while providing a baseline level of educational opportunity for all students.

Analysis

Applying the standard of review and burden of proof discussed above, the Court must now determine whether the plaintiffs have put forth sufficient evidence to demonstrate a "clear and substantial conflict" between current Adequacy Funding levels and the costs necessary to meet Constitutional Adequacy "in all, or virtually all," of New Hampshire's school districts. See Working Stiff Partners, 172 N.H. at 622; see also ConVal, 174 N.H. at 161.

I. The Plaintiffs Have Carried Their Burden to Prove That Total Adequacy Funding Levels are Constitutionally Insufficient

The plaintiffs first contend that total Adequacy Funding levels, taken together, are constitutionally insufficient. See Doc. 151 at 55, ¶ 1. Given the credible evidence and resulting factual findings outlined above, the Court concludes that the plaintiffs have carried their burden with respect to that contention. In reaching this conclusion, the Court relies heavily on the expert opinion and specialized factual testimony offered by Dr. Freeman and Dr. Cascadden. The Court observes that much of the State's criticism of this testimony focused on whether it offered reasonable or otherwise appropriate methodologies for determining the per pupil cost of Constitutional Adequacy (or, in other words, what amount of Adequacy Funding would be constitutionally appropriate). In the Court's view, however, this testimony was not designed to identify the proper amount of Adequacy Funding, but rather to establish that existing Adequacy Funding levels cannot

support Constitutional Adequacy, and that local school districts must rely in part on local school tax revenues to make up the difference.

In effect, the plaintiffs' reliance on evidence concerning Pittsfield and Berlin seeks to utilize those school districts as a "bellwether," the theory being that if current Adequacy Funding levels are not sufficient for those two school districts to meet Constitutional Adequacy, then those funding levels are not sufficient for any New Hampshire school district to do so. Cf. Bellwether Trial, Black's Law Dictionary (12th ed. 2024) (defining a "bellwether trial" as a "test case that in multidistrict litigation serves to indicate the value of a type of claim, or to establish answers to difficult issues . . . common to a defined group of claimants"). Upon review, the Court concludes that for the purposes of this case, the plaintiffs' "bellwether" evidence is sufficient to carry their burden. As outlined above, the plaintiffs offered evidence concerning two school districts that experienced significant local pressure to keep budgets as low as possible to minimize reliance on local property tax revenues. As a result, the budgets in those two school districts did not reflect extravagant local choices, but rather efficient spending decisions. That outcome aligns with the testimony offered by Dr. Shuls, who opined that policymakers might prefer a school funding model that relies on local tax revenues because such a model discourages school districts from overspending.

During his testimony Dr. Freeman demonstrated that even with a mock budget target of approximately twice Adequacy Funding levels—an adjusted target figure that included all of Pittsfield's State funding as well as federal funding administered through the State—Pittsfield could not provide students with services that meet Constitutional Adequacy without relying on local tax revenues. This evidence is particularly

compelling given that Pittsfield's teacher salaries—a significant educational cost driver—are some of the lowest in the State. This evidence is also compelling in light of Dr. Freeman's creative efforts to maximize efficiency, including the establishment of several muti-grade classrooms within the Pittsfield School District.

Although the State has suggested that Dr. Freeman could have achieved a more efficient mock budget by further reducing the number of teaching positions, the Court is unpersuaded. Given the credible testimony presented at trial, the Court concludes that Dr. Freeman could not have eliminated additional teaching positions from his mock budget without raising teacher salaries to account for a loss in teacher prep periods and/or the heightened level of credentials that would be necessary for teachers to provide instruction across multiple disciplines. Even then, teachers would require some amount of non-instructional time throughout the day to participate in IEP team meetings and perform other non-instructional but essential aspects of meeting the requirements of Constitutional Adequacy. For these reasons, the Court is not persuaded by the State's suggestion that Dr. Freeman's analysis is flawed because the teacher-to-student ratios in his mock budget did not equate to maximum class sizes.

The Court is similarly unpersuaded by the State's criticism that Dr. Freeman erroneously included certain cost drivers in his mock budget that are not actually required for Constitutional Adequacy. As previously noted, during his mock budget exercise Dr. Freeman felt compelled to cut items that are unquestionably essential to meeting Constitutional Adequacy, such as art programming and paraprofessional staff serving students with special needs. Upon review of Dr. Freeman's testimony and the explanations set out in his mock budget exercise, see Pls.' Ex. 2-A, the Court concludes

that those aspects of Constitutional Adequacy Dr. Freeman cut from his mock budget more than make up for any items he mistakenly included in that budget.

Consistent with the foregoing, the Court concludes that Dr. Freeman's mock budget exercise credibly demonstrates the insufficiency of current Adequacy Funding levels. Moreover, because Dr. Freeman's adjusted mock budget target figure included all State funding as well as federal funding administered through the State, the fact that such a budget still could not support Constitutional Adequacy demonstrates that even an efficient school district like Pittsfield must rely in part on local property tax revenues to bridge the gap between Adequacy Funding levels and Constitutional Adequacy.

Dr. Cascadden's testimony also supports the conclusion that New Hampshire school districts cannot meet the requirements of Constitutional Adequacy without relying on local tax revenues. Like Pittsfield, Berlin is a property poor community with significant local pressure to keep the school budget low. Berlin is also like Pittsfield in that teacher and staff salary levels are relatively low.[16] Dr. Cascadden's testimony regarding the multiple rounds of cuts required to meet her target budget figure demonstrates that Berlin's school budget is not bloated by local preferences that result in overspending. Far from it. It reflects an efficient and budget-conscience effort to meet the requirements of Constitutional Adequacy. Despite those realities, Berlin relies exclusively on local property tax revenues to bridge the gap between existing Adequacy Funding levels and the costs associated with Constitutional Adequacy.

In crediting the expert opinions and specialized factual testimony offered by Dr. Freeman and Dr. Cascadden, the Court is not persuaded by the State's suggestion that

[16] Dr. Freeman and Dr. Cascadden each testified to difficulties in attracting and retaining necessary staff given the relatively low compensation levels offered by their respective school districts.

this testimony is not founded on sufficient facts or data. As set forth above, Dr. Freeman and Dr. Cascadden relied in part on DOE 25 data in forming the opinions they offered at trial. To the extent the State suggests this data is not reliable, Mr. Manganello's testimony concerning the DOE's rigorous scrutiny of DOE 25 data belies this suggestion. Moreover, although the Court agrees with the State that actual expenditures are not necessarily synonymous with actual costs, in this case Dr. Freeman and Dr. Cascadden credibly established that their respective school districts experienced significant local pressure to keep costs low. For these reasons, the Court concludes that their reliance on DOE 25 data in gauging the sufficiency of Adequacy Funding does not undermine the reliability or relevance of the expert opinions Dr. Freeman and Dr. Cascadden offered at trial.[17]

The Court is similarly unpersuaded by the State's suggestion that the plaintiffs' evidence is insufficient because schools could reduce costs by adopting completely different educational models. As the Court observed during trial, school districts must provide students with Constitutional Adequacy today, and every day that follows. In doing so, school districts must (in the words of the State's expert witness, Dr. Shuls)

[17] The plaintiffs introduced a significant amount of DOE 25 data into evidence. See, e.g., Pls.' Ex. 52-A. For the reasons outlined above, the Court finds this data credible. Notably, however, the plaintiffs only presented detailed testimony about the budget process in a few select school districts that experience significant local pressure to keep costs low. On this record, the Court cannot meaningfully assess whether the DOE 25 expense data reported by other school districts is the product of local choices by communities willing to spend more on educating their students. Accordingly, the Court assigns little weight to the DOE 25 data reported by those other school districts. Relatedly, although Dr. Freeman and Dr. Cascadden each opined (based in part on their review of DOE 25 data) that current Adequacy Funding levels are not sufficient for any New Hampshire school district to meet Constitutional Adequacy, the Court is not relying on those discrete opinions in reaching the conclusions outlined in this Order. Instead, as explained above, given local pressure to keep both the Pittsfield and Berlin school budgets as low as possible, the Court concludes that the factual and expert opinion testimony Dr. Freeman and Dr. Cascadden offered about those school districts, respectively, provides an effective "bellwether" for the Court to use in assessing the sufficiency of Adequacy Funding levels statewide.

"dance with the girls they came with," or (in the Court's words) "fight the war with the armies [they've] got." Arguably, the State could reduce the costs associated with its school funding obligations by requiring local school districts to utilize significantly different educational models, or by centralizing certain aspects of education.[18] For example, the State could negotiate a single collective bargaining agreements with all New Hampshire teachers, or mandate use of a single curriculum. As the State has not historically utilized such an approach, any shift towards standardization or centralization would require clear direction, time, and sufficient funding for schools to meet Constitutional Adequacy in the interim.

In the Court's view, this issue illustrates the tension between the State's exclusive obligation to provide adequacy funding levels for education and the preference for local control. Although there are certainly benefits to local control, as Dr. Shuls acknowledged during his testimony, local control increases the likelihood of unequal educational opportunities across the State. In this respect, "local control" is somewhat of a double-edged sword. Indeed, the State has arguably taken advantage of this incongruity throughout recent school funding litigation, suggesting school funding plaintiffs can never prove that Adequacy Funding levels are universally insufficient given the variety in local educational models.

Here, the plaintiffs rebutted that argument by presenting credible evidence that school districts with lean budgets and significant local pressure to keep costs low must nevertheless rely on local tax revenues to bridge the gap between Adequacy Funding

[18] The Court notes that the State presented no concrete evidence indicating that a different educational model would actually achieve significant cost savings while still allowing school districts to meet the demands of Constitutional Adequacy.

levels and the essential costs of meeting Constitutional Adequacy. For that reason, the Court concludes that the plaintiffs have carried their burden of establishing a "clear and substantial conflict" between current Adequacy Funding levels and the costs necessary to meet Constitutional Adequacy "in all, or virtually all," of New Hampshire's school districts. See Working Stiff Partners, 172 N.H. at 622; ConVal, 174 N.H. at 161.

II. The Plaintiffs Have Partially Carried Their Burden to Prove That Differentiated Aid Funding Levels are Constitutionally Insufficient

The plaintiffs also claim that special education differentiated aid and differentiated aid for children living in poverty are constitutionally insufficient. See Doc. 151 at 55, ¶ 2. The plaintiffs further contend that "[d]ifferentiated aid for children living in poverty is not duplicative of the differentiated aid for children who qualify for special education and related services." See id. ¶ 3. Upon review, the Court concludes that the plaintiffs have carried their burden with respect to some, but not all, of those issues.

In particular, the Court concludes that Dr. Dolloff's testimony demonstrates the insufficiency of current funding levels for special education differentiated aid. As noted above, Dr. Dolloff credibly testified about a variety of potential special education cost drivers, the prices of which schools cannot always control. Moreover, based on her broad knowledge concerning a variety of New Hampshire schools, Dr. Dolloff credibly opined that the cost of evaluating (or reevaluating) a student who may qualify for special education services is at least $5,000. As set forth above, because schools must repeat that process at least every three years, New Hampshire school districts spend an average of $1,666.67 per student, per year, just on evaluating (or reevaluating) students who qualify for special education services, leaving an average of only $433.33 per year to fund special education services for each eligible student. See RSA 198:40-a, II.

Drawing on Dr. Dolloff's credible testimony as well as common sense, the Court readily concludes that this amount is insufficient for New Hampshire school districts to provide eligible students with an education that meets Constitutional Adequacy. Accordingly, the plaintiffs carried their burden with respect to that issue.

The Court reaches a different conclusion, however, with respect to the sufficiency of the plaintiffs' evidence regarding differentiated aid funding levels for children living in poverty. To be clear, the plaintiffs presented credible testimony to the effect that students living in poverty have heightened educational needs, and that meeting those needs comes with increased costs. The plaintiffs did not, however, offer concrete evidence quantifying the scope of such increased costs. For that reason, the plaintiffs failed to carry their burden of demonstrating that the current funding level of $2,300 per eligible pupil in the ADMR is constitutionally insufficient.[19]

As a final matter, the Court concludes that the plaintiffs did not carry their burden with respect to their claim that differentiated aid for children living in poverty is not duplicative of special education differentiated aid. See Doc. 151 ¶ 3. The evidence presented at trial demonstrates that students living in poverty who do not qualify for special education services have heightened educational needs. The evidence also demonstrates that students who qualify for special education services but do not live in poverty have heightened educational needs. The Court heard no concrete testimony, however, with respect to whether students who qualify for special education services

[19] Notably, the plaintiffs do not request a specific declaratory ruling concerning the sufficiency of differentiated aid levels earmarked for students who are English language learners. See Doc. 151 at 55. The Court observes, however, that as with students living in poverty, the plaintiffs demonstrated that English language learner students have heightened educational needs, but the plaintiffs did not present evidence quantifying the associated costs.

and who also live in poverty receive services that address both sources of heightened need, simultaneously.

In the Court's view, there could be some overlap between these two types of differentiated aid. For example, a student whose IEP includes the support of a dedicated paraprofessional might find that such support partially or even completely addresses the student's poverty-related needs.[20] On the other hand, a student whose IEP only includes speech therapy might find that they continue to struggle with general classroom instruction due to the heightened educational needs that result from their impoverished status. On the record presented, the Court cannot rule out that in some cases, special education differentiated aid is at least partially duplicative of differentiated aid earmarked for students living in poverty. Accordingly, the plaintiffs have not carried their burden with respect to this issue.

Consistent with the foregoing, the Court concludes that the plaintiffs have carried their burden of establishing a "clear and substantial conflict" between current special education differentiated aid funding levels and the costs necessary to meet the requirements of Constitutional Adequacy with respect to eligible students "in all, or virtually all," of New Hampshire's school districts. See Working Stiff Partners, 172 N.H. at 622; ConVal, 174 N.H. at 161. The plaintiffs did not, however, carry their burden with respect to the sufficiency of differentiated aid for children living in poverty. Nor did the

[20] The Court notes that under such a scenario, the increased costs associated with providing a dedicated paraprofessional would greatly exceed the combined current funding levels for these two types of differentiated aid. See RSA 198:40-a, II (providing for differentiated aid of $2,300 for each pupil in the ADMR who is eligible for a free or reduced price meal, $800 for each pupil in the ADMR who is an English language learner, and $2,100 for each pupil in the ADMR who receives special education services).

plaintiffs carry their burden with respect to the question of whether special education differentiated aid is duplicative of differentiated aid for children living in poverty.

In summary, the plaintiffs have proven a "clear and substantial conflict" between the costs necessary to meet Constitutional Adequacy and current Adequacy Funding and special education differentiated aid funding levels "in all, or virtually all," of New Hampshire's school districts. See id.; Working Stiff Partners, 172 N.H. at 622. The plaintiffs have also proven that these funding insufficiencies force local school districts to rely on local school tax revenues to fund a portion of Constitutional Adequacy. This effectively converts a portion of local school taxes into a State tax that is assessed at varying rates throughout the State, in violation of Part II, Article 5. See Claremont II, 142 N.H. at 471 ("To the extent . . . the property tax is used . . . to fund the provision of an adequate education, the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State.").

As previously noted, the State offered no affirmative evidence justifying the sufficiency of current Adequacy Funding and special education differentiated aid funding levels.[21] Accordingly, under the standard of review described above, the plaintiffs

[21] The Court notes that based on the plaintiffs' late disclosure of certain witnesses and documents, the State requested a continuance approximately one week prior to trial. See Doc. 137. Notably, the State's motion did not suggest that these late disclosures prevented the State from offering its own affirmative evidence as to the sufficiency of Adequacy Funding. See id. Instead, the State implied that it did not have adequate time to prepare effective cross-examinations regarding the recently disclosed items. See id. In denying the State's motion, the Court reasoned that the State's claims of prejudice were overstated and did not warrant the significant logistical burden that would result from again reserving a two-week block of time on the Court's docket for this bench trial to occur. During trial, the Court detected no defects in the State's ability to cross-examine the plaintiffs' witnesses or otherwise challenge the sufficiency of the plaintiffs' evidence. To the contrary, as the Court observed on the record, both sides litigated this case in an admirable fashion. Although the plaintiffs ultimately prevail with respect to certain aspects of their claim, the Court has no basis to conclude that this result stems from the timing of the plaintiffs' disputed disclosures. Indeed, the State's post-trial filings, which were submitted approximately one month after trial, do not suggest that the State would or could have performed differently at trial had it been given more time to respond to the evidence at issue in the State's motion to continue. See Docs. 150, 153.

prevail with respect to their Adequacy Funding-related taxation claim. See Mack, 173 N.H. at 815 (describing burden shifting applicable under strict scrutiny standard).

Remedies

Having concluded that the plaintiffs partially prevail, the Court must now determine the appropriate scope of any remedies. In doing so, the Court remains mindful of and deferential to the legislature's significant – and perhaps plenary - role in the school funding context. See Contoocook Valley Sch. Dist. v. State, No. 2024-0121, 2025 N.H. LEXIS 170, at *50-51 (July 1, 2025) ("Although we have rejected the proposition that the separation of powers doctrine categorically prohibits the judiciary from awarding injunctive relief like the immediate payment directive should the circumstances and the equities dictate, we conclude that, under the unique facts of this case, the trial court did not accord sufficient weight to separation of powers considerations in crafting the specific injunctive relief that it ordered."); See Mack. at 476–77 (permitting existing funding mechanism to remain in effect for set period so legislature had "reasonable time to effect . . . a new system"); Londonderry I, 154 N.H. at 163 (indicating Supreme Court's respect of legislature's role has led it to "demur[]" each time it "has been requested to define the substantive content of a constitutionally adequate public education"). The Court is equally mindful, however, that "the judiciary has a responsibility to ensure that constitutional rights not be hollowed out and, in the absence of action by other branches, a judicial remedy is not only appropriate but essential." Id. (citing Petition of Below, 151 N.H. 135 (2004)); cf. Norelli v. Sec'y of State, 175 N.H. 186, 200 (2022) (rejecting State's position that despite

unconstitutionality of existing congressional districting statute, judicial non-intervention was "more important than protecting the voters' fundamental rights").

This tension is not only inherent in but essential to our three-branch system of government. As the New Hampshire Supreme Court has explained, "each branch of government acts as a check on the other, protecting the sovereignty and freedom of those governed by preventing the tyranny of any one branch of the government being supreme." Fischer, 163 N.H. at 518. This system of checks and balances is also found in our three-branch federal government. See Immigr. & Naturalization Serv. v. Chadha, 462 U.S. 919, 959 (1983). In discussing the purpose and ramifications of such a system, including the judiciary's role in ensuring that the other branches of government comply with the Constitution, the United States Supreme Court has explained:

> The choices we discern as having been made in the Constitutional Convention impose burdens on governmental processes that often seem clumsy, inefficient, even unworkable, but those hard choices were consciously made by men who had lived under a form of government that permitted arbitrary governmental acts to go unchecked. There is no support in the Constitution or decisions of this Court for the proposition that the cumbersomeness and delays often encountered in complying with explicit Constitutional standards may be avoided, either by the Congress or by the President. With all the obvious flaws of delay, untidiness, and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraints spelled out in the Constitution.

Id. (citation omitted). Those same principles apply to our system of State government. See Fischer, 163 N.H. at 518.

In this case, the plaintiffs have established that the total Adequacy Funding level and the funding level for special education differentiated aid are each insufficient for New Hampshire school districts to meet the demands of Constitutional Adequacy, and that school districts are forced to bridge the gap by relying in part on revenue from local

property taxes assessed at varying rates. As a result, the relevant provisions of RSA 198:40-a, II, run afoul of not one but two provisions of our State Constitution. See N.H. CONST. pt. II, art. 5; N.H. CONST. pt. II, art. 83. Accordingly, the Court is now called to enforce those constitutional provisions, without regard to whether the legislature's compliance with those provisions would be cumbersome or otherwise challenging. See id.; Chadha, 462 U.S. at 959.

In their post-trial memorandum, the plaintiffs request several forms of relief. See Doc. 151 at 55–57. The Court will address each request, in turn.

> The plaintiffs first request a declaratory judgment that:
>
> 1. RSA 198:40-a, II is unconstitutional because it fails to provide enough money to deliver an adequate education as defined in RSA 193:E-2(a).
>
> 2. The amount of differentiated aid provided in RSA 198:40-a, II is unconstitutional because it fails to provide enough money to cover the additional cost of services that are necessary for students with disabilities and students eligible for free or reduced price meals to access an adequate education as defined in RSA 193:E-2(a).
>
> 3. Differentiated aid for children living in poverty is not duplicative of the differentiated aid for children who qualify for special education and related services.
>
> 4. Because RSA 198:40-a is insufficient to cover the full cost of an adequate education, districts must rely on local school taxes to pay for the cost of an adequate education. These local school taxes, when deployed to fund a state responsibility, are state taxes and violate the New Hampshire Constitution because they are not uniform in rate across the state.

Id. at 55.

For the reasons outlined above, the Court concludes that the plaintiffs have carried their burden with respect to the insufficiency of total Adequacy Funding and the insufficiency of special education differentiated aid. The plaintiffs have further carried

their burden with respect to their claim that these insufficiencies result in violations of Part II, Article 5. Accordingly, the requests for declaratory relief outlined in paragraphs 1 and 4, supra, are each **GRANTED**, and the request for declaratory relief outlined in paragraph 2 is **GRANTED** only with respect to special education differentiated aid. Because the plaintiffs did not carry their burden with respect to the insufficiency of existing differentiated aid levels for children living in poverty children, and because the Court cannot rule out some overlap between that type of differentiated aid and special education differentiated aid, the remainder of the declaratory relief requested in paragraph 2 and the declaratory relief requested in paragraph 3 are each **DENIED**.

The plaintiffs next request injunctive relief. See id. at 55–56. As noted in the Court's December 5, 2022 Order on the plaintiffs' motion for preliminary injunctive relief, "[t]he issuance of injunctions, either temporary or permanent, has long been considered an extraordinary remedy." Doc. 48 at 8 (quoting N.H. Dept. Envtl. Servs. v. Mottolo, 155 N.H. 57, 63 (2007)). Moreover, "the granting of an injunction 'is a matter within the sound discretion of the Court exercised upon a consideration of all the circumstances of each case and controlled by established principles of equity.'" Id. (citing UniFirst Corp. v. City of Nashua, 130 N.H. 11, 14 (1987) for proposition that courts may consider public interest in evaluating requests for injunctive relief).

Here, the plaintiffs ask that the Court enjoin the State from continuing to operate under the current education funding scheme, as provided for in RSA 198:40-a, after March 31, 2026. See Doc. 151 at 55–56. This request implicitly recognizes that once a legislative act is declared unconstitutional, the legislature must be given a reasonable time to effect an orderly transition to a new system. Accord Claremont II, 142 N.H. at

476. In requesting injunctive relief commencing on April 1, 2026, however, the plaintiffs have not addressed whether (and if so, why) their suggested timeline is reasonable. See Doc. 151 at 55–56. Moreover, as the State points out, the Court's decision in this matter is likely to be appealed, thus rendering the plaintiffs' proposed timeline unreasonable. See Doc. 153 at 8. On this record, the Court cannot conclude that the plaintiffs are entitled to injunctive relief prohibiting the State from continuing to operate under the existing education funding scheme after March 31, 2026.

In so ruling, the Court is mindful of the ConVal Court's recitation of the narrow and novel legal issues resolved in ConVal and this case. Contoocook Valley Sch. Dist. 2025 N.H. LEXIS 170, at *54 ("Accordingly, under these circumstances, we cannot say that there has been an absence of action by other branches, with respect to the specific issue now before us. In sum, we conclude that, in imposing the extraordinary directive for immediate payment, the trial court failed to accord sufficient weight to separation of powers concerns viewed in the context of the history of the narrow legal issue presented, and the court thereby unsustainably exercised its discretion.") (cleaned up).

The Court reaches a similar conclusion with respect to the plaintiffs' request that they be permitted to challenge future "legislation implementing [the legislature's] updated calculation of the cost of" meeting the requirements of Constitutional Adequacy "[w]ithin 90 days." See Doc. 151 at 55–56. In making this request, the plaintiffs fail to explain why they would otherwise not be permitted to challenge such legislation in a timely fashion. See id. On this record, the Court finds no basis to conclude that the extraordinary remedy of injunctive relief is necessary or otherwise appropriate with respect to this issue. See Mottolo, 155 N.H. at 63.

Consistent with the foregoing, the plaintiffs' requests for injunctive relief are **DENIED WITHOUT PREJUDICE**. If the Court's rulings, as outlined herein, are upheld on appeal or otherwise become final, the Court anticipates that the legislature will work diligently to enact a new school funding scheme that comports with the State's constitutional obligations. If, however, the plaintiffs form the belief that the legislature is not acting diligently in this regard, the plaintiffs may file a renewed request for injunctive relief.

The plaintiffs next ask that the Court "recommend" that the legislature "consider certain factors in recalculating the cost of an adequate education" and thereafter "express its explicit reliance on its study in crafting a new calculation that is adopted by statute." See id. at 56–57. While couched in terms of an effort to "build public confidence," it strikes the Court that the plaintiffs' latter request may also be intended to empower future litigants to challenge such a new statute by critiquing the underlying legislative study. The litigants in ConVal previously attempted to challenge RSA 198:40-a via such an approach. See 174 N.H. at 162. Ultimately, however, the ConVal court concluded that "the costing determinations set forth in the Joint Committee's Final Report and 2008 Spreadsheet [we]re irrelevant as to whether the amount of funding set forth in RSA 198:40-a, II(a) is constitutional," see id. at 162, because the legislature did not "incorporate by reference the Joint Committee's Final Report, including its 2008 Spreadsheet, as part of RSA 198:40-a." Id. at 165.

Given the protracted nature of this litigation and ConVal, the plaintiffs' desire to secure a more efficient approach for challenging future education funding statutes is understandable. Ultimately, however, as the State points out, the plaintiffs' requested

"recommendations" amount to advisory opinions. See Doc. 153 at 9 (citing Carrigan v. N.H. Dep't of Health & Hum. Servs., 174 N.H. 362, 366–67 (2021), in support of the proposition that "[c]onsistent with the separation of powers, private parties may not request advisory opinions, and the superior court may not issue them"); Opinion, Black's Law Dictionary (12th ed. 2024) (defining an "advisory opinion" as "[a] nonbinding statement by a court"); Doc. 150 at 57 (acknowledging that the list of "considerations" outlined in the plaintiffs' requested "recommendations" is "neither binding nor exhaustive"). Although Part II, Article 74 of the New Hampshire Constitution authorizes "[e]ach branch of the legislature as well as the governor and council . . . to require the opinions of the justices of the supreme court upon important questions of law and upon solemn occasions," see Opinion of the Justs., 171 N.H. 128, 132–33 (2018) (citation omitted), it would violate our State's system of separation of powers if this Court were to issue the advisory opinions requested in the plaintiffs' post-trial memorandum. For that reason, the plaintiffs' requests for such relief are **DENIED**.[22]

The Court acknowledges that in ruling on the merits of the ConVal action, the Court analyzed whether many of the topics referenced in the plaintiffs' requested recommendations—such as costs related to administrative services—are necessary components of Constitutional Adequacy. See Doc. 246 in Docket No. 213-2019-CV-00069. In ConVal, however, the plaintiffs not only asked that the Court declare RSA 198:40-a, II(a), unconstitutional, but they also requested injunctive relief mandating a

[22] One of the plaintiffs' requested recommendations is that the legislature consider "[t]he average costs of delivering instruction" within New Hampshire's school districts. See Doc. 151 at 56. Even if the Court could permissibly opine on this issue, the Court notes that the State presented substantial credible testimony explaining the pitfalls of setting education funding levels based on average expenditures, which may or may not equate to necessary costs.

particular funding level. See id. By contrast, in this case the plaintiffs ask only that the Court declare current funding levels unconstitutional.

As the Court explained in rejecting the State's criticisms of Dr. Freeman's testimony, the process of gauging the sufficiency of existing funding is far less onerous than the process of determining what education funding levels should be. The Court need not, for example, determine whether all school districts require the services of a full-time (or nearly full-time) superintendent in order to determine, based in part on Dr. Freeman's mock budget exercise, that existing Adequacy Funding levels are constitutionally insufficient. See Pls.' Ex. 2-A (reflecting that in Dr. Freeman's mock budget, he only allocated funding for a superintendent to serve the Pittsfield School District one day a week, notwithstanding his testimony that such a scenario would have proven unworkable). For this reason, the relief requested in ConVal required that the Court make findings and rulings that are not necessary here, rendering any "recommendations" about such topics improper advisory opinions within the context of this case. See Opinion of the Justs., 171 N.H. at 132–33.

Attorney's Fees

As a final matter, the plaintiffs ask that the Court award them their reasonable attorney's fees. See Doc. 151 at 57. In support, the plaintiffs argue that "the right to an adequate education is a well-established fundamental right guaranteed by the Constitution of the State of New Hampshire, and Plaintiffs should not have to seek judicial redress to secure it." Id. (quoting Harkeem v. Adams, 117 N.H. 687, 691 (1977), for the proposition that "'[w]here an individual is forced to seek judicial assistance to secure a clearly defined and established right, which should have been freely enjoyed

without such intervention, an award of counsel fees based on bad faith is appropriate'"). The plaintiffs further argue that because "the benefits of a judgment" in their favor "will better inform the New Hampshire public of their constitutional rights in regard to public education, the perennial budget crises facing public school districts, and as to changes to their taxation system," the plaintiffs are entitled to an award of attorney's fees under the "substantial benefit" theory. See id. (citing Sivalingam v. Newton, 174 N.H. 489, 499 (2021)). In response, the State argues that if the Court's rulings in ConVal are upheld on appeal, then much of the benefit the plaintiffs claim to have conferred on the public in this action would be redundant. See Doc. 150 at 12.

The ConVal Court has remanded the issue of attorney's fees back to the trial court for final resolution. The ConVal plaintiffs prevailed in most – but not all – of their appellate claims. The ConVal Court affirmed the determination that the current funding level for the Base Adequacy Amount is unconstitutional.

This case presents a bit of a different issue: whether both Base Adequacy Amount and differential aid amounts are unconstitutional. The plaintiffs have prevailed on part of their claims as they pertain to differential aid for special education but have not prevailed on other claims.

Thus, at this point, the Court cannot determine, what, if any, incremental "public benefit" has been achieved by the plaintiff's succeeding in its special education differential aid claim(s), that has not already been achieved by the holding in ConVal.

The request for attorney's fees is **DENIED**.

Conclusion

The plaintiffs brought this action in an effort to hold the State accountable for the school funding obligations imposed by Part II, Article 83. In doing so, the plaintiffs sought to safeguard the fundamental right held by New Hampshire children to "a constitutionally adequate public education . . . ." Claremont II, 142 N.H. at 473. The plaintiffs further sought to protect themselves and similarly situated taxpayers in property poor communities from bearing the unfair burden of paying for a portion of the State's school funding obligations via local property taxes assessed at varying (and relatively high) rates, in violation of Part II, Article 5. See id. at 471 ("There is nothing fair or just about taxing . . . real estate in one town at four times the rate that similar property is taxed in another town to fulfill the same purpose of meeting the State's educational duty . . . . We hold, therefore, that the varying property tax rates across the State violate [Part II, Article 5] in that such taxes, which support the public purpose of education, are unreasonable and disproportionate.").

For the reasons outlined above, the Court concludes that the plaintiffs have successfully proven that the total amount of current Adequacy Funding and the current amount of special education differentiated aid, as provided for in RSA 198:40-a, are constitutionally insufficient. The plaintiffs have further proven that school districts must rely in part on local property tax revenues, assessed at varying rates, to bridge these funding gaps. Accordingly, the plaintiffs' request for declaratory relief deeming these aspects of RSA 198:40-a unconstitutional is **GRANTED**.

The plaintiffs did not, however, prove that existing levels of differentiated for children living in poverty are constitutionally insufficient, or the absence of any overlap between this type of differentiated aid and special education differentiated aid. Accordingly, the plaintiffs' requests for declaratory relief concerning those issues are **DENIED**. Further, because the plaintiffs have not established that the extraordinary remedy of injunctive relief is warranted or reasonable at this juncture, their requests for such relief are **DENIED WITHOUT PREJUDICE**. In addition, as the plaintiffs' requested "recommendations" would run afoul of important separation of powers concerns, those requests are all **DENIED**. Lastly, the plaintiffs' request for an award of attorney's fees under Harkeem is **DENIED**, and their request for such an award under the substantial benefit theory is **DENIED**.

SO ORDERED.

August 18, 2025
_____
DATE

_____
David W. Ruoff
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 08/18/2025