

PRESS RELEASE: NH Supreme Court Allows Education Tax Dodging to Continue

June 10, 2025: Today, the NH Supreme Court issued a 3-1 ruling which will allow some property owners in the state to continue to avoid paying the full amount of the Statewide Education Property Tax (SWEPT). This order reverses part of the Superior Court's 2023 decision finding this practice unconstitutional and will allow some municipalities to retain excess SWEPT revenues they collect above the State's defined cost of an adequate education.

However, the Court found unanimously that the practice of setting negative local education tax rates to offset payments of SWEPT was unconstitutional.

“Allowing some taxpayers in this state to continue to get special treatment and avoid paying their fair share of taxes to support the education of all students in the state is beyond disappointing,” said Zack Sheehan, NH School Funding Fairness Project Executive Director. “For far too long the State has allowed this two-tiered system to operate, and this order will allow it to continue at the expense of funding for schools in the districts that need it the most.”

The Court found that the ability for communities with significantly more property wealth to retain their excess SWEPT revenues is “an exercise of the legislature's spending power” and not a decision to tax those towns at a different rate, which would violate Part II Article 5 of the NH Constitution. “What this ruling effectively says is that the legislature is choosing to spend more adequacy funding in the communities in the state with the highest property values,” Sheehan continued.

The Court dismissed the plaintiffs' arguments that allowing for the retention of excess SWEPT revenues meant taxpayers in property wealthy communities were paying a lower effective rate on SWEPT, which violates the constitutional requirement that taxes be levied in a uniform rate.

In a partial dissent, Justice Bassett wrote that the effective rate argument should have been considered, and that past Court rulings struck down tax schemes for that very reason. He pointed to the affidavits submitted by town administrators from the Coalition Communities 2.0 which claimed that having to remit excess SWEPT would have a financial impact on their communities, saying those statements make it clear that excess SWEPT retention does indeed create an economic benefit for those places that violate the constitution's equal taxation requirement. Justice Bassett wrote:

“The majority looks past the fundamental economic reality that money is fungible, and that when communities retain excess SWEPT revenue, the local education tax rate is reduced — and the overall property tax burden for the taxpayers in those communities is likewise reduced. The “effective rate” of the SWEPT is therefore reduced. That, of course, is the purpose — and “practical effect” — of the scheme. And that is why the SWEPT scheme is untenable and violates Part II, Article 5.”

The Superior Court wrote in its decision that “the public education system benefits the entire State, not merely those communities in which publicly-educated children reside.” That closely aligns with the vision of the *Claremont* decisions of the 1990s, which established a constitutional right for New Hampshire students to a State funded, adequate education supported by taxes that are “equal in valuation and uniform in rate” across the state.

“This is a major step backwards for our state, but it doesn’t have to be forever,” Sheehan said. “Just because this SWEPT loophole is allowed does not mean that the Legislature cannot act to close it. I believe they have a responsibility to ensure that all Granite Staters are treated fairly by our tax system, and I challenge them to do the right thing and end excess SWEPT retention anyways by including that policy change in the State budget.”

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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.