THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2024-0138

Steven Rand, et al.

v.

The State of New Hampshire

BRIEF OF *AMICI CURIAE*
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE AND NATIONAL EDUCATION ASSOCIATION-NEW HAMPSHIRE IN SUPPORT OF PLAINTIFFS

Appeal Pursuant to Supreme Court Rule 7 from Rockingham County Superior Court Docket No. 215-2022-cv-00167

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Rideout v. Gardner, 838 F.3d 65 (1st Cir. 2016), *cert. denied*, 581 U.S. 904 (2017)…...39

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N.H. Const. Part II, Article 5 ....*passim*
N.H. Const. Part II, Article 83 ....*passim*

OTHER SOURCES

1998 CACR46,
https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=2925&sy=1998&sortoption=&txtsessionyear=1998&txtbillnumber=CACR46...33

1999 HB737,
https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=1021&sy=1999&sortoption=&txtsessionyear=1999&txtbillnumber=HB737...33

2000 HB113,
https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=640&sy=2000&sortoption=billnumber&txtsessionyear=2000&txtbillnumber=HB113...33

2003 HCR14,
https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=15&sy=2003&sortoption=&txtsessionyear=2003&txtbillnumber=HCR14...33

2004 HCR25,
https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=2336&sy=2004&sortoption=&txtsessionyear=2004&txtbillnumber=HCR25..33-34

2007 HCR1,
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2008 CACR34,
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2010 CACR34,
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2015 CACR3,
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2023 Population Estimates for Nashua,
https://www.census.gov/quickfacts/fact/table/nashuacitynewhampshire/PST045219 26

Jack Bass, *Unlikely Heroes: The Dramatic Story of the Southern Judges of the Fifth Circuit who Translated the Supreme Court's* Brown *Decision Into a Revolution for Equality* (1981)…………………………………………………...25

Declaration of Constitutional Principles ("Southern Manifesto on Integration"), 102 Cong. Rec. 4459–60 (Mar. 12, 1956)……………………………………..24

Ethan Dewitt, "Cities, Towns Hoping State Will Make Retirement Contributions Permanent," *N.H. Bulletin* (Jan. 19, 2023), https://newhampshirebulletin.com/2023/01/19/cities-towns-hoping-state-will-make-retirement-contributions-permanent/...36

Equal Justice Initiative, "Massive Resistance," in Segregation in America (2018), https://segregationinamerica.eji.org/report.pdf..25

Exec. Order 10,730, 22 Fed. Reg. 7,628 (Sept. 24, 1957)………………………………24

Exec. Order 11,111, 28 Fed. Reg. 5,709 (June 11, 1963)……………………………….24

"For NH's Cities and Towns, Budget 'Downshift' is Business as Usual," *NHPR* (June 19, 2015), https://www.nhpr.org/nh-news/2015-06-19/for-nhs-cities-and-towns-budget-downshift-is-business-as-usual...36

Formella v. Hood, No. 2023-0663 (N.H. Sup. Ct. pending)……………………………21

Campbell Gibson and Kay Jung, "Historical Census Statistics On Population Totals By Race, "1790 to 1990, and By Hispanic Origin, 1970 to 1990, For Large Cities And Other Urban Places In The United States," *U.S. Census Bureau* (Feb. 2005), *available at* https://www.census.gov/content/dam/Census/library/working-papers/2005/demo/POP-twps0076.pdf...26

Sarah Gibson, "How New England's Lack of Teacher Diversity is Affecting Students at N.H.'s Largest School District," *NHPR* (June 22, 2022), https://www.nhpr.org/nh-news/2022-06-22/manchester-nh-student-teacher-diversity-enrollment-demographics...27

Lila Hassan & Dan Glaun, COVID19 and the Most Litigated Presidential Election in Recent U.S. History, PBS: Frontline (Oct. 28, 2020), https://www.pbs.org/wgbh/frontline/article/covid-19-most-litigated-presidential-election-in-recent-ushistory/...23

N.H. DOE, Cost Per Pupil by District, 2022-23 (Jan. 2, 2024), *available at* https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/cpp-fy2023.pdf..........27

N.H. DOE, Enrollments by Race/Ethnicity In New Hampshire Public Schools, As of October 1, 2023 (Feb. 23, 2024), *available at* https://my.doe.nh.gov/iPlatform/Report/Report?path=%2FBDMQ%2FiPlatform%20Reports%2FDemographic%20Data%2FEnrollments%20-%20Demographic%20Categories%2FRace%20-%20Ethnic%20Enrollments&name=Race%20-%20Ethnic%20Enrollments&categoryName=Enrollments%20-%20Demographic%20Categories&categoryId=19..........27

N.H. Supreme Ct. Oral Argument in *Contoocook Valley Sch. Dist. v. State*, No. 2019-0500 (Sept. 24, 2020), *available at* https://vimeo.com/1000548128 (20:40-21:15)..........13

Kenneth Johnson, "Modest Population Gains, but Growing Diversity in New Hampshire with Children in the Vanguard," *Carsey School of Public Policy* (Aug. 30, 2021), https://carsey.unh.edu/publication/modest-population-gains-growing-diversity-new-hampshire-children-vanguard..........26

Molly S. McUsic, The Future of *Brown v. Board of Education*: Economic Integration of the Public Schools, 117 Harv. L. Rev. 1334 (2004)..........30

Eric Ruben & Joseph Blocher, From Theory to Doctrine: An Empirical Analysis of the Right to Keep and Bear Arms After *Heller*, 67 Duke L.J. 1433 (2018)..........23

"School Districts That Serve Students of Color Receive Significantly Less Funding" *EdTrust* (Dec. 8, 2022), https://edtrust.org/press-room/school-districts-that-serve-students-of-color-receive-significantly-less-funding/..........25

SchoolFunding.Info, Overview of Litigation History, https://www.schoolfunding.info/litigation-map/..........30

Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* (2018)..........30

Victoria E. Sosina and Ericka S. Weathers, *Pathways to Inequality: Between-District Segregation and Racial Disparities in School District Expenditures, AERA Open,* 5(3), https://doi.org/10.1177/2332858419872445.....25

IDENTITY OF *AMICI CURIAE*

The American Civil Liberties Union of New Hampshire ("ACLU-NH") is the New Hampshire affiliate of the American Civil Liberties Union ("ACLU")—a nationwide, non-partisan, public-interest organization with over 1.7 million members (including over 9,000 New Hampshire members and supporters). The ACLU-NH engages in litigation by direct representation and as *amicus curiae* to encourage the protection of individual rights guaranteed under state and federal law, including the right to an adequate education funded by uniform taxation enshrined in the mandates of Part II, Article 83 and Part II, Article 5 of the New Hampshire Constitution. In this role, the ACLU-NH was a supporter of, and advocate for, the *Claremont* litigation and filed an *amicus* brief in *Contoocook Valley Sch. Dist. v. State*, 174 N.H. 154 (2021), in support of the plaintiffs.

National Education Association-New Hampshire ("NEA-NH") is located in Concord, New Hampshire and was founded in 1854—then as the New Hampshire State Teachers Association. The NEA-NH became one of the "founding ten" state education associations that formed the National Education Association ("NEA") in 1857. The NEA-NH is comprised of more than 17,000 member educators in New Hampshire representing the majority of all public-school employees in the state. The NEA-NH's mission is to strengthen and support public education and serve their members' professional, political, economic, and advocacy needs. The NEA-NH's members are public school educators in all stages of their careers, including classroom teachers and other certified professionals, education support personnel, instructors and staff at public higher education institutions, students preparing for a teaching career, and those retired from the profession. In this role, the NEA-

NH has been a supporter of, and advocate for, the state constitutional right to an adequate education, including through legislative testimony and the filing of *amicus* briefs in the following cases: *Claremont Sch. Dist. v. Governor*, 138 N.H. 183 (1993) ("*Claremont I*"), *Claremont Sch. Dist. v. Governor*, 147 N.H. 499 (2002) ("*Claremont Accountability*"); *Londonderry Sch. Dist. v. State*, 154 N.H. 153 (2006) ("*Londonderry I*"); and *Londonderry Sch. Dist. v. State*, 157 N.H. 734 (2008) ("*Londonderry II*"). Public education is the "cornerstone of our democratic system," which serves to prepare students to thrive as "citizens who are able to participate intelligently in the political, economic and social functions" of our society. *Claremont I*, 138 N.H. at 192. The NEA-NH's members strongly believe that, without constitutionally adequate education, this goal becomes much harder. As this Court held in *Claremont Sch. Dist. v. Governor*, 142 N.H. 462 (1997) ("*Claremont II*"), "[m]ere competence in the basics . . . is insufficient . . . to insure that [New Hampshire] public school students are fully integrated into the world around them. A broad exposure to the social, economic, scientific, technological, and political realities of today's society is essential for our students to compete, contribute, and flourish in the twenty-first century." *Id.* at 474.

The ACLU-NH and NEA-NH believe that their experience in these issues will make their brief of service to this Court.

SUMMARY OF ARGUMENT

New Hampshire's overall system for funding education continues to violate the rights that both students and taxpayers have under Part II, Article 83 and Part II, Article 5 of the New Hampshire Constitution. As this Court has already spoken clearly and directly

about these flaws and injustices in its prior school funding decisions, the ACLU-NH and NEA-NH ask that this Court affirm those rulings and direct the State to fulfill its constitutional duty in a uniform fashion without further delay.

The ACLU-NH and NEA-NH write separately to make the following points. *First*, this Court should follow the holdings of *Claremont* and its progeny on both the State's duty to provide an adequate education to public school students and to fund this effort with taxes that are uniform in rate. The State's argument in support of overruling *Claremont* and its progeny is underdeveloped and offhand, and therefore should be rejected. But if this Court does consider this argument (and it should not), it should reaffirm *Claremont* and its progeny, as the right to an adequate education funded through uniform taxation is firmly rooted in the text of the New Hampshire Constitution, its history, and this Court's jurisprudence. And if there was any doubt as to the correctness of *Claremont* and its progeny, the legislature has—while failing to comply with these decisions—also simultaneously and repeatedly rejected efforts to overrule or narrow these decisions, thereby demonstrating both these decisions' importance and the public's reliance on them. Further, it is critical for this Court to recognize that adequate and equitable education funding helps alleviate racial inequities in our society—a principle which is especially important here where per pupil spending is comparatively low in New Hampshire's most racially diverse cities of Manchester and Nashua. *Second*, this brief explains how the applicable constitutional standards of heightened scrutiny reject deference to the legislature and squarely place the burden on the State, not the Plaintiffs.

ARGUMENT

I. This Court Should Follow *Claremont* and its Progeny.

The State argues in less than one page that, "[i]f this Court's precedents do subject state education taxes to different constitutional requirements than other state taxes, and if those different requirements render the SWEPT [statewide education property tax] unconstitutional, *then those precedents should be overruled* to the extent necessary to permit state education taxes to be subject to the same constitutional standards as other state taxes." *See* State of New Hampshire Opening Br. in *Rand v. State of New Hampshire*, No. 2024-0138, at 27 (emphasis added); *see also id*. at 50-51. This position amounts to a direct effort to have this Court overrule the *Claremont* cases and the vital constitutional right to an adequate education paid for with taxes that are uniform in rate that this Court has repeatedly recognized. Far from *Claremont* and its progeny constituting a separation of powers violation, it is the position of the State in seeking to have this Court take the extraordinary step of overruling its prior precedent that is unprecedented. This Court should unequivocally reject this effort for the reasons explained below.

A. The State's Argument in Support of Overruling *Claremont* and its Progeny is Underdeveloped and Offhand, and Therefore Should Be Rejected.

Though the State asks this Court to overrule *Claremont* and its progeny if the lower courts otherwise correctly applied these precedents, the State does so in an undeveloped manner without a robust analysis of the *stare decisis* factors to be considered. When previously confronted with such underdeveloped, offhand arguments, this Court has not hesitated to reject consideration of the question. *See, e.g., Ford v. N.H. Dep't of Transp.*, 163

N.H. 284, 290 (2012) ("Having failed to brief any of the four stare decisis factors, the plaintiff has not persuaded us that our decision in *Trull* must be overruled."); *Boyle v. City of Portsmouth*, 172 N.H. 781, 787 (2020) ("The City does not address any of these [*stare decisis*] factors, but simply claims that the law is unfair in this case. In the absence of developed argument, we decline the City's request that we 'revisit' *Houston*."); *Sumner v. N.H. Sec'y of State*, 168 N.H. 667, 672 (2016) ("We reject, as underdeveloped, Sumner's remaining assertions that the ballot exemption statutes violate the New Hampshire Constitution."); *State v. Chick*, 141 N.H. 503, 504 (1996) (passing reference to constitutional claim renders argument waived); *Keenan v. Fearon*, 130 N.H. 494, 499 (1988) ("[O]ff-hand invocations of the State Constitution [that] are supported neither by argument nor by authority … warrant[] no extended consideration."). This Court should especially decline to address this question here where the State's minimally-reasoned argument would, if adopted, have far-reaching ramifications on the State's legal obligations to fund education. Further demonstrating the extraordinary nature of the State's argument here, the State explicitly told this Court four years ago that it was *not* making an argument that *Claremont* and its progeny were wrongly decided and should be overruled. *See* N.H. Supreme Ct. Oral Argument in *Contoocook Valley Sch. Dist. v. State*, No. 2019-0500 (Sept. 24, 2020), *available at* https://vimeo.com/1000548128 (20:40-21:15) (the Department of Justice—in response to Justice Bassett's question asking to confirm his understanding that the State was making no claim, unlike various *amici*, "that *Claremont I* or *Claremont II* or any of its progeny were wrongly decided and should be reversed"—stating that "[m]y office's job is

to defend the statutes of the state and that is what we are doing in this case, so we have not made that argument, your Honor, that's correct.").

B. If This Court Reconsiders *Claremont* and its Progeny (And it Should Not), *Stare Decisis* Demands That These Decisions Be Affirmed and Faithfully Applied.

Even if this Court were to consider overruling *Claremont* and its progeny—which it should not—the principle of *stare decisis* requires respect for, and deference to, these vitally important decisions.

This Court has made clear that "[t]he doctrine of *stare decisis* demands respect in a society governed by the rule of law, for when governing legal standards are open to revision in every case, deciding cases becomes a mere exercise of judicial will with arbitrary and unpredictable results." *Rallis v. Demoulas Super Markets*, 159 N.H. 95, 102 (2009) (quotation omitted). "Thus, when asked to reconsider a previous holding, the question is not whether we would decide the issue differently *de novo*, but whether the ruling has come to be seen so clearly as error that its enforcement was for that very reason doomed." *Id.* (quotation omitted). Indeed, "[a]dherence to precedent is 'a foundation stone of the rule of law.'" *Kisor v. Wilkie*, 588 U.S. 558, 559 (2019) (quoting *Mich. v. Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014)); *see also Payne v. Tenn.*, 501 U.S. 808, 827 (1991) (*stare decisis* "contributes to the actual and perceived integrity of the judicial process"); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 377 (2010) (Roberts, J., concurring) ("Fidelity to precedent . . . is vital to the proper exercise of the judicial function."). *Stare decisis* also "reflects respect for the accumulated wisdom of judges who have previously tried to solve the same problem." *Ramos v. La.*, 590 U.S. 83, 115 (2020) (Kavanaugh, J., concurring);

see also id. at 105 (majority op.) ("[T]he precedents of this Court warrant our deep respect as embodying the considered views of those who have come before."). In other words, *stare decisis* is a doctrine of judicial humility. *See Brown v. Davenport*, 596 U.S. 118, 141 (2022) ("At its best, that doctrine [*stare decisis*] is a call for judicial humility.") (Gorsuch, J.).

Accordingly, several factors inform this Court's judgment of whether *stare decisis* demands respect for prior precedent, "including whether: (1) the rule has proven to be intolerable simply by defying practical workability; (2) the rule is subject to a kind of reliance that would lend a special hardship to the consequence of overruling; (3) related principles of law have so far developed as to have left the old rule no more than a remnant of an abandoned doctrine; and (4) the facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification." *See N.H. Democratic Party v. Sec'y of State*, 174 N.H. 312, 326 (2021). None of these factors supports overruling *Claremont* and its progeny.

1. **The Right to an Adequate Education Paid by Uniform Taxation is Firmly Rooted in the New Hampshire Constitution, its History, and this Court's Jurisprudence. This Enforceable, Mandatory Right is Neither Unworkable Nor a Remnant of an Abandoned Doctrine. Nor Have Facts Changed to Rob This Right of Significant Application or Justification.**

As to the first, third, and fourth *stare decisis* factors, nothing about *Claremont* and its progeny is unworkable or a remnant of an abandoned doctrine. These decisions were correct when they were decided and they are correct now. They have a basis in both the text and history of the New Hampshire Constitution. And this Court should further be

deferential to precedent here because the principle that the New Hampshire Constitution contains an enforceable, mandatory right to an adequate education paid for with uniform state taxes is over three decades old and has been the centerpiece of not one, but multiple carefully-considered opinions of this Court, many years apart. A review of the history and rationale of these decisions demonstrates how they were rightly decided.

In *Claremont Sch. Dist. v. Governor*, 138 N.H. 183 (1993) ("*Claremont I*"), this Court held that Part II, Article 83 of the New Hampshire Constitution imposes a duty on the State to provide a constitutionally adequate education to every educable child in the public schools in New Hampshire and to guarantee adequate funding. This Court ruled that Article 83—the Encouragement of Literature Clause, which states that it is the duty of the legislators and magistrates to cherish, among other things, the public schools—was not "merely a statement of aspiration," but rather a command "in no uncertain terms" that "the State provide an education to all its citizens and that it support all public schools." *Id.* at 187. These holdings were not just based on textual considerations, but also the original intent of Article 83's framers:

> Between 1641 and 1679, New Hampshire and Massachusetts were united as a single province. The first New England law on education was enacted in 1642, which ordered that all children should be taught to read. In 1647, an act was passed by which public schools were established in New Hampshire. The 1647 law expressed the principles that private property was subject to public taxation for support of public schools, that schooling was to be provided for all children, and that the State would control education. "It can safely be asserted that these two Massachusetts laws of 1642 and 1647 represent not only new educational ideas in the English-speaking world, but that they also represent the very foundation stones upon which our American public school systems have been constructed." ….

> When New Hampshire became a separate province in 1680, it reenacted the education laws of Massachusetts then in existence. In 1693, the New Hampshire Legislature enacted a law requiring the towns' selectmen to raise money by "an equal rate and assessment" on the inhabitants for the construction and maintenance of the schools "and allowing a Sallary to a School Master." A penalty was provided for failure to comply with the statute. Similar laws were enacted in 1714, 1719, and 1721.
>
> The law of 1719 required every town having fifty householders or more to provide a schoolmaster to teach children to read and write, and in every town of 100 householders, a grammar school to be kept. A penalty was to be assessed for failing to comply with the law, to be paid "towards the Support of Such School or Schools within this Province where there may be most need." ….
>
> Although these laws required the towns to fund public education, Governor Wentworth made clear in an address to the Council Chamber of the House of Assembly, on April 13, 1771, that the duty to educate remained with the State: "Religion - Learning, and Obedience to the Laws, are so obviously the Duty & Delight of Wise Legislators, that their mention, justifies my Reliance on your whole Influence being applied to inculcate, spread & Support their Effect, in every Station of Life." It is also apparent from Governor Wentworth's subsequent message to the General Assembly on December 14, 1771, that the local town officials had failed to meet their duties under the prior laws and that corrective action was necessary by the State itself ….

Id. at 188-90 (internal citations omitted).

This Court elaborated on this history further and concluded that "[t]he contention that, despite the extensive history of public education in this State, the framers and general populace did not understand the language contained in part II, article 83 to impose a duty on the State to support the public schools and ensure an educated citizenry is unconvincing." *Id.* at 190. The Court added that "in New Hampshire a free public education is at the very least an important, substantive right." *Id.* at 192. This Court further concluded that this right was not just embedded in the Constitution, but that it was enforceable because it "is a right held by the public to enforce the State's duty." *Id.*

Since *Claremont I*, this Court not only has affirmed this enforceable constitutional right to adequate education, but also has actively enforced this right in the face of resident lawsuits to ensure that this right has meaning. In *Claremont Sch. Dist. v. Governor*, 142 N.H. 462 (1997) ("*Claremont II*"), for example, this Court held that the then-existing system for financing elementary and secondary public education in New Hampshire was unconstitutional because, rather than paying the full cost of a constitutionally adequate public education, the State was utilizing local and disproportional tax levies to satisfy part of its exclusive obligation. The Court made clear that "the property tax levied to fund education is, by virtue of the State's duty to provide a constitutionally adequate public education, a State tax and as such is disproportionate and unreasonable in violation of part II, article 5 of the New Hampshire Constitution." *Id.* at 466. There, this Court "made it clear that the State was responsible to: (1) define the content of a constitutionally adequate public education; (2) fund it; (3) ensure that any property tax used to pay for it was administered in a manner that was equal in valuation and uniform in rate; and (4) develop a system of accountability to ensure the delivery of a constitutionally adequate public education." *See Londonderry Sch. Dist. v. State*, 157 N.H. 734, 738 (2008) ("*Londonderry II*") (Broderick, C.J., dissenting) (summarizing *Claremont II* holding).

Later, in 1998, this Court denied the State's effort to obtain a two-year extension to fulfill the mandates of *Claremont II*, stating that, "[a]bsent extraordinary circumstances, delay in achieving a constitutional system [would be] inexcusable." *See Claremont Sch. Dist. v. Governor*, 143 N.H. 154, 158 (1998) ("*Claremont Motion for Extension of Deadlines*"). The following year, this Court concluded that the State's proposal to phase-in a

statewide property tax to fund constitutional adequacy would result in unconstitutional tax disparities. *See Claremont Sch. Dist. v. Governor*, 144 N.H. 210 (1999) ("*Claremont Statewide Property Tax Phase-In*"). And in *Claremont Sch. Dist. v. Governor*, 147 N.H. 499 (2002) ("*Claremont Accountability*"), this Court held that the accountability standards in Senate Bill 164 designed to provide an adequate education did not pass constitutional muster. The accountability rules the State had implemented allowed it to be relieved of its duty when a school district's tax base or other financial condition contributed to noncompliance with minimum standards. This Court held that there was "no accountability when the rules on their face tolerate[d] noncompliance with the duty to provide a constitutionally adequate education." *Id.* at 513. This Court then went so far as to conclude that the right to an adequate education was "settled law," concluding: "In light of the procedural history of this litigation, including efforts by the executive and legislative branches and their previous statements on this issue, and the application of <u>*settled law*</u>, this conclusion should be neither surprising nor unanticipated." *Id.* at 519 (emphasis added). This Court effectively affirmed *Claremont* once more when it held, in *Londonderry Sch. Dist. v. State*, 154 N.H. 153 (2006) ("*Londonderry I*"), that RSA 193-E:2, standing alone, did not fulfill the State's duty to define the substantive content of a constitutionally adequate education in the context of Part II, Article 83 in such a manner that the residents of the New Hampshire could know what the parameters of that educational program were. *Id.* at 161.

To overturn *Claremont* and its progeny now, after three decades in which New Hampshire courts have enforced these decisions would create a wave of political turmoil where state funds for education will perpetually be on the chopping block every legislative

cycle. There is no precedent for this type of dramatic about-face from such a longstanding, widely-known, and carefully-considered precedent, especially when it would require a dramatic holding that prior cases deemed justiciable actually were not justiciable. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 363-64 (2022) (Kagan, dissenting) ("The majority's cavalier approach to overturning this Court's precedents. *Stare decisis* is the Latin phrase for a foundation stone of the rule of law: that things decided should stay decided unless there is a very good reason for change. It is a doctrine of judicial modesty and humility. Those qualities are not evident in today's opinion …. The Court reverses course today for one reason and one reason only: because the composition of this Court has changed.").

This Court has rarely overruled a prior decision recognizing a core, enforceable right in the New Hampshire Constitution; rather, it has more commonly overruled decisions implicating how to interpret statutes and procedural rules in criminal cases. *See, e.g., Seacoast Newspapers, Inc. v. City of Portsmouth*, 173 N.H. 325 (2020) (overruling *Union Leader Corp. v. Fenniman*, 136 N.H. 624 (1993) with respect to how to interpret RSA 91-A:5, IV); *In re Blaisdell*, 174 N.H. 187, 188 (2021) (overruling *In the Matter of Blanchflower & Blanchflower*, 150 N.H. 226 (2003), to the extent that it limits the definition of "adultery," as that term is used in RSA 458:7, II, to sexual intercourse between persons of the opposite sex); *State v. Quintero*, 162 N.H. 526, 529 (2011) (overruling *State v. Williams*, 137 N.H. 343 (1993), which required the State to prove the charged acts occurred in the time frame alleged in the indictments); *State v. Duran*, 158 N.H. 146, 148 (2008) (overruling the statutory-based decision in *State v. Harnum*, 142 N.H. 195 (1997), on which the

trial court had relied in holding that defendant was not entitled to credit for pretrial confinement in Colombia while awaiting extradition). To the contrary, this Court has rejected at least one recent effort to overrule a decision expounding on constitutional rights, there with respect to the right to vote. *See N.H. Democratic Party*, 174 N.H. at 327 ("Under these circumstances, we are not persuaded that *Guare* should be overruled.").

The fact that this Court has had to previously enforce the constitutional right to a uniform tax rate in state taxes used to meet the State's educational duty in the face of legislative resistance—or that a state obligation to uniformly fund an adequate education may lead to lengthy and expensive constitutional litigation—also does not support a conclusion that the holdings in *Claremont* and its progeny are unworkable or that circumstances have meaningfully changed after these repeated decisions enforcing this right. *See Claremont Sch. Dist. v. Governor*, 142 N.H. 462 (1997) ("*Claremont II*"); *Opinion of the Justices ("School. Financing")*, 142 N.H. 892 (1998); *Claremont Sch. Dist. v. Governor*, 144 N.H. 210 (1999) ("*Claremont Statewide Property Tax Phase-In*"); *see also Londonderry Sch. Dist. v. State*, 154 N.H. 153 (2006) ("*Londonderry I*"). Constitutional rights often require vigilance from the courts, including in the face of legislative inaction or even hostility. Collectively, both federal courts and New Hampshire state courts hear thousands of cases every year alleging violations of constitutional rights, including the rights under the First Amendment and Part I, Articles 22 and 5 of the New Hampshire Constitution to free speech and free exercise of religion, *see, e.g., Formella v. Hood*, No. 2023-0663 (N.H. Sup. Ct. pending); *State v. Mack*, 173 N.H. 793 (2020), the rights under the Second Amendment and Part I, Article 2-a to bear arms, *see Burt v. Speaker of the House of Representatives*,

173 N.H. 522 (2020), and rights under the Eighth Amendment and Part I, Article 33 to be free from cruel and/or unusual punishments, *see, e.g., State v. Addison*, 165 N.H. 381, 565 (2013); *In re State of N.H.*, 166 N.H. 659 (2014). Far from supporting the elimination of such rights, the existence of continued unconstitutional conduct only underscores the continued necessity for judicial enforcement.

It is the responsibility of the judiciary to adjudicate such disputes. When "a [constitutional] hurt or injury is inflicted . . . by the encouragement or command of laws or other state action, the Constitution requires redress by the courts." *Schuette v. Coal. to Def. Affirmative Action, Integration & Immigrant Rights & Fight for Equal. by Any Means Necessary (BAMN)*, 572 U.S. 291, 313 (2014) (plurality). As this Court noted:

> Regardless, our decision in [*State v.*] *LaFrance* [, 124 N.H. 171 (1983)] does not permit us to treat the separation of powers as an "impenetrable barrier[ ]," *State v. Carter*, 167 N.H. 161, 166, 106 A.3d 1165 (2014) (quotation omitted), and thereby disregard our "duty to interpret constitutional provisions and … determine whether the legislature has complied with them." *Hughes* [*v. Speaker of N.H. House of Representatives*], 152 N.H. [276, 288 (2005)]. The legislature may not, even in the exercise of its "absolute" internal rulemaking authority, violate constitutional limitations. *Id.* at 284, 288. Indeed, "[n]o branch of State government can lawfully perform any act which violates the State Constitution." *LaFrance*, 124 N.H. at 176. Therefore, "[a]ny legislative act violating the constitution or infringing on its provisions must be void because the legislature, when it steps beyond its bounds, acts without authority." *Id.* at 177.

Burt, 173 N.H. at 527-28. Moreover, as the United States Supreme Court observed in *West Virginia State Board of Education v. Barnette*, "[w]e cannot . . . withhold the judgment that history authenticates as the function of this Court when liberty is infringed." 319 U.S. 624, 640 (1943); *see also Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) ("The very essence of civil liberty certainly consists in the right of every individual to claim the

protection of the laws, whenever he receives an injury."). It is neither unusual nor improper for individuals to look to the courts when their rights are violated; rather, it is a sign that the system is working—not that the rights at issue should be abandoned and left to the legislature with no judicial accountability.

Constitutional rights are, of course, often contentious. For example, the right to bear arms and the right to vote have both engendered significant litigation, including before this Court. *See, e.g., Burt*, 173 N.H. 522 (addressing right to bear arms under Part I, Article 2-a); *N.H. Democratic Party v. Sec'y of State*, 174 N.H. 312 (2021) (addressing right to vote under Part I, Article 11); *Guare v. State of New Hampshire*, 167 N.H. 658 (2015) (same); *Norelli v. N.H. Sec. of State*, 175 N.H. 186 (2022). More than one thousand Second Amendment challenges were filed in less than eight years after *District of Columbia v. Heller*, 554 U.S. 570 (2008).[1] There were more than 400 voting-related lawsuits in connection with the 2020 election cycle—more than twice as many as in the 2000 election.[2] Extensive litigation over constitutional rights is no reason to diminish the underlying constitutional rights at issue or to abandon this Court's responsibility to protect those rights. To overrule a right because it is contentious and requires this Court to make hard decisions that will sometimes be met with disapproval at the legislature would do grave damage to

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[1] *See* Eric Ruben & Joseph Blocher, From Theory to Doctrine: An Empirical Analysis of the Right to Keep and Bear Arms After *Heller*, 67 Duke L.J. 1433, 1455 (2018) (cataloguing "997 opinions address[ing] 1,153 distinct Second Amendment challenges" between June 2008 and February 2016).

[2] *See* Lila Hassan & Dan Glaun, COVID19 and the Most Litigated Presidential Election in Recent U.S. History, PBS: Frontline (Oct. 28, 2020), https://www.pbs.org/wgbh/frontline/article/covid-19-most-litigated-presidential-election-in-recent-ushistory/.

the rule of law. If the mere fact that constitutional disputes persist were sufficient to overturn constitutional decisions, those who are unhappy with a decision of the Court would have every incentive to continue to violate the right so that they could at some point argue that the existence of so many disputes is reason to abandon the Court's ruling. By contrast, adherence to *stare decisis* and the rule of law sends a clear message to avoid repetitive, untenable challenges to established law.

Consider, in this light, the United States Supreme Court's decisions in *Brown v. Board of Education*, 347 U.S. 483 (1954) ("*Brown I*"), and *Brown v. Board of Education*, 349 U.S. 294 (1955) ("*Brown II*"). Those decisions were met with widespread and staunch opposition—including by legislators—and required extensive litigation to make progress toward their promise of ending racial segregation. Shortly after the United States Supreme Court's decision in *Brown II*, nearly one hundred members of Congress endorsed a statement read on the congressional floor that praised "those States which have declared the intention to resist forced integration" and pledged "to use any lawful means to bring about a reversal of" the Court's decisions.[3] State resistance to desegregation required resort to United States military troops to enforce court orders.[4] And yet the courts remained steadfast in adhering to *Brown* and the rule of law. *See, e.g., Griffin v. Cnty. Sch. Bd.*, 377 U.S.

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[3] Declaration of Constitutional Principles ("Southern Manifesto on Integration"), 102 Cong. Rec. 4459–60 (Mar. 12, 1956) (statement of 19 Senators and 77 House members calling Brown "a clear abuse of judicial power").

[4] *See* Exec. Order 10,730, 22 Fed. Reg. 7,628 (Sept. 24, 1957) (ordering Arkansas National Guard under federal authority and sending federal troops in response to "willful[] obstruct[ion]" of court orders in the Eastern District of Arkansas); Exec. Order 11,111, 28 Fed. Reg. 5,709 (June 11, 1963) (similar order to enforce desegregation orders in Northern District of Alabama).

218 (1964) (holding Prince Edward County school board's decision to close public schools and fund private segregated schools violated equal protection); *Cooper v. Aaron*, 358 U.S. 1 (1958) (rejecting attempted suspension of Little Rock School Board's integration plan and ordering integration of public schools); *Lee v. Macon Cnty. Bd. of Educ*., 267 F. Supp. 458, 460–64 (M.D. Ala. 1967) (ordering desegregation plan after three prior injunctions against interference with desegregation efforts had been violated by state officials), *aff'd*, *Wallace v. United States*, 389 U.S. 215 (1967).[5] This history—decades of litigation to enforce the United States Constitution, often in the face of open resistance—was no basis for overruling *Brown*. The same is true of *Claremont* and its progeny.

Brown, as it celebrates its 70th anniversary, is insightful here for another reason: adequate and equitable education funding helps alleviate racial inequities in our society—a principle which is especially important here where per pupil spending is comparatively low in New Hampshire's most racially diverse cities of Manchester and Nashua.[6] New

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[5] *See generally* Jack Bass, *Unlikely Heroes: The Dramatic Story of the Southern Judges of the Fifth Circuit who Translated the Supreme Court's* Brown *Decision Into a Revolution for Equality* (1981); Equal Justice Initiative, "Massive Resistance," in Segregation in America 20–39 (2018), https://segregationinamerica.eji.org/report.pdf.

[6] *See* Victoria E. Sosina and Ericka S. Weathers, *Pathways to Inequality: Between-District Segregation and Racial Disparities in School District Expenditures, AERA Open,* 5(3), https://doi.org/10.1177/2332858419872445 ("[R]ace remains related to funding disparities and schooling experiences in ways that raise concerns about the role of school finance in perpetuating racial opportunity gaps …. We find that changes in racial/ethnic segregation within a state from 1999 through 2013 are associated with racial/ethnic disparities in spending, even after accounting for disparities in poverty."); "School Districts That Serve Students of Color Receive Significantly Less Funding" *EdTrust* (Dec. 8, 2022), https://edtrust.org/press-room/school-districts-that-serve-students-of-color-receive-significantly-less-funding/ ("Across the country, districts with the most Black, Latino, and Native students receive substantially less state and local revenue — as much as $2,700 per student

Hampshire rapidly is becoming more racially diverse. While New Hampshire's population grew by a modest 4.6% during the past decade, the number of residents who are people of color increased by 74.4% to 176,900 in 2020. Black, Hispanic, and other people of color now represent 12.8% (176,900) of the state's population as of 2020 compared to 7.5% (101,400) in 2010.[7] For example, the population of Manchester and Nashua was 98% White in 1980.[8] Manchester now is 77.4% White, 12.3% Latino/Hispanic (approximate population 14,203), and 5.6% Black alone (approximate population 6,466).[9] Nashua now is now 77.8% White, 13.1% Latino/Hispanic (approximate population 11,921), and 2.9% Black alone (approximate population 2,639).[10] And "children are at the leading edge of the state's growing diversity,"[11] with "[t]he number of non-white students [having risen] by 200% statewide in the last 20 years, driven in large part by growing diversity in cities

— less than districts with the fewest students of color. In a district with 5,000 students, this means $13.5 million in missing resources.").

[7] Kenneth Johnson, "Modest Population Gains, but Growing Diversity in New Hampshire with Children in the Vanguard," *Carsey School of Public Policy* (Aug. 30, 2021), https://carsey.unh.edu/publication/modest-population-gains-growing-diversity-new-hampshire-children-vanguard.

[8] *See* Campbell Gibson and Kay Jung, "Historical Census Statistics On Population Totals By Race, "1790 to 1990, and By Hispanic Origin, 1970 to 1990, For Large Cities And Other Urban Places In The United States," *U.S. Census Bureau* (Feb. 2005), *available at* https://www.census.gov/content/dam/Census/library/working-papers/2005/demo/POP-twps0076.pdf (Census Data for 1980 at Table 30, page 76).

[9] 2023 Population Estimates for Manchester, https://www.census.gov/quickfacts/fact/table/manchestercitynewhampshire/PST045219.

[10] 2023 Population Estimates for Nashua, https://www.census.gov/quickfacts/fact/table/nashuacitynewhampshire/PST045219.

[11] Kenneth Johnson, "Modest Population Gains, but Growing Diversity in New Hampshire with Children in the Vanguard," *Carsey School of Public Policy* (Aug. 30, 2021), https://carsey.unh.edu/publication/modest-population-gains-growing-diversity-new-hampshire-children-vanguard.

like Manchester and Nashua."[12] The *Union Leader* has also reported that "more than 2 of every 5 children in Manchester and Nashua hail from families of color," and that, "[i]n 30 years, Manchester's youngest generation has shifted from 94% White in 1990 to 57% last year."[13] Significantly, Manchester's level of spending per pupil ($16,636.35 for 2022-23) is among the lowest in the state, and Nashua's level of spending per pupil ($18,107.16 for 2022-23) is well below the state average of $20,322.52—both districts where racial/ethnic diversity among the student population is the largest in New Hampshire.[14]

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[12] *See* Sarah Gibson, "How New England's Lack of Teacher Diversity is Affecting Students at N.H.'s Largest School District," *NHPR* (June 22, 2022), https://www.nhpr.org/nh-news/2022-06-22/manchester-nh-student-teacher-diversity-enrollment-demographics.

[13] *See* Michael Cousineau, "NH Grows More Diverse, Faces Call for Change," *Union Leader* (Dec. 18, 2021) (updated Mar. 22, 2022), https://www.unionleader.com/news/business/whats_working/nh-grows-more-diverse-faces-call-for-change/article_8c1cfc2d-73c1-51f3-9a5d-939525c3c21e.html.

[14] *See* N.H. DOE, Enrollments by Race/Ethnicity In New Hampshire Public Schools, As of October 1, 2023 (Feb. 23, 2024), *available at* https://my.doe.nh.gov/iPlatform/Report/Report?path=%2FBDMQ%2FiPlatform%20Reports%2FDemographic%20Data%2FEnrollments%20-%20Demographic%20Categories%2FRace%20-%20Ethnic%20Enrollments&name=Race%20-%20Ethnic%20Enrollments&categoryName=Enrollments%20-%20Demographic%20Categories&categoryId=19 (indicating that Manchester's student population is 48.70% White/Non-Hispanic as of October 1, 2023, and that Nashua's student population is 50.20% White/Non-Hispanic, making them the most diverse districts in New Hampshire); N.H. DOE, Cost Per Pupil by District, 2022-23 (Jan. 2, 2024), *available at* https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/cpp-fy2023.pdf (indicating that Manchester is the sixth lowest district in per pupil spending out 162 districts with figures, and indicating that Nashua is the twenty-third lowest district in per pupil spending out 162 districts with figures); *see also* Sarah Gibson, "How New England's Lack of Teacher Diversity is Affecting Students at N.H.'s Largest School District," *NHPR* (June 22, 2022), https://www.nhpr.org/nh-news/2022-06-22/manchester-nh-student-teacher-diversity-enrollment-demographics ("In the last 20 years, the number of students of color in Manchester has more than doubled. Nearly half of students in the city's public schools are now non-white — predominantly Latino or Black — but the same applies to less than 5%

Any attempt to paint the right of New Hampshire's public school students to an adequate education or the right of property taxpayers to be protected from disproportionate and unequal taxes as somehow unique because these rights are perceived to be "hotly contested" similarly fails. Many rights are controversial or unpopular; indeed, that is why they cannot be left to the political process, and why individuals must often turn to an independent judiciary for their enforcement. Consider also criminal procedure rights for those accused of murder, free exercise rights of Jehovah's Witnesses, or free speech rights of those who burn the United States flag in protest or have views many deem repugnant—all of which retain constitutional protection despite often intense public criticism. *See Barnette*, 319 U.S. at 638 (constitutional rights "withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts"). As the United States Supreme Court remarked in *Brown II*, "it should go without saying that the vitality of . . . constitutional principles cannot be allowed to yield simply because of disagreement with them." 394 U.S. at 300.

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of Manchester's school staff"; "Data from the 2020 census shows that about 45% of those under age 18 in Manchester and Nashua are people of color.").

There is yet another parallel between *Brown* and *Claremont*. This Court's refusal to delay the deadline to fulfill the mandates of *Claremont II* by two years in *Claremont Sch. Dist. v. Governor*, 143 N.H. 154 (1998) ("*Claremont Motion for Extension of Deadlines*") was handled in similar ways to the United States Supreme Court's refusal to postpone the deadline for the Little Rock School Board to comply with *Brown* in *Cooper v. Aaron*, 358 U.S. 1 (1958). Both cases—*Claremont Motion for Extension of Deadlines* and *Cooper*—resulted in an order refusing delay that was personally signed by all the justices. And this Court in *Claremont Motion for Extension of Deadlines*, in rejecting delay, specifically cited *Cooper*. *See Claremont Motion for Ex-tension of Deadlines*, 143 N.H. at 158.

It also would be wrong to suggest that *Claremont* and its progeny have abandoned the proper limits of judicial power and improperly enmeshed the court system in the law-making process. Just as separation of powers principles were not violated by allowing a challenge to the legislature's rule prohibiting firearms in certain state house locations in *Burt*, no such violation occurs here in enforcing the constitutional mandates of the *Claremont* decisions where it "is the role of this court in our co-equal, tripartite form of government to interpret the Constitution." *See Burt*, 173 N.H. at 528 (quoting *Petition of Judicial Conduct Comm.*, 145 N.H. 108, 113, (2000)). *Claremont* and its progeny present even less of a separation of powers concern than in *Burt* where these education cases do not implicate internal legislative rules governing legislative behavior, but rather a fundamental and mandatory right "held by the public," *see Claremont I*, 138 N.H. at 192, including New Hampshire's poorest residents. In other words, far from constituting a violation of separation of powers, *Claremont*—and *Burt*—represent the foundational principle that New Hampshire is a State of checks and balances in which the court system plays a vital role in protecting fundamental, mandatory constitutional rights. *See also Horton v. McLaughlin*, 149 N.H. 141, 145 (2003) ("The court system [remains] available for adjudication of issues of constitutional or other fundamental rights."); *Baines v. N.H. Senate President*, 152 N.H. 124, 129, 132 (2005) ("Claims regarding compliance with these kinds of mandatory constitutional provisions are justiciable."; holding that claims under the mandatory provisions of N.H. Const. pt. II, art. 2, 20, 37, and 44 are justiciable; also noting that, "[w]hile it is appropriate to give due deference to a co-equal branch of government as long as it is functioning within constitutional constraints, it would be a serious dereliction

on our part to deliberately ignore a clear constitutional violation"); *Richard v. Speaker of the House of Representatives*, 175 N.H. 262, 268 (2022) ("Here, in effect, we have been asked whether the Speaker and the Senate President, on behalf of their respective legislative bodies, failed to comply with constitutional mandates. We conclude that this question is justiciable."). And New Hampshire is far from alone in recognizing these educational rights as being enforceable.[15]

Here, making this justiciability conclusion stronger—unlike *Brown v. Sec'y of State*, 176 N.H. 319 (2023), where this Court concluded that the claims for partisan gerrymandering were nonjusticiable under the New Hampshire Constitution—the right to an adequate education and the right to uniform taxes to pay for this education *have been* previously (and repeatedly) deemed a justiciable, mandatory right by this Court using discernable standards. The standards this Court has used in adjudicating these educational and taxpayer rights are no less discernable than the tiers of constitutional scrutiny that this Court has ubiquitously used elsewhere in adjudicating fundamental rights. *See infra*

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[15] *See* Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 42-43 (2018) ("All told, roughly forty-four states by now have faced state-constitutional challenges to their systems of funding public schools. Plaintiffs have won twenty-seven of these challenges at some point and in the process compelled legislatures to adopt a host of additional reforms, many of which increased funding and closed equity gaps."); *see also* SchoolFunding.Info, Overview of Litigation History, https://www.schoolfunding.info/litigation-map/ (noting 26 states, including New Hampshire, that have a legal right to education that is enforced); Molly S. McUsic, The Future of *Brown v. Board of Education*: Economic Integration of the Public Schools, 117 Harv. L. Rev. 1334, 1344 & n. 63 (2004) ("In addition to advancing federal theories of equal financing, plaintiffs have also brought claims under state constitutions. Plaintiffs have frequently won these cases, and most studies indicate that the resulting court orders have led to greater equity in school funding.").

Section II. The fact that some legislators may not like these standards (or that they are being held accountable by a system of checks and balances) in the context of education adequacy does not make these standards any less discernible. This Court, in fact, has taken great care to comply with separation of powers principles in its education funding decisions by drawing a fine line to exercise its duty to declare whether the right to an adequate education under Article 83 and the right to uniform taxation under Article 5 are being complied with, while at the same time giving the legislature the breadth and discretion to find the best ways to comply with these decisions. *See Claremont I*, 138 N.H. at 193 ("We are confident that the legislature and the Governor will fulfill their responsibility with respect to defining the specifics of, and the appropriate means to provide through public education, the knowledge and learning essential to the preservation of a free government."), *Claremont II*, 142 N.H. at 476-77 ("Decisions concerning the raising and disposition of public revenues are particularly a legislative function and the legislature has wide latitude in choosing the means by which public education is to be supported …. We are confident that the legislature and the Governor will act expeditiously to fulfill the State's duty to provide for a constitutionally adequate public education and to guarantee adequate funding in a manner that does not violate the State Constitution."). Unfortunately, while this Court has faithfully complied with its mandated obligation to "say what the law is," it is the legislature that has continued to skirt this obligation even when given a long leash by the courts for years.

The principle that this Court has a vital role to play in enforcing constitutional rights is no less true if, to meaningfully provide a constitutional right, the legislature needs to use

funds. It is not particularly remarkable that the State is subject here in the education context to constitutional mandates that may cause it to spend financial resources—just as, for example, the State is constitutionally required to provide adequate care to prison residents and must therefore spend funds to do so. This has been litigated time and time again in the context of federal constitutional rights, where federal courts have explained that "[r]elief that serves directly to bring an end to a present violation of federal law is not barred by the Eleventh Amendment even though accompanied by a substantial ancillary effect on the state treasury." *See, e.g., Papasan v. Allain*, 478 U.S. 265, 278 (1986).[16] Indeed, it would be paradoxical for this Court to conclude that—while the State clearly can be ordered by a federal court to take steps to enforce a federal substantive constitutional right that may have a "substantial ancillary effect" on the state treasury without running afoul of sovereign immunity—a state court does not have that similar power under the New Hampshire Constitution to enforce a state constitutional right in a manner that has an ancillary impact on the treasury. *Claremont* and its progeny are also readily distinguishable from *Carrigan v. N.H. Dep't of Health & Human Servs.*, where the plaintiff there asked this Court to sweepingly "[s]crutiniz[e] the entire realm of a governmental body's spending activity … to determine what aspects of its spending decisions, if any, are causing injury," 174 N.H. 362

[16] *See also, e.g., Milliken v. Bradley*, 433 U.S. 267, 289 (1977) (affirming that *Ex parte Young* "permits federal courts to enjoin state officials to conform their conduct to requirements of federal law, notwithstanding a direct and substantial impact on the state treasury"); *Edelman v. Jordan*, 415 U.S. 651, 667–68 (1974) ("[A]n ancillary effect on the state treasury is a permissible and often an inevitable consequence of the principle announced in *Ex parte Young*.").

(2001); here, rather, the question before this Court can be viewed as more targeted in focusing on whether the statewide education property tax (SWEPT) is unconstitutional.

Claremont and its progeny also cannot be viewed as unworkable and "no more than a remnant of an abandoned doctrine" where the legislature—while not complying with the mandates of the *Claremont* decisions—has simultaneously also repeatedly rejected efforts to overrule or limit the impact of these decisions dating all the way back to 1998. *See, e.g.,* 1998 CACR46 (House deeming inexpedient to legislate proposed constitutional amendment stating, in part, that the right of every child to an adequate education shall be enforced by appropriate legislation)[17]; 1999 HB737 (bill "declaring the New Hampshire supreme court's Claremont II decision to be an unconstitutional violation of the separation of powers mandate under part I, article 37 of the New Hampshire constitution" was inexpedient to legislate in the House)[18]; 2000 HB113 (Senate deeming inexpedient to legislate House bill intended to affirm sovereign immunity as it relates to the *Claremont* ruling)[19]; 2003 HCR14 (Senate rejecting as inexpedient to legislate House concurrent resolution stating that the *Claremont* cases are not binding on the legislature and executive branch)[20]; 2004

[17] *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=2925&sy=1998&sortoption=&txtsessionyear=1998&txtbillnumber=CACR46.

[18] *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=1021&sy=1999&sortoption=&txtsessionyear=1999&txtbillnumber=HB737.

[19] *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=640&sy=2000&sortoption=billnumber&txtsessionyear=2000&txtbillnumber=HB113.

[20] *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=15&sy=2003&sortoption=&txtsessionyear=2003&txtbillnumber=HCR14.

HCR25 (same House concurrent resolution deemed inexpedient to legislate in House)[21]; 2007 HCR1 (same House concurrent resolution deemed inexpedient to legislate in House)[22]; 2008 CACR34 (House deeming inexpedient to legislate constitutional amendment proposed by Senate stating that it is the legislature that shall define an adequate education)[23]; 2009 CACR11 (Senate tabling proposed constitutional amendment stating that it is the legislature that shall define an adequate education)[24]; 2010 CACR34 (Senate tabling proposed constitutional amendment stating that it is the legislature that shall define an adequate education)[25]; 2012 HCR26 (House concurrent resolution stating that the *Claremont* cases are not binding on the legislature and executive branch sent to interim study in House, with the report not recommending it for legislation)[26]; 2015 CACR3 (Senate deeming inexpedient to legislate proposed constitutional amendment stating that the legislature

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[21] *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=2336&sy=2004&sortoption=&txtsessionyear=2004&txtbillnumber=HCR25.

[22] *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=171&sy=2007&sortoption=&txtsessionyear=2007&txtbillnumber=HCR1.

[23] *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=2915&sy=2008&sortoption=billnumber&txtsessionyear=2008&txtbillnumber=CACR34.

[24] *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=926&sy=2009&sortoption=billnumber&txtsessionyear=2009&txtbillnumber=cacr11.

[25] *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=2906&sy=2010&sortoption=billnumber&txtsessionyear=2010&txtbillnumber=CACR34.

[26] *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=669&sy=2012&sortoption=billnumber&txtsessionyear=2012&txtbillnumber=HCR26.

determine the standards for an adequate education)[27]; 2021 HCR3 (House concurrent resolution stating that the *Claremont* cases are not binding on the legislature and executive branch recommended inexpedient to legislate).[28] These legislative rejections are especially salient where the legislature and the people have elsewhere demonstrated their ability to overrule this Court's decisions interpreting the New Hampshire Constitution, including this Court's taxpayer standing decision in *Duncan v. State*, 166 N.H. 630 (2014), through the amendments to Part I, Article 8 in 2018. All of this confirms that the relief sought here in overruling or narrowing the *Claremont* decision and its progeny is precisely something that the legislature has repeatedly refused to do, and therefore is even more extreme.

2. The Reliance Interests on *Claremont* and its Progeny are Overwhelming Where, For Over 30 Years, New Hampshire Residents and Municipalities Have to Come to Expect Significant, Uniform Financial Support from the State to Support an Adequate Education.

As to the second *stare decisis* factor—namely, whether *Claremont* and its progeny are subject to a kind of reliance that would lend a special hardship to the consequence of overruling them—the reliance interests here are overwhelming. With these repeated decisions affirming this "settled" constitutional right, *see Claremont Accountability*, 147 N.H. at 519, it can hardly be disputed that residents and municipalities have undoubtedly come to rely on aid provided by the State which could either be reduced or eliminated entirely if

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[27] *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=190&sy=2015&sortoption=billnumber&txtsessionyear=2015&txtbillnumber=CACR3.

[28] *See* https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/bill_docket.aspx?lsr=0691&sy=2021&sortoption=billnumber&txtsessionyear=2021&txtbillnumber=HCR3.

Claremont and its progeny are overruled. Indeed, these decisions may even be the only thing incentivizing the legislature to provide any funding for education at all, with the potential for funding to be cut if these decisions are washed away. If this Court overturns the *Claremont* cases, it may be only a matter of time before the State reduces its obligation to fund the adequacy formula—the structure that gives assistance to towns that cannot raise enough for their schools through the statewide education property tax (SWEPT). The end result would be further downshifting of the cost of vital services from the State to cash-strapped municipalities—a trend that has accelerated since the Great Recession of 2008-2009 and increased the burdens on municipal taxpayers.[29]

II. Heightened Scrutiny Rejects Deference to the Legislature.

This case also highlights how the applicable constitutional standards of heightened scrutiny reject deference to the legislature and squarely place the burden on the State of New Hampshire, not the Plaintiffs. As this Court explained in *Claremont II*, when "an

[29] *See* "For NH's Cities and Towns, Budget 'Downshift' is Business as Usual," *NHPR* (June 19, 2015), https://www.nhpr.org/nh-news/2015-06-19/for-nhs-cities-and-towns-budget-downshift-is-business-as-usual ("Since the Great Recession, local governments across New Hampshire have had to rely less and less on one of their main sources of revenue: state aid. To balance the budget, state lawmakers have suspended, eliminated or reneged on agreements that for decades have helped cities and towns pay for the services they provide residents."); Ethan Dewitt, "Cities, Towns Hoping State Will Make Retirement Contributions Permanent," *N.H. Bulletin* (Jan. 19, 2023), https://newhampshirebulletin.com/2023/01/19/cities-towns-hoping-state-will-make-retirement-contributions-permanent/ ("When New Hampshire lawmakers consolidated the state's public retirement systems in 1967, they offered cities and towns a deal: Add municipal employees to the system, and the state would pick up 35 percent of the cost …. Forty-three years later, amid the Great Recession, the state backtracked. The Legislature lowered the state's share to 30 percent in 2010, then to 25 percent in 2011, then to zero in 2013. Until last year – when legislators passed a one-time, one-year 7.5 percent state contribution rate – the state has not contributed at all.").

individual school or school district offers something less than educational adequacy, the governmental action or lack of action that is the root cause of the disparity will be examined by a standard of strict judicial scrutiny." *Claremont II*, 142 N.H. at 474; *see also State v. Hollenbeck*, 164 N.H. 154, 160 (2012) ("[A] heightened standard of review applies when a fundamental right or protected liberty interest is at issue."). Here, New Hampshire's tax scheme is "the root cause of the disparity."

Under strict scrutiny, the governmental restriction in question must "be justified by a compelling governmental interest and must be necessary to the accomplishment of its legitimate purpose.'" *Akins v. Sec'y of State*, 154 N.H. 67, 73 (2006) (*quoting Follansbee v. Plymouth Dist. Ct.*, 151 N.H. 365, 367 (2004)). Critically, under this standard, the burden is "upon the State to prove that the statute is narrowly tailored to promote a compelling [state] interest." *State v. Zidel*, 156 N.H. 684, 686 (2008); *see also Fisher v. Univ. of Tx. at Austin*, 579 U.S. 365, 400-401 (2016) ("Strict scrutiny is a searching examination, and it is the government that bears the burden of proof."). Where a showing has been made that the fundamental right to an adequate education has been adversely impacted thereby triggering strict scrutiny—as is the case here—the traditional presumptions in favor of constitutionality and deference to the legislature are discarded. In other words, strict scrutiny rejects deference to the legislature and, instead, carries a "presumption of unconstitutionality." *Bleiler v. Chief, Dover Police Dep't*, 155 N.H. 693, 699 (2007).

And even if the lesser standard of intermediate scrutiny applied, deference to the legislature is rejected. Under intermediate scrutiny, the challenged action must be substantially related to an important governmental objective. *See United States v. Virginia*, 518

U.S. 515, 524 (1996). As the United States Supreme Court has explained in the federal equal protection context governing sex-based classifications, "[t]he burden of justification [when applying intermediate scrutiny] is demanding and it rests *entirely on the State*." *Id.* at 533 (emphasis added). As part of this scrutiny, the State's justifications for its actions "must be genuine, not hypothesized or invented post hoc in response to litigation. *Id.*; *see also Sessions v. Morales-Santana*, 582 U.S. 47, 59 (2017) (noting that the burden falls on the "defender of [the] legislation"). This Court has also not hesitated to reject post-hoc justifications in applying intermediate scrutiny in the equal protection and voting contexts. *See, e.g., Cmty. Res. for Justice, Inc. v. City of Manchester*, 154 N.H. 748, 762 (2007) ("To meet this burden, the government may not rely upon justifications that are hypothesized or invented post hoc in response to litigation, nor upon overbroad generalizations.") (internal quotations omitted); *see also Guare,* 167 N.H. at 665, 668 (same; rejecting changes to voter registration form on intermediate scrutiny grounds, including post hoc justifications).

Particularly in recent years, courts have rigorously applied the intermediate scrutiny standard in the context of content-neutral speech restrictions and made clear that the burden under this standard falls on the government to present actual evidence justifying the restriction and whether it is tailored to the interests asserted. *See McCullen v. Coakley*, 573 U.S. 464, 495, 489-96 (2014) ("To meet the requirement of narrow tailoring, the government must demonstrate [that the speech restriction meets the relevant requirements]"; striking down content-neutral 35-foot buffer zone around reproductive health care facilities applying intermediate scrutiny, in part, because "the Commonwealth has not shown that it seriously undertook to address the problem with less intrusive tools readily available to

it"); *Cutting v. City of Portland*, 802 F.3d 79, 91 (1st Cir. 2015) (same; striking down City of Portland's blanket content-neutral median ban applying intermediate scrutiny, in part, because "the City did not try—or adequately explain why it did not try … less speech restrictive means of addressing the safety concerns it identified"); *Rideout v. Gardner*, 838 F.3d 65, 73 (1st Cir. 2016) (noting that "the government's burden is not met when a State offer[s] no evidence or anecdotes in support of its restriction"; striking down New Hampshire's content-neutral restriction on so-called "ballot selfies" when applying intermediate scrutiny, in part, because the State could provide no evidence supporting the need for the restriction) (internal quotations omitted), *cert. denied*, 581 U.S. 904 (2017); *Doyle v. Comm'r, N.H. Dep't. of Res. & Econ. Dev.*, 163 N.H. 215, 223 (2012) (striking down content-neutral special-use permit requirement applying intermediate scrutiny); *see also United States v. Playboy Ent. Group, Inc.*, 529 U.S. 803, 816-17 (2000) ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.") (collecting cases). The tailoring inquiry as part of the intermediate scrutiny test rejects blanket deference to the government; instead, the government must present actual evidence demonstrating the need to intrude upon constitutional rights. For example, as the United States Supreme Court made clear in *McCullen*, "[t]o meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests, not simply that the chosen route is easier." *McCullen*, 573 U.S. at 495; *see also Cutting*, 802 F.3d at 92 ("Such a [blanket median] ban is obviously more efficient, but efficiency is not always a sufficient justification for the most restrictive option.").

<u>**CONCLUSION**</u>

For these reasons, *Amici* ask that this Court affirm that *Claremont* and its progeny are good law in New Hampshire and direct the State to finally fulfill its constitutional duty to provide an adequate education through fair taxation without further delay, bringing a rapid end to the evasion of the past two decades. Without relief, New Hampshire's poorest and most vulnerable children will be left behind.

Respectfully Submitted,

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STATEMENT OF COMPLIANCE

I hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 9,364 words, which is fewer than the 9,500 words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of forgoing was served this 30th day of September 2024 to all counsel of record.

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