

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

No. 215-2022-CV-00167

Steven Rand, et al.

v.

State of New Hampshire

A hearing will be held on this Motion. The Court is intrigued by the State's argument that the holding in *Rand I* dictates the outcome of the trial. Neither party briefed that issue and this Court did not address it squarely in its merits order. The Clerk shall schedule 2 hours for this hearing.



Honorable David W. Ruoff

September 4, 2025

**DEFENDANT'S MOTION FOR RECONSIDERATION**  
**Clerk's Notice of Decision**

**Document Sent to Parties**

on 09/04/2025  
The State of New Hampshire, by and through the Office of the Attorney General, hereby

moves for reconsideration of this court's August 18, 2025, Order on the Merits. In support thereof, the State provides as follows:

1. A motion for reconsideration "shall state, with particular clarity, points of law or fact that the court has overlooked or misapprehended ..." Super. Ct. Civ. R. 12(e).
2. The State respectfully submits the following points for reconsideration consistent with this standard:
  - a. The court's conclusion that plaintiffs have standing is based upon a misapprehension and a failure to recognize the need for there to be a connection between the alleged injury and the substantive claims advanced and the remedies sought by the plaintiffs.
  - b. The court's decision assumes that when a municipality raises a local education property tax under RSA 76:8, III, and then spends that tax money to cover a school adequacy cost, the local education property tax is "converted" into a State tax and is then rendered unconstitutional under Part II, Article 5 of the State Constitution. This assumption is erroneous, is based upon a misapprehension of the holding from *Claremont II*, and amounts to the same type of indirect effect analysis the New Hampshire Supreme Court recently rejected in *Rand v. State*, 2025 N.H. 27.

**I. In finding the plaintiffs had standing, the court failed to recognize the need for there to be a connection between the injury upon which standing is premised and the claims being raised / the remedies being sought such that the injury “is capable of judicial redress by a favorable decision.”**

3. “The doctrine of standing limits the judicial role, consistent with a system of separated powers, to addressing those matters that are traditionally thought to be capable of resolution through the judicial process.” *Richard v. Governor*, 2024 N.H. 53, ¶ 7. When determining whether a party has standing to sue, the court must “focus on whether the party has alleged a legal injury against which the law was designed to protect.” *Carrigan v. N.H. Dep’t of Health & Human Servs.*, 174 N.H. 362, 367 (2021) (citing *Teeboom v. City of Nashua*, 172 N.H. 301, 307 (2019)). “A party must allege a concrete, personal injury, implicating legal or equitable rights, with regard to an actual, not hypothetical, dispute, which is capable of judicial redress by a favorable decision.” *Id.* A plaintiff must establish standing as to each claim she has raised. *See Richard*, 2024 N.H. 53, ¶¶ 10, 21, 23-24 (determining whether standing exists for each count of plaintiff’s complaint).

4. This court found the plaintiffs here had suffered a “concrete, personal injury” as a result of the fact that they own and pay taxes on property located in areas with “relatively high equalized local school tax rates.” (Aug. 18, 2025 Order, at 5-6). “Thus, if Adequacy Funding levels are constitutionally insufficient, this results in unique and concrete harm to the plaintiffs: i.e., a portion of their local property tax revenues is effectively converted into a State tax assessed to the plaintiffs at disproportionately high rates.” *Id.*

5. Section II of this motion will address the court’s assertion that a local property tax can be “converted into a State tax” by the manner in which it is spent by the locality. Setting that aside for the moment, the concrete, personal injury identified by the plaintiffs and accepted by

this court as providing injury in fact for standing purposes relates to the plaintiffs' payment of an allegedly unconstitutional local education property tax imposed by a municipality that is not a party to this case. This alleged injury is not "capable of judicial redress by a favorable decision" on the claims actually advanced and the remedies actually sought by the plaintiffs.

6. When an individual is injured through the payment of an unconstitutional tax, that injury can confer standing to challenge the tax. The individual could seek an abatement of the allegedly unconstitutional tax or a declaratory judgment finding the tax unconstitutional. *See Merrimack Premium Outlets, LLC v. Town of Merrimack*, 2025 N.H. LEXIS 51, \*8-10 (Feb. 28, 2025).

7. However, plaintiffs in this case have sought none of the remedies which would redress their alleged injury and have failed to join to this case the only parties who could deliver one or more of those remedies—their municipalities.

8. Instead, plaintiffs sought and obtained a declaration that certain "aspects" of RSA 198:40-a are unconstitutional under Part II, Article 83 of the State Constitution, as interpreted by the New Hampshire Supreme Court, because the amounts contained in those "aspects" are insufficient to meet the State's adequate education payment obligation. (Aug. 18, 2025 Order at 56). In this court's view, the State needs to spend more money on certain aspects of RSA 198:40-a, while the evidence was insufficient to prove that other aspects of RSA 198:40-a were unconstitutional (differentiated aid for ESL students and students living in poverty).

9. The plaintiffs' alleged Part II, Article 5 injury is not remedied by this declaration.

10. Moreover, the plaintiffs cannot maintain a Part II, Article 83 claim through a Part II, Article 5 violation. The plaintiffs must demonstrate standing to bring the Part II, Article 83 claim, which they cannot for the reasons explained in the State's post-trial memorandum. The

plaintiffs also cannot demonstrate standing to bring a Part II, Article 5 because those claims require the municipalities as adverse parties and an order against the State is not capable of redressing those alleged injuries.

11. Consequently, this Court should reconsider its standing analysis, find that plaintiffs lack standing to advance their Part II, Article 83 and Part II, Article 5 claims, and deny the plaintiffs relief in this matter. The plaintiffs cannot obtain Part II, Article 83 remedies through Part II, Article 5 standing.

**II. *Claremont II* does not stand for the proposition that anytime local tax dollars are used to cover an adequacy cost, the tax from which they are raised is somehow “converted” into a state tax subject to a Part II, Article 5 challenge.**

12. This court caricatured plaintiffs’ argument as follows: “The plaintiffs contend that by setting insufficient Adequacy Funding amounts, the State has effectively returned to a version of the funding scheme struck down in Claremont II: a system that relies on local property tax revenues, assessed at varying rates, to satisfy a portion of the State’s constitutional school funding obligations.” (Aug. 18, 2025 Order at 6).

13. The court then adopted this proposition as its own, writing: “Thus, if Adequacy Funding levels are constitutionally insufficient, this results in unique and concrete harm to the plaintiffs: i.e., a portion of their local property tax revenues is *effectively converted into a State tax* assessed to the plaintiffs at disproportionately high rates.” *Id.* (emphasis added).

14. This analysis is constitutionally and legally incorrect and fundamentally misreads and misunderstands *Claremont II*.

15. Part II, Article 5 “provides that the legislature has the power ‘to impose and levy proportional and reasonable assessments, rates, and taxes, upon all of the inhabitants of, and residents within, said state.’” *Starr v. Governor*, 148 N.H. 72, 74 (2002). “This article requires

that all taxation be proportionate and reasonable[,], equal in valuation and uniform in rate, and just.” *Id.* (cleaned up). “In order for a tax to be proportional, all property in the taxing district must be valued alike and taxed at the same rate.” *Sirrell v. State*, 146 N.H. 364, 370 (2001).

16. The plaintiffs’ local education property taxes are not State taxes. The State does not impose them. Municipalities are separately allowed to raise such taxes under RSA 76:8, III, and do so to help fund their schools. A local education property tax imposed by a municipality under specific statutory authorization does not become a State tax simply because the State may not be meeting its Part II, Article 83 obligations. Similarly, a municipality cannot convert a local education property tax into a State tax by choosing to spend lawfully raised local tax dollars in a certain way. No precedent of the New Hampshire Supreme Court holds or implies otherwise.

17. *Claremont II* in particular is not support for such a proposition. In *Claremont II*, the New Hampshire Supreme Court held that the town district property tax scheme in that case violated Part II, Article 5. Specifically, the State relied on RSA 194:34 to raise the funds needed to meet the State’s obligation under Part II, Article 83. *Claremont Sch. Dist. v. Governor*, 142, N.H. 462, 467 (1997) (*Claremont II*) (“To comply with the State’s requirements, school districts must raise money for their schools with revenue collected from real estate taxes. RSA 194:34 (1989); RSA 198:1-:7 (1989 & Supp. 1996)). RSA 194:34 provided: “It shall be the duty of said town district to raise and appropriate each year thereafter sufficient money, in addition to the school money which the town in which it is situated may raise, to properly maintain such high school, or schools, as may be established under RSA 194:33.”

18. The New Hampshire Supreme Court held that, because Part II, Article 83 imposes a duty on the State to fund a constitutionally adequate education, the State is the taxing district for purposes of raising money to fulfill that duty, *Claremont II*, 142 N.H. at 469-70, and, as a

consequence, the State’s imposition of the town district property tax scheme to finance that obligation amounted to a State tax that was not equal in valuation and uniform in rate across the State and therefore violated Part II, Article 5, *Claremont II*, 142 N.H. at 471.

19. A manifestly different tax regime exists in our State today. *See Rand v. State*, 2025 N.H. 27, ¶ 14 (holding that the Statewide Education Property Tax is “materially different from other education property tax schemes that we have found to violate Part II, Article 5” and citing, in part, *Claremont II*).

20. Today, the State imposes a state tax known as the Statewide Education Property Tax (“SWEPT”), RSA 76:3 & RSA 76:8, I-II, to help meet its funding obligations under Part II, Article 83.

21. The New Hampshire Supreme Court has just upheld its constitutionality finding the SWEPT meets Part II, Article 5’s requirements. *Rand*, 2025 N.H. 27, ¶ 17.

22. While RSA 76:3 and RSA 76:8, I-II create and impose the SWEPT, RSA 76:8, III separately permits municipalities “to assess local property taxes necessary to fund school district appropriations not funded by the education tax, by distributions from the education trust fund under RSA 198:39, or by other revenue sources.”

23. Municipalities are not compelled, forced, or required to utilize this statute, and there is no reason why they should be because the current statutory machinery contemplates the State’s Part II, Article 83 obligations being met through RSA 198:39-:45, including RSA 198:40-a.

24. Consequently, a municipality’s imposition of a local education property tax under RSA 76:8, III, is not a State tax and does not alchemically become one because the State is not spending sufficient money to fund a constitutionally adequate education.

25. This Court’s decision to the contrary is incorrect, fails to follow New Hampshire Supreme Court precedent, and invents a new constitutional claim or theory where none exists.

26. This Court should therefore reconsider its decision on these points and dismiss plaintiffs’ remaining Part II, Article 5 claim or theory from the case as not being a viable legal claim or theory on which they can proceed.

**III. This court’s analysis conflicts with the Supreme Court’s decision in *Rand v. State*, 2025 N.H. 27 and should be reconsidered on that basis.**

27. In *Rand v. State*, 2025 N.H. 27, the New Hampshire Supreme Court reversed this court’s decision finding the SWEPT unconstitutional under Part II, Article 5. In doing so, the New Hampshire Supreme Court made clear that the SWEPT “is materially different from other education property tax schemes that [the Court] ha[s] found to violate Part II, Article 5.” *Id.* ¶ 14. The New Hampshire Supreme Court further held in no uncertain terms that the “[t]heoretical indirect effects of the scheme on municipalities are not relevant to the analysis under Part II, Article 5.” *Id.* ¶ 16.

28. Despite the New Hampshire Supreme Court’s clear precedential holding in *Rand v. State*, 2025 N.H. 27, informing this court that theoretical indirect effects on municipalities do not play a role in the Part II, Article 5 analysis, this court has now ruled that the theoretical indirect effect of the State not supplying sufficient adequacy funding to municipalities under Part II, Article 83 converts a municipal tax allowed under RSA 76:8, III into a state tax that violates Part II, Article 5. The New Hampshire Supreme Court’s decision in *Rand v. State*, 2025 N.H. 27 forecloses such an analysis.

29. The relevant inquiry in a Part II, Article 5 case is whether the challenged tax is proportionate and reasonable, equal in valuation and uniform in rate, and just. The plaintiffs have failed to prove that any municipality’s local education property tax violates this

constitutional provision, and any indirect effect that insufficient State adequacy funding may have on a municipality does not give rise to a Part II, Article 5 claim and plays no role in a Part II, Article 5 analysis.

WHEREFORE, the State respectfully requests that this court enter an order:

- A. Granting this motion for reconsideration;
- B. Finding the plaintiffs lack standing to proceed with this case;
- C. Finding the plaintiffs' remaining Part II, Article 5 claim or theory non-viable and dismissing it from the case; and
- D. Granting such further relief as the court deems just and equitable.

Respectfully submitted,

STATE OF NEW HAMPSHIRE

By its attorney,

JOHN M. FORMELLA  
ATTORNEY GENERAL

Date: August 28, 2025

By: /s/Anthony J. Galdieri  
Anthony J. Galdieri, No. 18594  
Solicitor General  
Samuel Garland, No. 266273  
Senior Assistant Attorney General  
New Hampshire Department of Justice  
1 Granite Place South  
Concord, NH 03301  
Phone: (603) 271-3658  
[anthony.j.galdieri@doj.nh.gov](mailto:anthony.j.galdieri@doj.nh.gov)  
[samuel.rv.garland@doj.nh.gov](mailto:samuel.rv.garland@doj.nh.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing motion was sent via the Court's electronic filing system to all parties of record.

Date: August 28, 2025

/s/Anthony J. Galdieri  
Anthony J. Galdieri