

STATE OF NEW HAMPSHIRE

ROCKINGHAM, ss

SUPERIOR COURT

Case No. 215-2022-CV-00167

Steven Rand, *et al*

v.

State of New Hampshire

**SETTLEMENT AGREEMENT REGARDING
THE STATEWIDE EDUCATION PROPERTY TAX**

Now come the parties in this matter by and through their respective legal counsel and enter into this settlement agreement (“Agreement”) representing that each signatory has voluntarily executed this Agreement with full authority to bind the respective parties and those parties intend to be legally bound.

I. Preliminary Statements

1. This Agreement exclusively pertains to the above-referenced litigation and is intended to resolve a portion of, but not the entirety, of the above-referenced litigation.

2. One aspect of the above-referenced litigation involves Plaintiffs’ challenge to the constitutionality of the Statewide Education Property Tax (“SWEPT”), R.S.A. 76:8.

3. The parties intend to settle or resolve without benefit of a court ruling the pending issue of the constitutionality of the SWEPT by and through this Agreement.

4. This Agreement shall be without findings for or against any party. Plaintiffs agree they will not further pursue their litigation claims regarding the constitutionality of the SWEPT in its current form and as currently administered by the New Hampshire Department of Revenue Administration (“NH DRA”). The Plaintiffs will not seek the award of attorney’s fees or costs regarding this aspect of the litigation but reserve the right to seek fees and costs for all other parts

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of this dispute. The Plaintiffs reserve the right to challenge other schemes or mechanisms adopted by the State to fund constitutional adequacy as well as the State's efforts to define and assign a cost to constitutional adequacy.

5. The parties agree this Agreement shall become effective upon the date of the last entered signature below or through counterparts. Electronic signatures and execution through counterparts shall be permitted.

II. Factual Predicate

6. The parties to this Agreement participated in a hearing before the Rockingham County Superior Court (Ruoff, J.) on July 12, 2023, at which the merits of Plaintiffs' Motion for Partial Summary Judgment were argued. The parties agreed during the hearing that there are no factual disputes with respect to the material facts concerning the constitutionality of the State's administration of the SWEPT.¹

7. In arguing the summary judgment motion, the parties generally divided their arguments between "Negative Rate Communities" and "Excess Communities."

8. In general terms, Negative Rate Communities are defined for the purposes of this Agreement as communities for which the NH DRA sets a negative local education tax rate that offsets all or part of the SWEPT rate established by the State. Negative Rate Communities tend to be unincorporated areas.

9. In general terms, Excess Communities are defined for purposes of this Agreement as communities for which the imposition of the SWEPT tax rate generates more revenue than the amount identified by the State as sufficient to fund the State's defined cost of educational

¹ The State reserved the right to assert there are factual disputes with regard to potential remedies to a constitutional violation. None of the reservations regarding factual disputes are implicated by this Agreement.

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adequacy. Since approximately 2011, the State, through the NH DRA, has permitted the Excess Communities to keep all revenues generated by the SWEPT, including revenues in excess of the cost of adequacy. Prior to approximately 2011, the Excess Communities were required to transmit such excess revenues to the State's Education Trust Fund.

III. Terms of the Agreement

10. The parties hereby agree that commencing with the tax year that begins on April 1, 2024, the State will no longer set or approve local education tax rates that are in the negative.

11. The parties hereby agree that commencing with the tax year that begins on April 1, 2024, the State will not engage in any effort that has the effect of offsetting, rebating, discounting, or making any effort to create a circumstance that will cause, or that will result in, taxpayers paying less than the full SWEPT rate established by the State, except to comply with formally adopted, constitutional, statutory exemptions eligibility for which is determined by the specific characteristics of the taxpayer (e.g., exemption for low income, elderly taxpayers).

12. The parties hereby agree that commencing with the tax year that begins on April 1, 2025, the State will discontinue its practice of allowing communities to retain revenues generated by the SWEPT in excess of that necessary to fund the cost of adequacy in those communities.

13. The parties hereby agree that commencing with the tax year that begins on April 1, 2025, the State will require any funds generated by the SWEPT that are not expended to defray the cost of educational adequacy in the community where they are generated be deposited in the Education Trust Fund.

14. Nothing in this Agreement shall require the State to continue to fund a constitutionally adequate education through a statewide property tax.

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15. Nothing in this Agreement shall prevent the Plaintiffs or their counsel from challenging any adequacy funding scheme or mechanism adopted by the State in the future.

16. Nothing in this Agreement is intended to convey or imply the parties' belief that the State's definition or assigned cost of constitutional adequacy is correct, sufficient, or appropriate. The parties fully reserve their rights to fully litigate all remaining issues in the above-referenced litigation.

Executed and Agreed on the Dates Indicated:

THE STATE OF NEW HAMPSHIRE
BY AND THROUGH ITS ATTORNEY GENERAL

John Formella, Attorney General

Date: _____

Anthony Galdieri, Solicitor General

Date: _____

Samuel Garland, Senior Assistant Attorney General

Date: _____

Lawrence Gagnon, Assistant Attorney General

Date: _____

THE PLAINTIFFS
BY AND THROUGH THEIR LEGAL COUNSEL

Michael Jaoude, admitted *pro hac vice*
White & Case, LLP
Date: _____

Andru Volinsky, No. 2634
160 Law, PLLC
Date: _____

John Tobin, Jr., No. 2556
Date: _____

Natalie Laflamme, No. 266204
Laflamme Law, PLLC
Date: _____