

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

CASE NO. 2024-0138

Steven Rand, et al.

v.

State of New Hampshire

MOTION TO RECONSIDER THE DECISION REGARDING THE REMEDY
FOR NEGATIVE TAX RATE VIOLATIONS

The plaintiffs, by and through their attorneys, respectfully move, pursuant to New Hampshire Supreme Court Rule 22, that the Court reconsider the portion of its June 10, 2025 decision vacating the trial court’s remedy, stating as follows:

1. On June 10, 2025, this Court issued its final decision, affirming in part, reversing in part, vacating in part, and remanding. Relevant to this Motion,¹ this Court held “that the DRA’s practice of setting negative local property tax rates that offset the SWEPT rate violates Part II, Article 5 [of the New Hampshire Constitution] and affirm[ed] the trial court’s ruling on this issue.” Slip Op. at 9.

2. Despite affirming the trial court on this issue, the opinion “conclude[d] that the trial court’s remedy — enjoining the State ‘from permitting communities to . . . offset the

¹ The plaintiffs respectfully disagree with the Court’s decision regarding excess SWEPT. Because the dissent by Justice Bassett thoroughly explains the points of law and fact overlooked by the majority, the plaintiffs will not repeat those arguments, but instead focus their motion to reconsider on the remedy for the negative tax rate issue.

equalized SWEPT rate via negative local tax rates’ — is unnecessary.” *Id.* The opinion continued: “Resolving the constitutional infirmity in the State’s practice of setting negative local tax rates is the responsibility of the other co-equal branches of government.” *Id.* “Accordingly, we vacate the trial court’s injunction remedy and remand for further proceedings consistent with this decision.” *Id.*

3. In rendering this decision, the Court overlooked or misapprehended points of law and fact. *See* N.H. Sup. Ct. R. 22 (2).

THE LAW REGARDING NEGATIVE TAX RATES IS ALREADY RESOLVED

4. The Court’s opinion apparently overlooks the state of the current law and misapprehends what needs to be done to resolve the “constitutional infirmity.” Because in this case the legislature need only obey a law it has already enacted, the Court is empowered and should order to the legislature to do so. No deference is warranted.

5. In the past, this Court has repeatedly deferred to the legislature in school funding cases. *But see Londonderry Sch. Dist. SAU # 12 v. State*, 154 N.H. 153, 163 (2006) (Broderick, J., dissenting) (“Deference, however, has its limits.”). In those cases, the Court decided that the legislature needed to affirmatively act, by amending a statute, enacting new legislation, or creating new law or policy.²

6. The decision here requires no deference. As the opinion holds, it is the DRA’s practice that is unconstitutional. Slip Op. at 8-9. The statute itself is constitutional as written. It does not need to be amended or repealed, nor does additional legislation need to be passed. The law simply needs to be followed.

² The plaintiffs do not suggest that the Court’s continued deference was appropriate or would be appropriate going forward. This Motion mentions those cases only to further explain what the plaintiffs contend the Court overlooked for this matter in particular.

7. Acting constitutionally would also not require additional determinations by the Department of Revenue Administration (DRA) or Department of Education or any other state agency. As the opinion notes, the State already uses the property in unincorporated places as part of its calculation. Slip Op. at 8. The SWEPT rate for those places is already calculated, and indeed, tax warrants for those places are already issued each year. The State just needs to actually collect the revenue set by this state tax.³

A REMEDY IS NECESSARY TO PROTECT PLAINTIFFS' CONSTITUTIONAL RIGHTS

8. The Court's opinion overlooks the longstanding legal principle that a legal right must have a remedy. *See Edes v. Boardman*, 58 N.H. 580, 589 (1879) ("If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it; and, indeed, it is a vain thing to imagine a right without a remedy. Want of right and want of remedy are reciprocal.").

9. Affirming the trial court's ruling regarding unconstitutionality, but vacating the injunction that would immediately remedy it, awards the plaintiffs a pyrrhic victory. The plaintiffs may now be in a worse position because the June 10, 2025 decision sends a message to the State that, even when it is blatantly violating the constitution, the courts will do little to stop it. This may further embolden the State to ignore court rulings or not see them as binding. *See Londonderry*, 154 N.H. at 163 (Broderick, J., dissenting) ("[T]he judiciary has a responsibility to ensure that constitutional rights not be hollowed out and, in the absence of action by other branches, a judicial remedy is not only appropriate but essential.").

³ The State offered little basis for why it is unable to collect revenue properly due to it, beyond that it may cause accounting difficulties. That reason is not legitimate as the State already accounts for this revenue in its books. *See, e.g.*, State of New Hampshire Annual Comprehensive Financial Report (ACFR) for the Fiscal Year Ended June 30, 2023, at 7 and 150. In any event, mere administrative inconveniences are not a reason to violate the constitution.

10. The legislature has a long history of violating the constitution and not following the judicial branches' orders with respect to fairly funding public schools in New Hampshire; the plaintiffs fear that may now be easier. *See Edes*, 58 N.H. at 589 (“When the law thus declines to interfere between the claimant and his disturber, and stands, as it were, neutral between them, it is manifest that, in respect to the matter involved, no claim to legal rights can be advanced.”).

WHEREFORE, the plaintiffs respectfully request that this Court:

- A. Grant this Motion;
- B. Reconsider its June 10, 2025 Opinion;
- C. Affirm the trial court's granting an injunction regarding negative tax rates; and
- D. Grant such other relief as is just and proper.

June 17, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2025, a true and correct copy of the foregoing document has been served via the Supreme Court electronic filing system on all counsel of record.

/s/ John E. Tobin, Jr.
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