

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.

**STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

1. Plaintiffs 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") filed the First Amended Complaint in the above-captioned matter on August 26, 2022 (Dkt. No. 17) (the "Complaint").

2. In the Complaint, Plaintiffs alleged, among other claims, that Defendant the State of New Hampshire's (the "State") education property tax system is unconstitutional because the property taxes upon which the State relies to fund a constitutionally adequate public education, including the Statewide Education Property Tax (the "SWEPT"), are administered in a manner that is not uniform in rate in violation of Part II, Article 5 of the New Hampshire Constitution (the "Constitution").

3. On September 7, 2022, the State filed its Answer to the First Amended Complaint (Dkt. No. 18) ("the Answer").

4. The SWEPT was introduced in 1999 and set at a rate of \$6.60. RSA 76:3 (1999).

5. From 2005 to 2021, the New Hampshire Legislature (the “Legislature”) set the total to be raised by the SWEPT at \$363 million annually. RSA 76:3.

6. This amount is not adjusted for inflation. RSA 76:3.

7. For the 2022-2023 state fiscal year only, the Legislature lowered the amount of the money to be collected by the SWEPT from \$363 million to \$263 million.¹

8. That amount is expected be raised back to \$363 million for the 2023-2024 fiscal year.²

9. The SWEPT is collected and distributed locally by each town to raise funds needed to meet the State’s cost of funding an adequate education.³ RSA 76:8.

10. Although assessed, collected, and distributed locally, the SWEPT is a state tax.⁴

11. To determine the tax rate, the Legislature sets the amount of total statewide cost for educating all New Hampshire students and divides that total number by the total statewide equalized property value. *See* RSA 76:8 (the statewide education property tax is computed based on total equalized valuation).

12. By statute, the Legislature has directed the Commissioner of the Department of Revenue Administration (the “DRA Commissioner”) to set the SWEPT rates by December 15 of each year.⁵ RSA 76:8.

¹ Complaint ¶ 30; Answer ¶ 30.

² Complaint ¶ 20; Answer ¶ 20.

³ Complaint ¶ 19; Answer ¶ 19.

⁴ Complaint ¶ 28; Answer ¶ 28.

⁵ Complaint ¶ 29; Answer ¶ 29.

13. In practice, the DRA Commissioner sets the SWEPT rates and begins issuing warrants starting in late September through November, with towns collecting the SWEPT tax in December.⁶

14. Revenue generated by the SWEPT is used to fund the State's educational adequacy aid.⁷

15. For some towns, the SWEPT raised exceeds the total amount of adequacy aid provided to those communities.⁸

16. Previously, the State required these towns to remit the excess revenue generated to the State's Education Trust Fund.

17. However, 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.⁹

18. At least a small number of towns have set negative local education tax rates.¹⁰

19. Plaintiffs reside in towns that do not generate excess SWEPT or issue negative local education tax rates.

⁶ NH Department of Revenue Administration, Municipal Matters: Technical Assistance for Tax Collectors 51 (2019), <https://www.revenue.nh.gov/mun-prop/municipal/documents/tax-collector-municipal-matters-manual.pdf>.

⁷ RSA 198:40-a; Complaint ¶¶ 19-21; Answer ¶¶ 19-21.

⁸ Complaint ¶ 21; Complaint ¶ 33; Answer ¶ 21; Answer ¶ 33.

⁹ Complaint ¶ 22; Complaint ¶ 34; Answer ¶ 22; Answer ¶ 34.

¹⁰ Complaint ¶ 35; Answer ¶ 35.

Dated: October 5, 2022

Respectfully submitted,
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Certificate of Service

I hereby certify that a copy of this Statement of Undisputed Facts in Support of Plaintiffs' 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