

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

No. 215-2022-CV-00167

Steven Rand, et al.

v.

The State of New Hampshire

**THE STATE’S RESPONSE TO PLAINTIFFS’ STATEMENT OF MATERIAL FACTS
AND STATEMENT OF ADDITIONAL MATERIAL FACTS**

Pursuant to Superior Court Civil Rule 12(g), the State of New Hampshire, by and through counsel, submits the following response to the plaintiffs’ statement of material facts and its own statement of additional material facts.

Responses to Plaintiffs’ Statement of Material Facts

1. In New Hampshire, the property tax year is determined by statute and runs from April 1 through March 31. RSA 76:2.

State’s Response: This statement summarizes or characterizes the effect of a statute, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statute speaks for itself. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

2. All property taxes are assessed based on the inventory taken in April of the property tax year. RSA 76:2.

State’s Response: This statement summarizes or characterizes the effect of a statute, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statute speaks for itself. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

3. Property taxes may be collected on a semi-annual or a quarterly basis. RSA 76:15-a, RSA 76:15-aa.

State’s Response: This statement summarizes or characterizes the effect of two statutes, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statutes speaks for themselves. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

4. In towns and cities where taxes are collected semi-annually, the first property tax payment is due by July 1. Tax bills for this payment are mailed out in late May or early June. This initial payment is computed by taking the previous year’s assessed valuation and multiplying it by one-half of the previous year’s tax rate. RSA 76:15-a.

State’s Response: This statement summarizes or characterizes the effect of a statute, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statute speaks for itself. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

5. By November, the Department of Revenue Administration (the “DRA”) receives data from various state agencies, towns, cities, and school districts that is used to set local tax rates for the current fiscal year. RSA 21-J:35.

State’s Response: This statement summarizes or characterizes the effect of a statute, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statute speaks for itself. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

6. This data includes estimated appropriations certified or voted upon by municipalities, in the prior winter or spring, and the Department of Education’s estimate of the state aid to be disbursed to each school district to cover the cost of an adequate education pursuant to RSA 198:40-a. RSA 21-J:34, RSA 21-J:35.

State’s Response: This statement summarizes or characterizes the effect of two statutes, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statutes speak for themselves. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

7. RSA 76:8 determines how the Statewide Education Property Tax (“SWEPT”) is calculated and raised. First, the DRA Commissioner calculates a municipality’s tax base for SWEPT. Then, the equalized tax rate set under RSA 76:3 is multiplied by that tax base to determine the total amount of revenue generated by the SWEPT in that municipality.¹ RSA 76:8, I(a), (b).

State’s Response: This statement summarizes or characterizes the effect of a statute, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statute speaks for itself. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

¹ State’s Objection to Plaintiffs Motion for Preliminary Injunction (“Objection”) at 3.

8. By statute, the Commissioner is directed to set the SWEPT rates by December 15 of each year.² RSA 76:8.

State’s Response: This statement summarizes or characterizes the effect of a statute, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statute speaks for itself. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

9. 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.³

State’s Response: Undisputed.

10. Payments made in December comprise the second tax payment of the current property tax year. While the first tax payment, made during the summer, is based on the prior year’s tax rate, the second tax payment reflects the actual tax rates set by the DRA for the current year. RSA 76:15-a.

State’s Response: This statement summarizes or characterizes the effect of a statute, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statute speaks for itself. The plaintiffs may not

² First Amended Complaint (“Complaint”) ¶ 29; State’s Answer to First Amended Complaint (“Answer”) ¶ 29.

³ 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>.

use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

11. The SWEPT is collected and distributed locally by each municipality to fund the State’s cost of funding an adequate education.⁴ RSA 76:8.

State’s Response: This statement summarizes or characterizes the effect of a statute, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statute speaks for itself. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

By way of further response, RSA 76:8, II sets forth the process by which the SWEPT is assessed and collected. Per that statute, the Commissioner of the DRA, through a warrant issued under her hand and official seal, “direct[s]” a municipality’s “selectmen or assessors” to “assess” the amount to be generated by the SWEPT in that municipality and “pay it to the municipality for the use of the school district or districts.” Revenues generated by the SWEPT are also factored into the calculation of total education grants that municipalities receive from the Department of Education under RSA 198:41. The State accordingly

⁴ Complaint ¶ 19; Answer ¶ 19.

disputes this statement to the extent it implies that the SWEPT operates entirely at a local level and is not administered by the State.

12. Although assessed, collected, and distributed locally, the SWEPT is a state tax.⁵

State’s Response: The State does not dispute that the SWEPT is a state tax. The State dispute this statement to the extent it implies that the SWEPT operates entirely a local level and is not administered by the State for the reasons stated in its response to Statement 11.

13. 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.

State’s Response: This statement summarizes or characterizes the effect of a statute, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statute speaks for itself. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

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

State’s Response: This statement summarizes or characterizes the effect of a statute, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statute speaks for itself. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page,

⁵ Complaint ¶ 28; Answer ¶ 28.

paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a). The State further disputes that this statement is material to the plaintiffs’ legal theory with respect to the SWEPT. The plaintiffs have not explained in their complaint or their motion for summary judgment why this statement has any bearing on their theories for why the SWEPT violates Part II, Article 5 of the New Hampshire Constitution.

15. 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.⁶

State’s Response: Undisputed.

16. That amount is expected to revert back to \$363 million for the 2023-2024 fiscal year.⁷

State’s Response: The State does not dispute that as of the date of this filing, the amount of funds the SWEPT generates is expected to be \$363 million for the 2023-2024 fiscal year.

17. The State factors in revenue generated by the SWEPT in each municipality when calculating total education grants under RSA 198:41. In municipalities where the amount of SWEPT generated cannot cover the full cost of an adequate education, the State provides supplemental funding. This supplemental funding comes from the State’s Education Trust Fund.⁸ See RSA 198:40-a, RSA 198:41, RSA 198:42.

State’s Response: This statement summarizes or characterizes the effect of multiple statutes, and therefore does not contain a statement of material fact within the meaning of

⁶ Complaint ¶ 30; Answer ¶ 30; Objection at 14.

⁷ Complaint ¶ 20; Answer ¶ 20.

⁸ Complaint ¶¶ 19-21; Objection at 4.

Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statutes speak for themselves. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a). Furthermore, the State disputes the plaintiffs’ use of the phrase “supplemental funding” in this statement. None of the statutes the plaintiffs rely on contain that phrase, nor does the regime for calculating total education grants embodied in those statutes reflect that any municipality receives “supplemental funding” from the State. The statutory regime does not contemplate that revenues generated by the SWEPT will always cover the total cost of an adequate education in every municipality. The State Constitution does not require the SWEPT to operate in this way. RSA 76:8 and RSA 198:41 set forth the manner in which municipalities receive payments of state funds to be used for educational purposes.

18. In some municipalities, the revenues raised by the SWEPT exceed the total cost of providing a constitutionally adequate education in that community, as calculated by the State.⁹

State’s Response: Undisputed.

19. In the past, the State has required these municipalities to remit the excess revenue generated to the State’s Education Trust Fund.

State’s Response: This statement does not comply with Rule 12(g)(2) because the plaintiffs make it without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission,

⁹ Complaint ¶ 21; Complaint ¶ 33; Answer ¶ 21; Answer ¶ 33.

affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a). By way of further response, the State admits that before 2011, the legislature specifically authorized excess revenue generated by the SWEPT to be remitted to the Education Trust Fund. *See* RSA 198:46, I (2009); RSA 76:8, II (2009). In 2011, the legislature repealed RSA 198:46 in its entirety and amended RSA 76:8, II to remove that authorization.

20. However, since 2011, communities have been permitted to retain the excess amounts raised by the SWEPT when the amount raised by the SWEPT exceeds the total cost of adequacy.¹⁰ The communities permitted to retain excess SWEPT revenues for tax year 2021 are listed in Table 1, appended to the affidavit of Mr. Douglas Hall attached hereto as Exhibit A.

State’s Response: The State does not dispute that before 2011 the legislature specifically authorized excess revenue generated by the SWEPT to be remitted to the Education Trust Fund. *See* RSA 198:46, I (2009); RSA 76:8, II (2009). In 2011, the legislature repealed RSA 198:46 in its entirety and amended RSA 76:8, II to remove that authorization. There is accordingly no longer any statutory authorization for excess revenue generated by the SWEPT to be remitted to the Education Trust Fund. The State therefore disputes this statement to the extent it asserts that the State is “permitting” municipalities to retain revenues generated by the SWEPT insofar as the word “permit” implies a discretionary act. RSA 76:8 requires that the Commissioner of the DRA issue a warrant that directs “the selectmen or the assessors of each municipality” to “assess” the total amount to be generated in that municipality by the SWEPT and “pay it to the municipality for the use of the school district or districts.” RSA 76:8, II. The statutory scheme thus contemplates that the total amount of revenues the SWEPT generates in a municipality be paid to that municipality *and*

¹⁰ Complaint ¶ 22; Complaint ¶ 34; Answer ¶ 22; Answer ¶ 34.

that those funds be used for education purposes. The State is not “permitting” these actions; they are mandated by statute.

21. When the DRA sets the local education tax rates in these communities, the DRA permits communities that retain excess funds to characterize these excess funds as proper sources of revenue. RSA 21-J:35.

State’s Response: This statement summarizes or characterizes the effect of a statute, and therefore does not contain a statement of material fact within the meaning of Rule 12(g)(2). See *Kingston Place, LLC v. N.H. DOT*, 167 N.H. 694, 695 (2015) (“The construction of a statute presents a question of law.”). The statute speaks for itself. The plaintiffs may not use this statement to the extent it contains a factual assertion made without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

By way of further response, before 2011 the legislature specifically authorized excess revenue generated by the SWEPT to be remitted to the Education Trust Fund. See RSA 198:46, I (2009); RSA 76:8, II (2009). In 2011, the legislature repealed RSA 198:46 in its entirety and amended RSA 76:8, II to remove that authorization. There is accordingly no longer any statutory authorization for excess revenue generated by the SWEPT to be remitted to the Education Trust Fund. The State therefore disputes the statement that the DRA “permits communities that retain excess funds to characterize these excess funds as proper sources of revenue” to the extent the word “permits” implies a discretionary act” RSA 76:8 requires that the Commissioner of the DRA issue a warrant that directs “the selectmen or the assessors of each municipality” to “assess” the total amount to be generated

in that municipality by the SWEPT and “pay it to the municipality for the use of the school district or districts.” RSA 76:8, II. The statutory scheme thus contemplates that the total amount of revenues the SWEPT generates in a municipality be paid to that municipality *and* that those funds be used for education purposes. The DRA is therefore neither “permitting” municipalities to retain excess revenues generated by the SWEPT nor “permitting” that municipalities factor those funds in as revenues. These actions are mandated by the RSA 76:8 itself.

22. The DRA also sets negative local education tax rates in a small number of communities to offset SWEPT revenues.¹¹ The communities the DRA instructed to levy negative local education taxes, and the SWEPT tax rates for those communities, for tax year 2021 are listed in Table 3 to Exhibit A.

State’s Response: The first sentence in this statement is undisputed. The second sentence of this paragraph is undisputed. By way of further response, only property in municipalities is subject to the SWEPT, *see* RSA 76:3; RSA 76:8; property in unincorporated places is not within the class of property subject to the SWEPT.

23. Plaintiffs reside in, or own commercial property in, communities that do not generate excess SWEPT or issue negative local education tax rates.

State’s Response: This statement does not comply with Rule 12(g)(2) because the plaintiffs make it without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a).

¹¹ Complaint ¶ 35; Answer ¶ 35.

24. Plaintiffs pay the full SWEPT tax rate set by the DRA. Taxpayers who own property in communities permitted to keep excess SWEPT revenues, or those with negative tax rates, do not pay the full SWEPT rate as set by the DRA. This is because the negative tax rates and the retention of excess funds serve as offsets to the full SWEPT rate. As a result, the SWEPT tax rate, as administered by the DRA, is not uniform throughout the state.

State’s Response: This statement does not comply with Rule 12(g)(2) because the plaintiffs make it without citation to “page, paragraph and line references to supporting pleadings, depositions, answers to interrogatories, responses to requests for admission, affidavits, or other evidentiary documents.” Super. Ct. Civ. R. 12(g)(2)(a). By way of further response, the State disputes this statement in its entirety. As discussed in the State’s objection to the plaintiffs’ motion for summary judgment and cross-motion for summary judgment on the plaintiffs’ Part II, Article 5 claim, these statements are incorrect as a matter of law.

Statement of Additional Material Facts

1. All property subject to the SWEPT is valued and the SWEPT tax rate is set at a uniform and proportionate matter. Affidavit of Bruce K. Kneuer (“Kneuer Aff.”) ¶ 14.

2. A negative Local Education Tax Rate may occur in a very limited set of circumstances when a municipal entity, generally an unincorporated place, has minimal or no public education responsibilities within its boundaries, *i.e.*, no school budget or a very small school budget. Kneuer Aff. ¶ 18.

3. Each spring, municipalities typically vote on their budgets for the “current” year, which can begin on January 1 or July 1. Affidavit of Lindsey M. Stepp (“Stepp Aff.”) ¶ 9.

4. Municipal and school officials begin meeting in the fall of the year before the budget vote to determine what the appropriation needs are for the coming year and the availability of revenue sources to cover the appropriations and determine the anticipated level of “tax efforts” that may be required. Stepp Aff. ¶ 10.

5. In SB 2 towns, deliberative sessions or hearings will typically occur in January through March in advance of town meeting. Stepp Aff. ¶ 11.

6. In non-SB2 towns, a budget warrant is issued 14 days before the annual meeting and voted on during the meeting. Stepp Aff. ¶ 12.

7. Once the budget is approved, the municipality issues a first tax bill in June, which is in essence the first payment on the tax effort for the entire period covered by the budget. Stepp. Aff ¶ 13.

8. By September 1, the municipality reports to DRA its budget and other reports. Stepp Aff. ¶ 14.

9. The DRA also gathers information from other sources, including the Department of Education, in inform the rate-setting process. Stepp Aff. ¶ 14.

10. The DRA then sets rates for municipal uses, the SWEPT, the local education tax, and county apportionments and communicates those rates to the municipality during the last three months of the year. Stepp Aff. ¶ 15.

11. Using these rates, the municipality issues a tax bill in December for the second half of the period covered by the budget, which reconciles the estimates incorporated into the June bill to ensure that revenues are generated for the total amount the municipality budgeted. Stepp Aff. ¶ 16.

12. Between the June and December tax bills, the municipality has already begun to expend funds to meet local needs, including education. Stepp Aff. ¶ 17.

13. At the time of this filing, municipal entities are already well into creating their budgets for the current year. Stepp Aff. ¶ 18. Many municipalities will have completed the required public hearing and procedural requirements, and voters will have seen the recommended budgets, which will subsequently be printed and identified on warrants or ballots that will be provided to voters at or prior to municipalities' annual meetings. *Id.*

14. In so-called "excess SWEPT" municipalities, these budgets will likely include anticipate revenues from the amount the SWEPT generates in those municipalities above what those municipalities would receive in total education grants under RSA 198:41. Stepp Aff. ¶ 19.

15. A loss of these anticipated revenues would create a cash-flow problem for municipalities, the potential remedies for which would be highly disruptive mid-cycle. Stepp Aff. ¶ 19.

16. School districts would likely need to seek approval from the superior court under RSA 197:3 to hold special meetings to amend their school budgets to reflect the reduced revenues caused by the unavailability of these revenues. Stepp Aff. ¶ 19.

17. Alternatively, the DRA might need to increase the local education tax rate in these municipalities during the rate-setting process, resulting in an unanticipated tax-rate spike for residents of these municipalities in the fall. Stepp Aff. ¶ 19.

18. Limiting any remedy this Court were to impose to the next budget cycle would provide the DRA time to inform municipalities in Fall 2023 that the revenues they should anticipate when building their next proposed budgets should not include any revenues generated

by the SWEPT in excess of the amount they would receive in total education grants under RSA 198:41. Stepp Aff. ¶ 20.

19. Municipalities typically have, or belong to, one or more school districts; unincorporated places do not. Kneuer Aff. ¶ 18.

20. The unincorporated places in which the DRA sets negative local education tax rates do not have school districts and do not belong to school districts, and many have no residents at all. Kneuer Aff. ¶ 18

21. The following is a list of unincorporated places in New Hampshire: Atkinson and Gilmanton Academy Grant; Bean's Grant; Bean's Purchase; Cambridge; Chandler's Purchase; Crawford's Purchase; Cutt's Grant; Dix's Grant; Dixville; Erving's Location; Green's Grant; Hadley's Purchase; Hale's Location; Kilkenny; Livermore; Low and Burbank's Grant; Martin's Location; Millsfield; Odell; Pinkham's Grant; Sargent's Purchase; Second College Grant; Success; Thompson and Meserve's Purchase; and Wentworth Location. See New Hampshire Employment Security, NHES Home, ELMI Tools, Geo Areas, NH cities, towns, and unincorporated places, <https://www.nhes.nh.gov/elmi/tools/documents/nh-geo-areas-town.pdf>, at pp. 6, 9-10, 17, 21, 27-28, 32, 40, 50-52, 64, 70, 72, 76, 80, 92, 96, 106-107, 113, 118, and 125 of 130 (last visited Feb. 6, 2023).

22. According to the 2020 census, Atkinson and Gilmanton Academy Grant had a total population of zero. *See* United States Census Bureau, 1 Filter (Atkinson and Gilmanton Academy Grant, Coos County, New Hampshire), <https://data.census.gov/table?q=&g=0600000US3300702420&tid=DECENNIALPL2020.P1> (last visited Feb. 6, 2023)

23. According to the 2020 census, Bean's Grant had a total population of zero. United States Census Bureau, 1 Filter (Beans Grant, Coos County, New Hampshire), <https://data.census.gov/table?q=&g=0600000US3300704100&tid=DECENNIALPL2020.P1> (last visited Feb. 6, 2023).

24. According to the 2020 census, Bean's Purchase had a total population of zero. United States Census Bureau, 1 Filter (Beans Purchase, Coos County, New Hampshire), <https://data.census.gov/all?q=Beans+purchase,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

25. According to the 2020 census, Cambridge Township had a total population of 16. United States Census Bureau, 1 Filter (Cambridge township, Coos County, New Hampshire), <https://data.census.gov/all?q=Cambridge+township,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

26. According to the 2020 census, Chandler's Purchase had a total population of zero. United States Census Bureau, 1 Filter (Chandlers purchase, Coos County, New Hampshire), <https://data.census.gov/all?q=Chandlers+purchase,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

27. According to the 2020 census, Crawford's Purchase had a total population of zero. United States Census Bureau, 1 Filter (Crawfords purchase, Coos County, New Hampshire), <https://data.census.gov/all?q=crawfords+purchase,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

28. According to the 2020 census, Cutt's Grant had a total population of zero. United States Census Bureau, 1 Filter (Cutts grant, Coos County, New Hampshire),

<https://data.census.gov/all?q=cutts+grant,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

29. According to the 2020 census, Dix's Grant had a total population of zero. United States Census Bureau, 1 Filter (Dixs grant, Coos County, New Hampshire), <https://data.census.gov/all?q=dixs+grant,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

30. According to the 2020 census, Dixville had a total population of four. United States Census Bureau, 1 Filter (Dixville township, Coos County, New Hampshire), <https://data.census.gov/all?q=dixville+township,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

31. According to the 2020 census, Erving's Location had a total population of zero. United States Census Bureau, 1 Filter (Erving's location, Coos County, New Hampshire), <https://data.census.gov/all?q=ervings+location,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

32. According to the 2020 census, Green's Grant had a total population of zero. United States Census Bureau, 1 Filter (Greens grant, Coos County, New Hampshire), <https://data.census.gov/all?q=greens+grant,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

33. According to the 2020 census, Hadley's Purchase had a total population of zero. United States Census Bureau, 1 Filter (Hadley's purchase, Coos County, New Hampshire), <https://data.census.gov/all?q=hadleys+purchase,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

34. According to the 2020 census, Hale's Location had a total population of 132. United States Census Bureau, 1 Filter (Hales location, Carroll County, New Hampshire), <https://data.census.gov/all?q=hales+location,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

35. According to the 2020 census, Kilkenny had a total population of zero. United States Census Bureau, 1 Filter (Kilkenny township, Coos County, New Hampshire), <https://data.census.gov/all?q=kilkenny+township,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

36. According to the 2020 census, Livermore had a total population of two. United States Census Bureau, 1 Filter (Livermore town, Grafton County, New Hampshire), <https://data.census.gov/all?q=livermore+town,+Grafton+County,+New+Hampshire> (last visited Feb. 6, 2023).

37. According to the 2020 census, Low and Burbank's Grant had a total population of zero. United States Census Bureau, 1 Filter (Low and Burbanks grant, Coos County, New Hampshire), <https://data.census.gov/all?q=low+and+burnbanks+grant,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

38. According to the 2020 census, Martin's Location had a total population of two. United States Census Bureau, 1 Filter (Martins location, Coos County, New Hampshire), <https://data.census.gov/all?q=martins+location,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

39. According to the 2020 census, Millsfield had a total population of 25. United States Census Bureau, 1 Filter (Millsfield township, Coos County, New Hampshire),

<https://data.census.gov/all?q=millsfield+township,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

40. According to the 2020 census, Odell had a total population of one. United States Census Bureau, 1 Filter (Odell Township, Coos County, New Hampshire), <https://data.census.gov/all?q=odell+township,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

41. According to the 2020 census, Pinkham's Grant had a total population of zero. United States Census Bureau, 1 Filter (Pinkhams grant, Coos County, New Hampshire), <https://data.census.gov/all?q=pinkhams+grant,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

42. According to the 2020 census, Sargent's Purchase had a total population of zero. United States Census Bureau, 1 Filter (Sargents purchase, Coos County, New Hampshire), <https://data.census.gov/all?q=sargents+purchase,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

43. According to the 2020 census, Second College Grant had a total population of one. United States Census Bureau, 1 Filter (Second College grant, Coos County, New Hampshire), <https://data.census.gov/all?q=second+college+grant,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

44. According to the 2020 census, Success had a total population of four. United States Census Bureau, 1 Filter (Success township, Coos County, New Hampshire), <https://data.census.gov/all?q=success+township,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

45. According to the 2020 census, Thompson and Meserve’s Purchase had a total population of one. United States Census Bureau, 1 Filter (Thompson and Meserve’s purchase, Coos County, New Hampshire), <https://data.census.gov/all?q=thompson+and+meserves+purchase,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

46. According to the 2020 census, Wentworth Location had a total population of 28. United States Census Bureau, 1 Filter (Wentworth location Coos County, New Hampshire), <https://data.census.gov/all?q=Wentworth+location,+Coos+County,+New+Hampshire> (last visited Feb. 6, 2023).

47. In these unincorporated places, negative tax rates operate as an accounting mechanism to address the reality that the SWEPT generates unneeded education revenues. Stepp Aff. ¶ 21.

48. The use of negative tax rates to offset unneeded revenues is not confined to situations involving the local education tax rate in unincorporated places, but rather can also be employed when other revenue sources, such as direct payments from third parties, exceed the amount that would need to be generated through the tax effort. Stepp Aff. ¶ 21.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: February 6, 2023

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Certificate of Service

I hereby certify that a copy of the foregoing motion was sent via the Court's electronic-filing system to all parties of record.

Date: February 6, 2023

/s/ Samuel Garland
Samuel R.V. Garland.