

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

Steven Rand, et al

Plaintiffs,

v.

The State of New Hampshire,

Defendant.

PLAINTIFFS' MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

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 respectfully move the Court for partial judgment on the pleadings, based on the Court's ruling issued on November 20, 2023 in the matter of *Contoocook Valley School District v. State* ("*ConVal*"), No. 213-2019-CV-00069 that the State's funding of a constitutionally adequate education is deficient. In support of this motion, Plaintiffs state as follows:

1. The Court issued its ruling on the merits in the ConVal case on November 20, 2023.¹ "[T]he sole issue before the Court [was] the constitutional sufficiency of base adequacy aid." Order of November 20, 2023 at 6. (hereafter, "Order") (citations to the docket omitted). In pertinent part, the Court found that "the evidence at trial overwhelmingly established that no

¹ The Court also issued an order in the instant case on November 20, 2023, granting partial summary judgment to Plaintiffs on issues involving the Statewide Education Property Tax (SWEPT).

school could provide the opportunity for an adequate education if it had to rely solely on the base adequacy aid from the State.” Order at 7. In other words, the State is not meeting its constitutional duty to fund an adequate education, and that duty is necessarily downshifted to local communities.

2. The Court ruled: “plaintiffs’ request for a declaratory judgment deeming RSA 198:40-a, II(a), unconstitutional on its face is **GRANTED**. See Doc. 83 at 26. The plaintiffs’ request for injunctive relief is also **GRANTED** insofar as the Court has established a conservative minimum threshold of \$7,356.01 which base adequacy aid funding must exceed, but is otherwise **DENIED**.” Order at 56.

3. Plaintiffs in the instant case seek a declaratory judgment as follows:
The State does not currently guarantee funding sufficient to cover the cost of an adequate education. As a result, New Hampshire must rely on local school taxes to bridge the gap. These local school taxes violate Part II, Article 5 of the New Hampshire Constitution because they are not uniform in rate.

First Amended Complaint dated August 26, 2022, at ¶ 80 (Doc. 17).

4. The State responded to Plaintiffs’ request for declaratory relief as follows:

This paragraph contains a statement of declaratory relief requested by the plaintiffs to which no response is necessary. If a response is deemed necessary, the State denies that the plaintiffs are entitled to any relief in this case, declaratory or otherwise. The State further denies each of the specific statements made in the three underlined sentences contained in this paragraph.

State’s Answer dated September 7, 2022 (hereafter, “Answer”) at ¶ 80 (Doc. 18).

5. The Court’s order of November 20, 2023 in the ConVal case established that the State currently underfunds the cost of a constitutionally adequate education by more than \$3,000

per student.² This proves the first part of the declaratory judgment sought in this case: (“The State does not currently guarantee funding sufficient to cover the cost of an adequate education.”) Based on this finding, it is clear that the State has shifted more of the cost of funding an adequate education to the local school districts, which mirrors the second part of the requested declaratory judgment: (“As a result, New Hampshire must rely on local school taxes to bridge the gap.”) Because districts have very different abilities to raise the funds, tax rates are unequal across the state³ in violation of the uniformity requirement of Part II, Article 5 of the New Hampshire Constitution. This necessary conclusion is the final part of Plaintiffs’ declaratory judgment: (“These local school taxes violate Part II, Article 5 of the New Hampshire Constitution because they are not uniform in rate.”) As to this point, Plaintiffs are entitled to partial judgment on the pleadings, specifically, the declaratory judgment sought in First Amended Complaint at ¶ 80 (Doc. 17).

6. Plaintiffs do not agree that the minimum funding level set by the Court in the ConVal matter is sufficient.⁴ As the Court found that the parties in the ConVal matter did not

² “Effective July 1, 2023, the legislature amended RSA 198:40-a to provide for base adequacy aid of \$4,100 per pupil in the ADMR. *See* RSA 198:40-a, II(a) (2023).” Order at 3.

³ The source for all of the tax rate information used by Plaintiffs in the Complaint is a website maintained by the New Hampshire DOE: N.H. DEP’T OF EDUCATION, VALUATIONS, PROPERTY TAX ASSESSMENTS AND TAX RATES OF SCHOOL DISTRICTS (2020-2021), https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/values-2020-revised_0.pdf. The DRA also maintains the tax rate information. The State has essentially admitted the facts necessary for judgment on the pleadings, once the Court factors in its ruling of November 20, 2023. *See* Answer at ¶¶ 23 and 24.

⁴ The Court itself agrees, stating: “In total, these conservative choices and overcorrections demonstrate that a base adequacy aid figure of \$7,356.01 would in actuality be far too low and would likely not survive scrutiny.” Order at 53.

address the sufficiency of differentiated aid funding in ConVal, this aspect of the instant case also remains to be determined after a trial on the merits.⁵

7. The New Hampshire Supreme Court has explained that “[i]n general, a motion seeking judgment based solely on the pleadings is in the nature of a motion to dismiss for failure to state a claim upon which relief may be granted.” *Sivalingam v. Newton*, 174 N.H. 489, 493-94 (2021).⁶ A party may move for judgment on the pleadings “after the pleadings are closed—but early enough not to delay trial.” Fed. R. Civ. P. 12(c); *cf. Eames v. Bedor*, 2008 N.H. Super. LEXIS 181, *6 (“The State Supreme Court has previously looked to the federal rules for guidance in explaining the procedural posture of a motion for judgment on the pleadings, *see Jenks v. Menard*, 145 N.H. 236, 239 (2000), and the Court therefore finds the federal rules instructive.”). The analysis for these motions “is similar to that used for cross-motions for summary judgment, though for the purposes of judgment on the pleadings the court ordinarily may consider only facts contained in the pleadings and documents fairly incorporated therein, and those susceptible to judicial notice.” *Mercury Sys. v. S'holder Representative Servs., LLC*, 820 F.3d 46, 51 (1st Cir. 2016) (citations omitted).

8. Here, this Court should take judicial notice of its own ruling in ConVal. *See* N.H. Evid. Rule 201(b) (court may take judicial notice of law, including decisional, constitutional, and public statutory law) (emphasis added). *See also Leavitt v. United Servs. Auto. Ass'n*, Civil Action No. 1:20-cv-12130-IT, 2021 U.S. Dist. LEXIS 133250, at *6, *22 (D. Mass. July 16,

⁵ The fact that ConVal does not address differentiated aid does not defeat this motion for partial judgment. The Court’s order addressed this question and found that the base cost and differentiated aid amounts could be “cleanly divided.” Order at 5 (citing Apr. 6, 2023 Order on Mots. In Limine at 18–19).

⁶ Per New Hampshire court rules, a non-moving party has 10 days to file an objection or response to any motion other than a motion for summary judgment. *See* N.H. Super. Ct. R. 13(a).

2021) (explaining that a trial court granted judgment on the pleadings after a different judge granted another party's motion for summary judgment that involved the same legal issue). If followed, the ruling in ConVal proves the elements of the declaratory judgment sought by Plaintiffs. For that reason, Plaintiffs are entitled to partial judgment at this time.

WHEREFORE, for the foregoing reasons, Plaintiffs move the Court to enter a partial judgment finding that the current state school funding scheme violates Part Two, Article Five of the New Hampshire Constitution. Plaintiffs assume the State will interlocutorily appeal this finding and Plaintiffs assent to an interlocutory appeal, with or without ruling, if the State also appeals the ConVal Order. Plaintiffs further request a status conference at which the parties may discuss the parameters of a trial on the sufficiency of the state's funding of base adequacy and differentiated aid.

Dated: Concord, New Hampshire
November 21, 2023

Respectfully submitted,

/s/ Natalie Laflamme

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion has been served via the court's electronic filing system to all parties of record on this 21st day of November, 2023.

/s/ Natalie Laflamme
Natalie Laflamme