

PRESS RELEASE: State and Property Wealthy Communities Argue Unconstitutional SWEPT Administration Should be Allowed to Continue

August 15: Last night, the State filed its initial briefs to the NH Supreme Court in the *Rand* school funding lawsuit, arguing that the unconstitutional administration of the Statewide Education Property Tax (SWEPT) should be allowed to continue. They were joined in making this argument by the “Coalition Communities 2.0”, a group of 26 property wealthy municipalities that intervened in the case specifically regarding the SWEPT issue.

“Fair taxation to fund schools is one of the pillars of the *Claremont* decisions, and these arguments from the State and the Coalition seek to defy that basic principle,” said Zack Sheehan, NH School Funding Fairness Project Executive Director. “The arguments presented in these briefs rehash what failed at the Superior Court and contribute to blocking progress towards a fairly and adequately funded education for all New Hampshire students.”

The *Rand* lawsuit was filed in June 2022 by property tax payers from communities with low property values that are being negatively impacted by our current funding system. They argue that the funding the State provides is unconstitutionally low, and the wildly varying local education property tax rates that generate over 70% of all school funding violate the *Claremont* decisions. Those claims around school funding will be argued during a Superior Court trial beginning on September 30.

The portion of the case relating to SWEPT was separated from the rest of the case. In regards to SWEPT, the taxpayer plaintiffs argue that municipalities around the state are unconstitutionally avoiding paying SWEPT by both retaining excess SWEPT revenues (amounts raised in excess of the State’s defined cost of an adequate education) to offset local tax rates, paying a lower effective rate on SWEPT as a result, or by setting negative local education property tax rates to offset the payment of SWEPT all together.

The Superior Court ruled in November 2023 that both practices are unconstitutional and must end.

“By trying to block the reforms that will bring SWEPT in line with the New Hampshire Constitution, the State and the Coalition Communities are actively working against fair taxes and an adequate education for every child going to schools in other communities,” Sheehan said.

In this filing, the first argumentative briefs submitted to the NH Supreme Court on this case, the State and the Coalition Communities argued that this is actually a spending question, and not a tax question. They claim that because the legislature allows for these excess State funds to be spent at the local school where they are raised, that does not constitute a tax break. In the Coalition’s brief, they argue that because the excess funds are spent by the municipality at the school and not returned to taxpayers, it cannot be claimed that those municipal tax payers are paying a lower effective rate.

Using the Department of Revenue Administration’s CAMA file, which has a record of every single property in the state, NHSFFP was able to determine that 20% of all residential property value lies in the 26 municipalities that make up the Coalition Communities, which is

disproportionate to their population. Additionally, those municipalities have much higher rates of out-of-town and out-of-state home ownership than the rest of New Hampshire.

In addition to arguing in court to maintain this element of our unconstitutional and deeply inequitable school funding scheme, the Coalition Communities have also been active in the legislative process. In recent years they have lobbied against attempts to reform SWEPT while failing to offer any productive alternatives that could help reduce the disparities in educational opportunities for students or property tax rates that most homeowners face around the state.

On the matter of negative local tax rates, the State argued that because these mainly occur in unincorporated parts of the state, which it argues are not municipalities in the eyes of State law, they are not subject to SWEPT, which only taxes property in municipalities.

In its November 2023 decision, the Superior Court held that “As the Supreme Court has repeatedly emphasized, the public education system benefits the entire State, not merely those communities in which publicly-educated children reside.”

The plaintiffs have until September 30 to file their response. The State and Coalition Communities will then have 20 days to file briefs in reply to the plaintiffs ahead of oral arguments taking place later in the fall.

“The Courts have been consistently clear on the need for fair taxation to support public education,” Sheehan said. “These arguments just don’t hold up, and I expect that we’ll see as much when the Supreme Court rules on this case.”

* * * * *

The mission of the NHSFFP, a registered 501(c)(3), is to inform the public about the condition of New Hampshire public schools and their funding; to advocate for changes to make the system more equitable for students and taxpayers alike; and, if necessary, to prosecute, manage, control, and/or participate in a lawsuit challenging the constitutionality of the system for funding education in New Hampshire.