

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 SUMMARY
JUDGMENT REGARDING
SWEPT**

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 pursuant to Rule 12 of the Superior Court of the State of New Hampshire, and other applicable law, and move the Court to issue a partial summary judgment declaring the current Statewide Education Property Tax ("SWEPT") scheme to be unconstitutional because excess SWEPT revenues are retained, and/or the State offsets SWEPT by setting a negative tax rate.

1. Plaintiffs are taxpayers who pay the SWEPT at its full effective rate. Part II, Article 5 of the New Hampshire State Constitution (the "Constitution") requires that the SWEPT be uniform in its effective rate throughout the state. The SWEPT is not uniform because some municipalities are permitted to abate the local tax rate by keeping revenues generated by SWEPT in excess of those needed to pay for the cost of constitutional adequacy. *See* Statement of Undisputed Facts in Support of Plaintiffs' Motion for Partial Summary Judgment, Ex. A Table 1.

In other municipalities, the SWEPT scheme results in SWEPT tax rates being offset by negative local education tax rates. *Id.* at Table 3.

2. As discussed further in Plaintiff's *Memorandum of Law in Support of [their] Motion for Partial Summary Judgment Regarding SWEPT*, the Court should grant partial summary judgment in this instance because Plaintiffs have demonstrated the effective SWEPT rate, which is set by the DRA Commissioner at the direction of Defendant the State of New Hampshire (the "State"), will be lower in those towns that generate excess SWEPT funds and in those towns with offsetting negative tax rates violating the constitutional requirement that state taxes be uniform in rate.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that the Court enter an order granting: (i) partial summary judgment in favor of Plaintiffs regarding the unconstitutionality of the SWEPT; and (ii) for such other relief as the Court may deem proper. Plaintiffs also request a hearing on this matter.

Dated: Concord, New Hampshire
December 21, 2022

Respectfully submitted,

/s/ Natalie J. Laflamme

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**pro hac vice pending*

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this motion was electronically filed in the court's electronic filing system and thereby served on counsel for the State, Samuel Garland, Anthony Galdieri, and on John-Mark Turner, counsel for the Intervenor, this 21st day of December, 2022.

/s/ Natalie Laflamme

Natalie Laflamme