

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2024-0138

Steven Rand, et al.

v.

State of New Hampshire

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

The State of New Hampshire, by and through counsel, hereby objects to the plaintiffs' Motion To Reconsider The Decision Regarding The Remedy For Negative Tax Rate Violations as follows:

1. The plaintiffs' motion for reconsideration challenges only this Court's decision with respect to the remedy for the negative local education tax rate issue.
2. The plaintiffs seem to assert that they require an injunction to protect to their rights with respect to that issue and that, without one, they are without a remedy.
3. The plaintiffs are incorrect.
4. Our State Constitution divides the "three essential powers" of government, "the Legislative, Executive, and Judicial," into separate, coordinate branches, N.H. Const. Pt. I, Art. 37, all three of which must "work[] together" and "carry[] into effect conjointly the whole power of the state," *Ferretti v. Jackson*, 88 N.H. 296, 300 (1936), without usurping an essential power of another, *N.H. Health Care. Assoc. v. Governor*, 161 N.H. 378, 386 (2011).

5. Part II, Article 2 of the State Constitution vests the legislature with the “supreme legislative power” to make laws.

6. Part II, Article 41 of the State Constitution vests the Governor with “[t]he executive power of the state” and imposes a duty on the Governor and her subordinate officers to execute the law and enforce constitutional requirements. *N.H. Health Care. Assoc.*, 161 N.H. at 386.

7. Part II, Article 72-a of the State Constitution vests the “judicial power of the state” in part “in the supreme court,” and makes “the judiciary . . . responsible for interpreting and applying [the law],” *State v. Shackford*, 127 N.H. 695, 701 (1986).

8. This Court’s June 10, 2025 opinion has interpreted the SWEPT statutes. It has determined that the SWEPT statutes impose the SWEPT on unincorporated places and that unincorporated places are not exempt from them. This Court has therefore declared the DRA’s practice of setting a negative local education tax rate to offset the SWEPT rate for those places unconstitutional under Part II, Article 5 of the State Constitution.

9. Contrary to the plaintiffs’ suggestion otherwise, this definitive legal declaration is an available and effective remedy for them. RSA 491:22, I.

10. It now requires the executive branch to fulfill its constitutional obligation to execute the law.¹

¹ The plaintiffs’ motion for reconsideration seems to be misdirected at the legislature. It seems to suggest in paragraph 4 that the legislature executes the SWEPT statutes, and that this Court should order it to do so. It further alleges in paragraph 10 that “[t]he 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,” but the constitutional infirmity this Court has identified is an executive branch agency practice. Consequently, it is not clear to the defendant why these allegations support issuance of an injunction in this case.

11. The executive branch intends to do this.
12. Specifically, the DRA will no longer utilize negative local education tax rates to offset SWEPT rates.
13. The plaintiffs have therefore not been deprived of a remedy; they have instead received a full and complete remedy and have failed to show why any injunctive relief is now needed.
14. Under such a circumstance, the plaintiffs are not entitled to injunctive relief because injunctions issue to remediate irreparable harm and do not issue where another adequate remedy at law is available. *See N.H. Dep't of Envtl. Servs. v. Mottolo*, 155 N.H. 57, 63 (2007) (“An injunction should not issue unless there is an immediate danger of irreparable harm to the party seeking injunctive relief, and there is no adequate remedy at law.”).
15. This Court’s final opinion in combination with the ordinary and orderly functioning of our constitutional form of state government will now fully remediate the plaintiffs’ harm.
16. Consequently, no injunction is required, and this Court did not overlook or misapprehend any points of law or fact by deferring to the normal operation of our state government, as embodied in our state constitution, to resolve the identified constitutional infirmity. *See Brouillard v. Governor & Council*, 114 N.H. 541, 544 (1974).

WHEREFORE, the State of New Hampshire respectfully requests that this Honorable Court issue an order:

- A. Denying the plaintiffs' Motion To Reconsider The Decision Regarding The Remedy For Negative Tax Rate Violations; and
- B. Granting such further relief as the Court deems just and equitable.

Respectfully submitted,

THE STATE OF NEW
HAMPSHIRE

By its attorneys,

JOHN M. FORMELLA
ATTORNEY GENERAL

ANTHONY J. GALDIERI
SOLICITOR GENERAL

Date: June 23, 2025

/s/ Anthony J. Galdieri
Anthony J. Galdieri, No.18594
Solicitor General
Samuel R.V. Garland, No. 266273
Senior Assistant Attorney General
New Hampshire Dept. of Justice
1 Granite Place South
Concord, NH 03301
(603) 271-3650
anthony.j.galdieri@doj.nh.gov
samuel.r.v.garland@doj.nh.gov

CERTIFICATION

I certify that a copy of the foregoing was served on all counsel of record through the Court's e-filing system.

Date: June 23, 2025

/s/ Anthony J. Galdieri

Anthony J. Galdieri