

STATE OF NEW HAMPSHIRE
Superior Court
Grafton, ss.
Case No. 215-2022-CV-00167

Steven Rand et al.,

Plaintiffs,

v.

The State of New Hampshire,

Defendant.

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

1. NOW COME Steven Rand, Randvest, Inc., Dr. Robert Gabrielli, the Gabrielli Family Ltd. Partnership, Jessica Wheeler Russell, Adam Russell, James Lewis, and John Lunn (collectively, the "Plaintiffs"), by and through their counsel, and pursuant to Rule 48 of the Superior Court of the State of New Hampshire, and other applicable law, and move the Court to issue a preliminary injunction preventing the Commissioner of the New Hampshire Department of Revenue Administration (the "DRA Commissioner") from (i) setting the Statewide Education Property Tax ("SWEPT") rates for the coming year and (ii) allowing any school district to set a negative local education tax rate.

2. Plaintiffs are taxpayers who pay the SWEPT. Part II, Article 5 of the New Hampshire State Constitution (the "Constitution") requires that the SWEPT be uniform. The SWEPT is not uniform because some municipalities abate the local tax rate in accordance with excess revenues. In some municipalities, the SWEPT scheme results in a negative local education tax rate.

3. As discussed further in Plaintiff's *Memorandum in Support of [their] Motion for Summary Judgment*, the Court should issue a preliminary injunction in this instance because (i) Plaintiffs are likely to succeed in proving the effective SWEPT rate for the coming tax year, which is set by the DRA Commissioner at the direction of Defendant the State of New Hampshire (the "State"), will be lower in those towns that generate excess SWEPT funds and elect to abate their taxes, thereby violating the Constitutional requirement that state taxes be uniform in rate, (ii) Plaintiffs will suffer an irreparable harm to their Constitutional rights if an injunction is not granted, and (iii) granting an injunction serves the interests of the public at-large while causing only minimal, if any, harm to the State.

4. Pursuant to Rule 11 of the Superior Court of the State of New Hampshire, Plaintiffs have met and conferred with the State on this issue in good faith and have been unable to reach agreement on the relief sought.

5. Plaintiffs and the State intend to file a mutually agreed-upon briefing schedule.

6. As the DRA Commissioner will set the final SWEPT rate to be collected for the coming year on or before December 15, 2022, Plaintiffs request a hearing as soon as reasonably possible after briefing is completed.

7. WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that the Court enter an order substantially in the form attached hereto as Exhibit A granting: (i) the preliminary injunction requested herein; and (ii) such other relief as the Court may deem proper. Plaintiffs also request a hearing on this matter.

Dated: October 5, 2022

Respectfully submitted,

/s/ Natalie Laflamme

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**pro hac vice pending*

Certificate of Service

I hereby certify that a copy of this Motion for Preliminary Injunction has been served upon the State of New Hampshire this 5th day of October, 2022, by way of the court's electronic filing system.

/s/Natalie Laflamme
Natalie J. Laflamme

EXHIBIT A

Proposed Order

STATE OF NEW HAMPSHIRE
Superior Court
Grafton, ss.
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Steven Rand et al.,

Plaintiffs,

v.

The State of New Hampshire,

Defendant.

**ORDER GRANTING PLAINTIFFS’
MOTION FOR PRELIMINARY INJUNCTION**

This matter coming before the Court on Steven Rand, Randvest, Inc., Dr. Robert Gabrielli, the Gabrielli Family Ltd. Partnership, Jessica Wheeler Russell, Adam Russell, James Lewis, and John Lunn’s (collectively, the “Plaintiffs”) *Motion for Preliminary Injunction* (the “Motion”), and considering Defendant the State of New Hampshire’s (the “State”) *Answer to [Plaintiff’s] First Amended Complaint* (Dkt. No. 18) (the “Answer”), particularly paragraphs 21 and 22 of the Answer (“The State admits that since 2011, communities for which the amount raised by the SWEPT exceeds the total amount of adequacy aid paid by the State have been permitted to retain the excess amounts raised by the SWEPT.”), and 35 (“The State admits that a small number of

towns have set negative local education tax rates.”), legal precedent,¹ relevant statutes, and applicable regulations, it is hereby **ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is **GRANTED**.
2. The Commissioner of the New Hampshire Department of Revenue Administration (the “DRA Commissioner”), her subordinates, and all employees of the State are hereby ordered to refrain from approving any final school district tax rate for the coming year pursuant to R.S.A. 21-J:35, or other authority, at a tax rate less than \$00.00 per \$1000—that is, approving a negative tax rate;
3. The DRA Commissioner, her subordinates, and all employees of the State are hereby ordered to refrain from issuing a warrant under the DRA Commissioner's hand and official seal to the selectmen or assessors of each municipality directing them to assess and pay to the municipality any sum for the use of the school district or districts, as required by R.S.A. 76:8, II, based upon a negative tax rate.

This preliminary injunction order shall remain in effect unless and until it is replaced by a permanent injunction or other order of this Court.

Dated this ___ day of _____, 2022.

The Honorable Peter H. Bornstein
Superior Court for Grafton County

¹ See *Opinion of the Justices (School Finance)*, 142 N.H. 892 (1998); *Claremont v. Governor*, 144 N.H. 590 (1999) (regarding phase-in of statewide property tax).