

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOSEPH A. FOSTER
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

July 15, 2013

Eileen Fox, Clerk
New Hampshire Supreme Court
Supreme Court Building
1 Charles Doe Drive
Concord, NH 03301

RE: Appeal of State of New Hampshire
Duncan, Bill, et al v. State of NH

Dear Clerk Fox:

Enclosed please find the State of New Hampshire's Rule 7 Mandatory Notice of Appeal for filing in the above-referenced case.

Thank you for your assistance in this matter.

Sincerely,

Richard W. Head, Bar #7900
Associate Attorney General
(603) 271-1221

RWH/jmw
Enclosure

Copy to: Stafford County Superior Court, Strafford No. 219-2013-CV-00011
See Certificate of Service

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH**

<http://www.courts.state.nh.us>

RULE 7 NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court or circuit court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving a collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A other than an appeal from a final divorce decree or from a decree of legal separation. (An appeal from a final divorce decree or from a decree of legal separation should be filed on a Rule 7 Notice of Mandatory Appeal form.)

1. COMPLETE CASE TITLE AND CASE NUMBERS IN TRIAL COURT

Bill Duncan *et al.* v. State of New Hampshire *et al.*, Docket No. 219-2013-CV-00011

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

Strafford County Superior Court, John M. Lewis, Presiding Justice

3A. NAME AND MAILING ADDRESS OF APPEALING PARTY. IF REPRESENTING SELF, PROVIDE E-MAIL ADDRESS AND TELEPHONE NUMBER

State of New Hampshire

33 Capitol Street

Concord, NH 03301

E-Mail address: _____

Telephone number: _____

3B. NAME, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS AND TELEPHONE NUMBER OF APPEALING PARTY'S COUNSEL

Richard W. Head, NH Bar No. 7900

Office of the Attorney General

33 Capitol Street

Concord, NH 03301

E-Mail address: richard.head@doj.nh.gov

Telephone number: 603-271-1221

RULE 7 NOTICE OF MANDATORY APPEAL

4A. NAME AND MAILING ADDRESS OF OPPOSING PARTY. IF OPPOSING PARTY IS REPRESENTING SELF, PROVIDE E-MAIL ADDRESS AND TELEPHONE NUMBER

See attached

E-Mail address: _____

Telephone number: _____

4B. NAME, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS AND TELEPHONE NUMBER OF OPPOSING PARTY'S COUNSEL

See attached

E-Mail address: _____

Telephone number: _____

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

See attached

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING. ATTACH COPY OF NOTICE AND DECISION.

July 17, 2013

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION, IF ANY. ATTACH COPY OF NOTICE AND DECISION.

Not applicable

7. CRIMINAL CASES: DEFENDANT'S SENTENCE AND BAIL STATUS

Not applicable

8. APPELLATE DEFENDER REQUESTED?

☐ YES

☒ NO

IF YOUR ANSWER IS YES, YOU MUST CITE STATUTE OR OTHER LEGAL AUTHORITY UPON WHICH CRIMINAL LIABILITY WAS BASED AND ATTACH FINANCIAL AFFIDAVIT (OCC FORM 4)

9. IS ANY PART OF CASE CONFIDENTIAL?

☐ YES

☒ NO

IF SO, IDENTIFY WHICH PART AND CITE AUTHORITY FOR CONFIDENTIALITY. SEE SUPREME COURT RULE 12.

10. IF ANY PARTY IS A CORPORATION, LIST THE NAMES OF PARENTS, SUBSIDIARIES AND AFFILIATES.

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LRS TECHNOLOGY SERVICES, LLC, Box 760, 12 Cranfield St., New Castle, NH 03854

11. DO YOU KNOW OF ANY REASON WHY ONE OR MORE OF THE SUPREME COURT JUSTICES WOULD BE DISQUALIFIED FROM THIS CASE? ☐ YES ☒ NO

IF YOUR ANSWER IS YES, YOU MUST FILE A MOTION FOR RECUSAL IN ACCORDANCE WITH SUPREME COURT RULE 21A.

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY FOR THIS APPEAL?

☐ YES ☒ NO

IF YOUR ANSWER IS YES, YOU MUST COMPLETE THE TRANSCRIPT ORDER FORM ON PAGE 4 OF THIS FORM.

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH. SEE SUPREME COURT RULE 16(3)(b).

1. Whether the trial court erred by finding that all of the plaintiffs have standing under RSA 491:22.

2. Whether the trial court erred by finding the tax credit established under the Education Tax Credit Program in RSA 77-G constitutes "public funds" or "money raised by taxation," and is therefore subject to review under Part I, Article 6 and/or Part II, Article 83 of the New Hampshire Constitution.

3. Whether the trial court erred by finding that the Education Tax Credit Program established under RSA chapter 77-G is unconstitutional under Part 2, Article 83 of the New Hampshire Constitution.

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14. CERTIFICATIONS


I hereby certify that every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.



Appealing Party or Counsel

I hereby certify that on or before the date below, copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Rule 26(2).

Date



Appealing Party or Counsel

RULE 7 NOTICE OF MANDATORY APPEAL**TRANSCRIPT ORDER FORM**

INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Supreme Court Rule 15(3)), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the court transcriber. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.
4. The transcriber will produce a digitally-signed electronic version of the transcript for the Supreme Court, which will be the official record of the transcribed proceedings. Parties will be provided with an electronic copy of the transcript in PDF-A format. A paper copy of the transcript will also be prepared for the court.

PROCEEDINGS TO BE TRANSCRIBED					
PROCEEDING DATE (List each day separately, e.g. 5/1/11; 5/2/11; 6/30/11)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	LENGTH OF PROCEEDING (in .5 hour segments, e.g., 1.5 hours, 8 hours)	RATE (standard rate unless ordered by Supreme Court)	DEPOSIT
				X \$137.50	\$
				X \$137.50	\$
				X \$137.50	\$
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				X \$137.50	\$
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				X \$137.50	\$
				TOTAL DEPOSIT	\$

PROCEEDINGS PREVIOUSLY TRANSCRIBED					
PROCEEDING DATE (List date of each transcript volume)	TYPE OF PROCEEDING (Motion hearing, opening statement, trial day 2, etc.)	NAME OF JUDGE	NAME OF TRANSCRIBER	DO ALL PARTIES HAVE COPY (YES OR NO)	DEPOSIT FOR ADDITIONAL COPIES
				<input type="checkbox"/> Yes <input type="checkbox"/> No	TBD
				<input type="checkbox"/> Yes <input type="checkbox"/> No	TBD
				<input type="checkbox"/> Yes <input type="checkbox"/> No	TBD

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you will be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

Case Name: *Duncan, et al v. State of New Hampshire, et al*

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4A. NAME AND MAILING ADDRESS OF OPPOSING PARTY, IF OPPOSING PARTY IS REPRESENTING SELF, PROVIDE E-MAIL ADDRESS AND TELEPHONENUMBER

Bill Duncan, 12 Cranfield Street, Box 760, New Castle, NH
Thomas Chase, 4 Decato Drive, Lee, NH
Charles Rhoades, 4 Austin Drive, Dover, NH
Rebecca Emerson-Brown, 34 Woodbury Avenue, Portsmouth, NH
Rabbi Joshua Segal, 10 Onset Road, Box 408, Bennington, NH
Rev. Richard Stuart and Ruth Stuart, 677 Squam Lake Road, Sandwich, NH
LRS Technology Services, LLC

4B. NAME, FIRM NAME, MAILING ADDRESS, E-MAIL ADDRESS AND TELEPHONE NUMBER OF OPPOSING PARTY'S COUNSEL

<p>Alex J. Luchenitser, Esquire Ayesha N. Khan, Esquire Randall Maas, Esquire Americans United for Separation of Church and State 1301 K Street NW, Suite 850E Washington, DC 20005 Tel: (202) 466-3234 E-mail: Luchenitser@au.org; khan@au.org; maas@au.org <i>Admitted Pro Hac Vice</i></p>	<p>Barbara R. Keshen, Esquire New Hampshire Civil Liberties Union 18 Low Avenue Concord, NH 03301 Tel: (603) 224-5591 E-mail: Barbara@nhclu.org <i>Local Counsel</i></p>
<p>Daniel Mach, Esquire Heather L. Weaver, Esquire ACLU Foundation Program on Freedom of Religion and Belief 915 15th Street, NW, Suite 600 Washington, DC 20005 Tel: (202) 675-2330 E-mail: dmach@aclu.org; hweaver@aclu.org <i>Admitted Pro Hac Vice</i></p>	<p><i>Attorneys for Plaintiffs</i></p>

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5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

<p>Shalimar Encarnacion, Heidi and Geoffrey Boffitto, and the Network for Educational Opportunity</p> <p><i>Intervenor-Defendants</i></p>	<p>Richard D. Komer, Esquire Timothy D. Keller, Esquire Institute for Justice 901 N. Glebe Road, Suite 900 Arlington, VA 22203 Tel: (703) 682-9320 E-mail: dkomer@ij.org; tkeller@ij.org <i>Admitted Pro Hac Vice</i></p> <p>Michael J. Tierney, Esquire Wadleigh, Starr & Peters, PLLC 95 Market Street Manchester, NH 03101 Tel: (603) 669-4140 E-mail: mtierney@wadleighlaw.com <i>Local Counsel</i></p>
<p>Alliance Defending Freedom, Cornerstone Policy Research, and Liberty Institute</p> <p><i>Amicus Curiae</i></p>	<p>Gregory S. Baylor, Esquire Alliance Defending Freedom 801 G Street NW, Suite 509 Washington, DC 20001 Tel: (202) 393-8690 E-mail: gbaylor@alliancedefendingfreedom.org <i>Admitted Pro Hac Vice</i></p> <p>Heather Gebelin Hacker, Esquire Alliance Defending Freedom 101 Parkshore Drive, Suite 100 Folsom, CA 95630 Tel: (916) 932-2850 E-mail: hghacker@alliancedefendingfreedom.org <i>Admitted Pro Hac Vice</i></p> <p>Michael J. Compitello, Esquire 72 Birkdale Road Bedford, NH 03110 Tel: (603) 396-4804 E-mail: mjcompit@us.ibm.com <i>Local Counsel</i></p>

Case Name: *Duncan, et al v. State of New Hampshire, et al*

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<p>Concord Christian Academy and Grace Christian School; Association of Christian Schools International; the Roman Catholic Bishop of Manchester, New Hampshire; and the National Association of Evangelicals</p> <p><i>Amicus Curiae</i></p>	<p>Roy S. McCandless, Esquire P.O. Box 4137 6 Loudon Road, Suite 403 Concord, NH 03302 Tel: (603) 856-8441 E-mail: roy@roymccandlesslaw.com</p> <p>Roger G. Brooks, Esquire Benjamin H. Diessel, Esquire Cravath, Swaine & Moore, LLP 825 Eighth Avenue New York, NY 10019 Tel: (212) 474-1000 E-mail: rgbrooks@cravath.com; bdiessel@cravath.com</p>
<p>Home School Legal Defense Association</p> <p><i>Amicus Curiae</i></p>	<p>Michael Donnelly, Esquire Darren A. Jones, Esquire Home School Legal Defense Association P.O. Box 3000 Purcellville, VA 20134 Tel: (540) 338-5600 E-mail: mike@donnellyclan.com; Darren@hsllda.org</p>
<p>Pacific Legal Foundation, Greg Hill, Jim Forsythe, William O'Brien, Pamela Tucker, Michael Balboni, Fenton Groen, and Andrew Sanborn</p> <p><i>Amicus Curiae</i></p>	<p>Joshua P. Thompson, Esquire Pacific Legal Foundation 930 G Street Sacramento, CA 95814 Tel: (916) 419-7111 E-mail: jpt@pacificlegal.org <i>Admitted Pro Hac Vice</i></p> <p>William L. O'Brien, Esquire P.O. Box 154 9 Southview Drive Mont Vernon, NH 03057 Tel: (603) 673-6610 E-mail: williamlobrien@gmail.com <i>Local Counsel</i></p>

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<p>The Friedman Foundation for Educational Choice</p> <p><i>Amicus Curiae</i></p>	<p>Joshua D. Dunlap, Esquire Pierce Atwood, LLP Merrill's Wharf 254 Commercial Street Portland, ME 04101 Tel: (207) 791-1100 E-mail: jdunlap@pierceatwood.com</p> <p>Geoffrey Slaughter, Esquire Taft, Stettinius & Hollister, LLP One Indiana Square, Suite 3500 Indianapolis, IN 46204 Tel: (317) 713-3606 E-mail: gslaughter@taftlaw.com <i>Admitted Pro Hac Vice</i></p>
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CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the **State's Rule 7 Mandatory Notice of Appeal** to be served upon counsel of record for the Plaintiffs and Defendant-Intervenors via postage prepaid U.S. Mail, as well as *electronically by agreement*, to all interested parties:

Alex J. Luchenitser, Esq.	Luchenitser@au.org	Plaintiffs
Ayesha N. Khan, Esq.	Khan@au.org	Plaintiffs
Randall Maas, Esq.	Maas@au.org	Plaintiffs
Barbara R. Keshen, Esq.	barbara@nhclu.org	Plaintiffs
Daniel Mach, Esq.	dmach@aclu.org	Plaintiffs
Heather L. Weaver, Esq.	hweaver@aclu.org	Plaintiffs
Richard D. Komer, Esq.	rkomer@ij.org	Intervenor-Defendants
Timothy D. Keller, Esq.	tkeller@ij.org	Intervenor-Defendants
Michael Tierney, Esq.	mtierney@wadleighlaw.com	Intervenor-Defendants
Erica Smith, Esq.	esmith@ij.org	Intervenor-Defendants
Roy S. McCandless, Esq.	roy@roymccandlesslaw.com	Amici – Concord Christian Academy, et al
Benjamin Diessel, Esq.	BDiessel@cravath.com	
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Joshua D. Dunlap, Esq.	jdunlap@PierceAtwood.com	Amici – Friedman Foundation for Educational Choice
Geoffrey Slaughter, Esq.	GSlaughter@taftlaw.com	

Dated: July 15, 2013


 Richard W. Head, Esquire
 Associate Attorney General