

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Docket No. 215-2022-CV-00167

Steven RAND et al.

v.

STATE OF NEW HAMPSHIRE

MOTION FOR PARTIAL RECONSIDERATION ON REMEDY

Pursuant to Superior Court Rule 12(e), the intervenor, Coalition Communities (the “Coalition”), an association of New Hampshire municipalities, requests that the Court reconsider its decision on remedy, saying in support as follows:¹

Summary of Argument

1. The Court’s injunction will create substantial hardships on the member municipalities of the Coalition (the “Towns”) and other similarly situated communities while conferring no benefit to any student or taxpayer in New Hampshire. The Court has not ordered the State to actually spend the remitted excess SWEPT, though it has ordered the State not to use the money for anything other than adequacy payments. The State says it will place the funds in an escrow account pending appeal. See State Rule 46(c) motion.

2. Thus, the money will remain in an account and not used for any educational purposes or tax relief during the pendency of the appeal. At the same time, to remit SWEPT revenue, the Member Towns will have to make painful cuts to their schools or their municipal budgets. That could put off long overdue and critically needed projects like bridge repairs,

¹ The Coalition is also today filing a Motion for Stay Pending Appeal and Joinder in the State’s Rule 46(c) motion to sever and its Motion to Stay.

replacing old emergency vehicles, and remediating impaired lakes and coastal waterways to keep beaches and vital tourism open. See infra ¶¶4-19.

3. Reconsideration is appropriate under Rule 12(e) because the Court misapprehended the balance of harms and public interest factors in the injunction analysis.² See infra ¶¶20-24. Both factors weigh against issuing an injunction requiring excess SWEPT to be collected but saved by the State, at least until there is legislation or a judicial order that the State is required to spend the funds on adequacy aid.

The Injunction Will Cause Substantial Harm to the Towns and Their Residents

4. An injunction is appropriate when (1) the plaintiff would otherwise suffer irreparable harm, (2) the public interest is served in granting the injunction, and (3) the harm suffered by the plaintiff absent an injunction outweighs the harm an injunction would cause the defendant. See UniFirst Corp. v. City of Nashua, 130 N.H. 11, 14-15 (1987).

5. The injunction upsets a twelve-year status quo. It will cause substantial hardship to all of the Towns in the Coalition and other similarly situated municipalities in a variety of ways: voter confusion ahead of town meetings, cancellation of vital municipal projects, or damaging cuts to the Town's schools.

6. The Coalition offers affidavits from four Towns (Hebron, Moultonborough, Rye, and Waterville Valley) explaining the hardships they expect if they are required to remit SWEPT over adequacy in 2024. These four communities are representative of the many others, each with

² None of the parties briefed the injunction factors or the appropriate scope of an injunction. Instead, the State requested that any order from the Court not take effect during the current budget cycle, while Plaintiffs argued the order should become effective immediately and asked that the "Court declare the tax unconstitutional and order its sunseting." Pl. SJ Response at 14.

their unique situations and challenges, that will have to make very difficult funding decisions under the uncertainty the injunction causes.³

Voter Confusion in Advance of Town Meetings.

7. Town meetings are only a few months away, and the Towns are deep into budget planning. See Affidavit of Mark DeCoteau ¶7, Exh. 1 hereto; Commissioner Step Affidavit (attached to State’s Summ. J. Memo.), ¶¶10-12. But during this critical budget planning stage, it is now unclear how much SWEPT revenue the municipalities may have for the upcoming year. There is tension between the Court’s Order and the State’s position that it lacks authority to compel remission of SWEPT revenues. That makes it impossible for the municipalities to present a budget to their voters at town meetings. See DeCoteau Aff. ¶ 7.

8. Potential voter confusion over town budgets could have real world consequences for the Towns. For instance, Hebron voters are considering leaving SAU4 and joining Bridgewater and Groton to form a new school district. See Karen Sanborn Affidavit ¶8 attached hereto as Exhibit 2. To guide the voters, the towns have formed a steering committee in advance of town meetings. See id. The steering committee must prepare a proposed budget for the new school district so voters know the costs and potential tax implications of the change. See id. ¶9.

³ The State contends that it lacks statutory authority to compel municipalities to remit SWEPT payments to DRA if they do not do so voluntarily. The Coalition read the Court’s order to apply to the State only and does not understand the Court to have ordered the municipalities, which are non-parties, to actually remit the payments. See Super Ct. R. 48(d) (injunctions are “binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise”). If there is no legal obligation to remit the payments to DRA, and if the payments are not remitted to DRA, the hardships discussed in this Motion will not occur. However, parts of the Court’s order can be read to require remission. See Ct. Order at 20 (ordering that “any SWEPT funds generated by a community which exceed the amount of adequacy aid to which that community is statutorily entitled must be remitted to the DRA.”). Out of abundance of caution, the Coalition is asking for reconsideration and a stay.

Yet, the steering committee cannot put its budget together without knowing whether SWEPT will or will not be remitted to the DRA. See id. ¶¶9-10. The injunction therefore runs against the public interest in avoiding voter confusion. See Libertarian Party New Hampshire v. State, 154 N.H. 376 (2006) (recognizing governmental “interest in avoiding undue voter confusion and in running efficient and equitable elections”).

9. Furthermore, if municipalities are compelled to remit excess SWEPT, the new School District’s budget will need to project enormous property tax increases. See id. ¶10. If the Supreme Court reverses, those projections will be wrong. However, the school vote will likely have failed by the time of the Supreme Court decision. See id.

Municipal Budget Cuts Will Harm the Towns and Their Schools

10. If the Court orders remission of excess SWEPT in 2024 it could result in numerous critical municipal projects being cancelled. In Waterville Valley, the excess SWEPT that may have to be remitted pursuant to the injunction is 8.3% of its revenue. See DeCoteau Aff. ¶¶6, 8. That reduction would come on the heels of new state and federal standards that will require the Town to build a new, \$40+ million wastewater treatment plant, double its drinking water testing and treatment spending, comprehensively survey its drinking water connection for lead, and reconfigure its municipal transfer station. See id. ¶¶9-12. These required expenditures will increase taxes by \$2 to \$3 per \$1000 to the current tax rate of \$12.06, for the next thirty years. See id. ¶¶10, 13. That huge, locked-in tax increase makes it extremely difficult for the Town to absorb an 8.3% loss of revenue through additional tax increases. See id. The town has a large percentage of residents 65 and older, many of whom are on fixed incomes. See id.

11. Instead, Waterville Valley will have to either cut other vital services to fund its schools or reduce school funding. Remission of SWEPT will put at risk the Town’s purchase of

a fire engine and ambulance, both of which are beyond their expected useful lives. See id. ¶14. It will also endanger the Town's new project to remedy long deferred maintenance on its roads, which has cost \$2.4 million over this year and last. See id. ¶15. The work is vital to the Town to protect cyclists, pedestrians, and plow drivers. See id.

12. The remitted SWEPT would be nearly a third of Waterville Valley's school budget. Its loss would be very difficult to absorb. Closing facilities is not an option, because the Town only has a single school building. See id. ¶16. One of the only ways to reduce the Town's educational spending would be to lay off one or more of the school's three teachers, but that would substantially increase class size and harm the Town's students. See id.

13. Moultonborough faces a similar situation. The excess SWEPT that would have to be remitted by the Town is \$5,105,266, which is over a quarter of the current school budget. See Affidavit of Charles Smith, Exh. 3 hereto, ¶¶5-6. A reduction of anything approaching that magnitude from the school budget would jeopardize operation of the schools. See id. ¶7. After a recent study, the Town's schools need to spend \$19 million to replace heating, lighting systems, boilers, insulation, other HVAC systems, and ceilings. See id. ¶8. These projects must be completed because many of the systems are at or near the end of their useful life. See id.

14. Municipal budget cuts to make up for the remission of SWEPT will also be painful and threaten important projects to Moultonborough like its recent effort to expand sewer line access. See id. ¶9. The Town is only able to utilize a small part of the Winnepesaukee River Basin Program, a State wastewater and sewer system created in the 1970s to benefit ten Lakes Region communities. See id. Thus, Moultonborough must pay for sewer extensions to its residents, which may be as much as \$1 million per mile. See id. Expanding sewer access is a critical need for the Town because it will help reduce runoff and infiltration that are causing algal

and cyanobacteria blooms in the Town's lakes. See id. The lakes, which make up 15 square miles within the Town and 89 miles of shoreline, are considered "public waters" held in the public trust. See id.; see also Official List of Public Waters, available at <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/olpw.pdf>.

15. Like the other Towns, Rye cannot absorb a large loss of SWEPT revenue without cutting its own education funding or cancelling critical projects. Rye projects the excess SWEPT that would need to be remitted in the next budget cycle is \$2,264,409. See Affidavit of Matt Scruton, Exh. 4 hereto.

16. Remission of that amount will threaten numerous municipal efforts. Like Moultonborough, Rye is largely defined by its proximity to state waters, such as Parsons Creek, which drains into the Atlantic Ocean near Wallis Sands Beach. See id. ¶8. The Creek has been plagued with very high levels of bacteria during the last 4-5 summers, resulting in beach closures and swimming advisories. See id. That is an existential threat to the Town, which relies on its beaches and tourism. See id. The Town needs to invest significant resources over the next several budget cycles to develop a new watershed management plan and to remediate the contaminations. See id.

17. Remission of excess SWEPT also threatens the Town's recent capital improvement and maintenance program. For instance, the Town must soon spend nearly \$1 million to repair or replace Harbor Road Bridge, which has partially failed. See id. ¶6. The Town must soon spend approximate \$1.35 million to purchase emergency winter vehicles, an ambulance, and a fire engine. See id. It also must replace its 40-year-old municipal fuel island and pumps as soon as possible, at approximately \$1.4 million. See id. ¶7. The Town must also

spend over \$1 million for significant repairs and repaving of major town thoroughfares that are past their useful life. See id. ¶9.

18. Reducing Rye’s school’s budget is also very difficult because Rye’s schools have planned capital projects that cannot be put off. See id. ¶11. The expected additional capital costs will be \$400,000 to \$500,000 in each of the next five years. See id. Those include fixing elementary and junior high school restrooms that have not been renovated in 40 years and are partially unusable, and replacing a roof. See id.

19. Finally, Rye has very little leeway to raise taxes. The Town already increased its tax rate 15% in 2023 to pay for its urgently needed capital projects. See id. ¶10. If the Town increases its tax rate again make up for the remitted SWEPT revenue, many of its residents would suffer. See id. (testifying to large percentage of older residents on fixed incomes). Increased taxes also increase rents, making housing even less affordable for Rye’s low-income residents (5% of whom live in poverty). See id.

The Public Interest and Balance of Harms Weigh Against the Injunction

20. The Court recognized that an immediate remedy affecting the current budget cycle would impact the Towns and similarly situated municipalities. See S.J. Order at 20. However, the Court seemed to balance this harm against the harm to “communities which do not generate excess SWEPT funds or offset the SWEPT with negative local tax rates [which] continue to shoulder an unfair burden as it relates to the State’s adequacy aid obligations.” Id.

21. The Court overlooked and/or misapprehended the appropriate public interest and balance of harms underlying the injunction. The harms to the Towns from the injunction outweigh the harm the injunction is preventing. Taxpayers in communities that do not generate excess SWEPT funds will not gain any benefit from the Court’s injunction, because the State is

escrowing the funds pending appeal. None of the escrowed funds will be spent on education in other communities and taxpayers in property-poor communities will see no tax relief. Thus, there will be no benefit to any Plaintiff, their towns, or any New Hampshire student to offset the demonstrated harms to the many towns in New Hampshire like Hebron, Moultonborough, Rye, and Waterville Valley.

22. If the enjoined party, or a third-party, would suffer injury, but the injunction does not remedy the Plaintiffs' alleged harm, the injunction should be denied. See, e.g., Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 534 (1987) (reversing injunction when defendant would lose money spent on oil exploration but injunction halting exploration would not prevent environmental harm).

23. Furthermore, the public interest does not favor sequestering funds that would otherwise be used to advance important governmental interests, like the Towns' funding of their schools and school buildings, remediating contamination of public trust waters, and repairing or replacing failing bridges, roads, and emergency vehicles.

24. Therefore, the Court should reconsider and modify its order to take effect only after appeal if the State is required to spend the remitted SWEPT revenue, either through a legislative enactment or judicial order.

25. Alternatively, the Court can deem the SWEPT decision a final, appealable decision under Rule 46(c) and stay its order pending appeal.

WHEREFORE, the Coalition respectfully requests that this Honorable Court:

- A. Reconsider the remedy portion of its Order to take effect only after appeal if the Legislature or Supreme Court requires the State to spend the remitted SWEPT revenue on adequacy aid;
- B. In the alternative, grant the State's Rule 46(c) motion and the State's and Coalition's stay motions; and

EXHIBIT 1

STATE OF NEW HAMPSHIRE

GRAFTON COUNTY

SUPERIOR COURT

Docket No. 215-2022-CV-00167

Steven RAND et al.

v.

STATE OF NEW HAMPSHIRE

AFFIDAVIT OF MARK DECOTEAU

I, Mark Decoteau, hereby depose and swear as follows:

1. My name is Mark Decoteau, and I am the Town Manager in the Town of Waterville Valley, New Hampshire (the “Town”).
2. The Town was incorporated in 1829. We are small and close-knit community of approximately 580 year-round residents.
3. The Town is approximately 42,000 acres, of which 41,300 acres are part of the White Mountain National Forest. The Town is a member of the Intervenor, Coalition Communities (“Coalition”), and I am the Coalition’s Chairman.
4. I am offering this affidavit testimony in support of the Coalition’s request that the Court reconsider and/or stay its order that, beginning with the current budget cycle, “SWEPT funds generated in excess of the adequacy aid to which any community is statutorily entitled must be remitted to the DRA.”
5. If the Court’s order goes into effect and Waterville Valley is required to remit SWEPT revenues to the State, it will have very harmful effects on our small community.

6. For the upcoming budget cycle, the amount of SWEPT in excess of adequacy is \$504,231. That is a very large percentage of the Town's budget. The excess SWEPT represents approximately 8.3% of the Town's entire 2023 tax revenue of \$6,061,960. It also represents nearly a third of our school's \$1,689,223 2023 net budget.

7. Our Town Meeting is scheduled for March 12, 2024, and the Town is already deep into budget planning so that our voters can review and debate the budget at the deliberative session. The injunction has left us almost no time to account for an 8.3% drop in revenue. In addition, I understand the State is taking the position that remission of excess SWEPT by Towns may be voluntary rather than compelled. This inconsistency makes it impossible to plan our budgets in the next several months and to educate our voters before the Spring town meetings.

8. If Waterville Valley is required to remit 8.3% of its revenue to the State, it would have drastic effects on the Town and our school for several reasons unique to Waterville Valley.

9. First, the Town recently received a new wastewater discharge permit from the EPA for our municipal wastewater treatment system. The permit requires the Town to build a new wastewater treatment plant ("WWTP") to comply with updated and stricter discharge requirements. This is an enormous investment for our small Town. In my previous affidavit provided to the Court, I estimated a \$20-\$30 million cost for this project. It will in fact be substantially more expensive. The voters have approved a \$42 million bond offering to cover a portion of the costs. Currently, the project is in the design phase, without a final determination of the costs of the new WWTP. I expect that, given increasing prices of materials and labor that the Town (and many others) have absorbed over the last several years following the pandemic, the WWTP will end up being even more expensive than projected.

10. This large, required outlay will significantly constrain the Town in spending on other items. It will also add \$2 to \$3 per \$1000 to the tax rate, a huge increase over our \$12.06 per 1000 current rate. That increase will be borne by our taxpayers for the next 30 years as the bonds are repaid.

11. Second, the Town also faces significantly increased costs due to drinking water regulations. Due to recent changes in Federal and State drinking water standards and testing/treatment requirements, our drinking water operating costs have gone up 100% from the last year, a \$100,000 increase in one year. In my prior affidavit, I predicted an additional \$1 million in drinking water expenses. I now believe that estimate is too low. My understanding is that by October 2024, the Town is required to perform a community-wide survey and inventory of its domestic drinking water connections to check for the presence of lead. If service connections contain lead, or if the Town cannot establish the absence of lead, it will be required to excavate, inspect and document the connections, replacing them if they contain lead. The potential costs of excavation, testing, and replacement of numerous service connections will impose an unknown, but likely very, very large expense on the Town.

12. Third, updating our solid waste facilities to meet all state regulations requires the Town to redesign and reorganize our solid waste transfer station. We have already begun that process, which is why our solid waste budget was up 29% last year. Because we have only started the reconfiguration work, I expect that future operations expense to go up substantially.

13. Given all these regulatory commitments, the Town cannot absorb another annual \$500,000 loss of revenue without either cutting school funding, cutting vital Town projects, or increasing taxes. But increasing taxes by another 8.3% on our residents is not a viable option given the locked-in 25% rate increase for the next 30 years to pay for the EPA-required WWTP,

as well as the other expenses mandated by regulatory changes. Increasing rates by such a substantial amount over a short period of time will also harm many of our residents, 5.1% of whom make less than \$25,000 per year, and 37.5% of whom are 65 years or older, many of those on fixed incomes.

14. If the remitted SWEPT revenue is offset by municipal budget cuts, it will hurt our Town, which faces significant immediate capital outlays. For instance, we have to replace our old Fire Truck, which is already beyond its 20-year expected useful life. We expect that purchase to cost approximately \$690,000. If the voters approve the purchase, the expected delivery time is approximately 1-2 years. In other words, our fire truck will be about 5 years over its expected useful life by the time a new one is delivered, at the earliest. We also have to replace our ambulance at a cost of approximately \$400,000, which is now also over its useful life. If the Town is forced to abandon either one of these planned purchases, it will impact the health and safety our residents.

15. In addition, the Town started a major repaving and road repair project last year, to remedy a long period of deferred maintenance. The Town spent approximately \$1.9 million last year, \$500,000 this year, and expects another \$ 1 million or more in maintenance and repaving in the next few years. This work is vital to the Town. Our roads are becoming substandard, making plowing difficult, and endangering cyclists and pedestrians.

16. Finally, the excess SWEPT constitutes nearly a third of our school's budget. Reducing school funding by that amount will gut our school. We have an elementary school for kindergarten through Grade 8. The population of the school is approximately 40 students, served by three full-time teachers and several part-time instructors. Making cuts to school facilities is next to impossible because all students are housed in a single building. We cannot therefore

close facilities to save money. One of the few options is to cut staff, but that will hurt our students. Even the reduction of one teacher (going from 3 to 2) would cause substantially larger class sizes at our school and seriously undermine the quality of our children's education.

This ends my testimony.

Dated: December 18, 2023



Mark Decoteau, Town Manager, Waterville Valley

STATE OF NEW HAMPSHIRE
COUNTY OF Grafton

Signed and sworn to (or affirmed) before me on this 18th day of December 2023
Decoteau.



Notary Public / Justice of the Peace
My Commission Expires:

8/17/2027

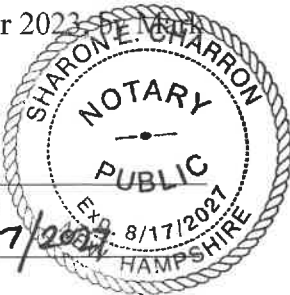


EXHIBIT 2

GRAFTON COUNTY

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Docket No. 215-2022-CV-00167

Steven RAND et al.

v.

STATE OF NEW HAMPSHIRE

AFFIDAVIT OF KAREN SANBORN

I, Karen Sanborn, hereby depose and state as follows:

1. My name is Karen Sanborn, and I am the Town Administrator in the Town of Hebron, New Hampshire (the "Town").

2. The Town was incorporated in 1792 and has approximately 718 full-time residents.

3. Until the Court's order, the Town had retained any excess SWEPT revenue (revenue over the state-mandated adequacy amount) and put it towards local education funding.

4. The New Hampshire Department of Revenue ("DRA") issued the Education Tax Warrant for the Town for tax year 2024 on September 18, 2023, requiring the Town to raise \$536,802 for the 2024 Education Tax. The warrant issued in 2023 is the amount that will be used to calculate the Town's locally assessed state education rate in the fall of 2024.

5. If the Court's Order is allowed to go into effect during an appeal, the Town expects to lose \$279,117.36 in SWEPT funds in 2024, constituting the excess SWEPT that the Town would have retained prior to the Court's Order.

6. The Town relies on the excess SWEPT funds each year to help fund education for its constituents. As an example of the effect the Court's Order would have on the Town's budget for next year, for budget year 2023-2024, the Town's school budget was \$ 984,638, constituting

42.4% of the Town's total operating budget. Of that amount, \$ 348,240.04 is paid by the SWEPT revenues the Town retains over adequacy (\$590,518 – \$242,277.96).¹ For the current school year, the excess SWEPT revenues constituted about 35% of the Town's overall school budget.

7. If the Town is required to remit those excess SWEPT funds, it will have a serious impact on the education that the Town is able to provide.

8. Specifically, the Town, along with Bridgewater and Groton, is currently in the process of withdrawing from the SAU 4 school district and starting its own school district pursuant to House Bill 349. The Town, Bridgewater, and Groton have organized a steering committee and at the upcoming May 2024 Town Meeting, the voters will vote by a simple majority to decide whether to move forward with leaving SAU 4.

9. One of the purposes of the steering committee is to develop a proposed budget for the new school district in order to inform the voters of the costs and potential property tax implications. I understand that the State is arguing that it cannot force Towns to remit excess SWEPT funds. This makes the steering committee's job extremely difficult because it cannot complete its budget without knowing whether SWEPT will need to be remitted to the DRA. It is also impossible to educate voters on the costs and potential tax implications of the new school district without clarity on whether Hebron will lose 35% of its current school budget.

10. In addition, if the Town is required to remit excess SWEPT funds, the projected property tax increases to fund the new school district would be extreme. That would lead to increased voter dissatisfaction and likely failure of the school vote, even if the Supreme Court later determines the Town does not need to remit the SWEPT.

¹ The Town follows a May Town Meeting schedule and will not begin the 2024-2025 budget planning process until January and will not finalize the school budget until May.

11. Besides confusing the voters, remission of SWEPT during the appeal of the Court's order will jeopardize Hebron's ability to provide the facilities necessary for the new school district. If passed, the new district will house K-8 students from the Town, Bridgewater, and Groton in the Bridgewater-Hebron School that the Town currently owns and where it currently educates students in kindergarten through fifth grade. To accomplish adding another three grades of students, teachers, and staff, the Town is also considering building an addition to the current footprint of the Bridgewater-Hebron School. The Town might not be able to afford to build this addition to the Bridgewater-Hebron School if the Town is required to make up for the loss of its excess SWEPT funds. And if the Town is unable to build the addition, the Town's ability to withdraw from SAU 4 will be jeopardized because the voters will not want to start a new school district without adequate facilities.

12. In addition, the Town is trying to expand access to community services for its aging population.² In 2023, the Town proposed raising money through bonds, grants, and other sources to build a library and community center. Unfortunately, and likely due to the unknown impending costs relative to the new school district, the voters voted the proposal down. These are services that the Town is still hoping to provide for its residents and will be jeopardized if the Town is forced to remit its excess SWEPT causing continued uncertainty relative to the school budget.

13. Overall, if the Court's Order is not reconsidered or stayed, it will severely limit the Town's ability to provide a better education for its students, increase taxes for our residents, and limit our ability to provide public services for our community, residents, taxpayers, and the children that attend our schools.

² According to the New Hampshire Employment Security Community Profiles, the median age of the Town's residents is 58.2 years with 265 residents aged 65 and over.

This ends my testimony.

Dated: December 18th, 2023

Karen Sanborn
Karen Sanborn

STATE OF NEW HAMPSHIRE
COUNTY OF Grafton

Signed and sworn to (or affirmed) before me on this 18th day of December, 2023, by
Karen Sanborn.

Tracey H. Steenbergen
Notary Public/Justice of the Peace
My Commission Expires: _____

TRACEY H. STEENBERGEN
Notary Public - New Hampshire
My Commission Expires February 5, 2025

EXHIBIT 3

GRAFTON COUNTY

STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Docket No. 215-2022-CV-00167

Steven RAND et al.

v.

STATE OF NEW HAMPSHIRE

AFFIDAVIT OF CHARLES SMITH

I, Charles Smith, hereby depose and state as follows:

1. My name is Charles Smith, and I am the Town Administrator in the Town of Moultonborough, New Hampshire (the "Town").
2. The Town was incorporated in 1777 and has approximately 5,163 full-time residents.
3. Until the Court's order, the Town had retained any excess SWEPT revenue (revenue over the state-mandated adequacy amount) and put it towards local education funding.
4. The New Hampshire Department of Revenue ("DRA") issued the Education Tax Warrant for the Town for tax year 2024 on September 18, 2023, requiring the Town to raise \$7,230,520 for the 2024 Education Tax. The warrant issued in 2023 is the amount that will be used to calculate the Town's locally assessed state education rate in the fall of 2024.
5. If the Court's Order is allowed to go into effect during an appeal, the Town expects to lose \$5,105,266.18 in SWEPT funds from 2024, constituting the excess SWEPT that the Town would have retained prior to the Court's Order.
6. The Town relies on the excess SWEPT funds each year to help fund education for its constituents. As an example of the effect the Court's Order would have on the Town's budget

next year, for budget year 2023-2024, the Town's school budget was \$16,677,021.¹ Of that amount, \$4,589,202.26 is paid by the SWEPT revenues the Town retains over adequacy (\$6,684,886 - \$2,095,683.74). For the current school year, the excess SWEPT revenues constituted about 27.5% of the Town's overall school budget.

7. If the Town is required to remit those excess SWEPT funds, it will have a serious impact on the education that the Town is able to provide.

8. Specifically, the school buildings are in significant disrepair. The Town completed an energy study on its two school buildings and the study found that it will require over \$19 million to repair or replace the hot water heater and tank, building boilers, lighting system, insulation, and HVAC systems at Moultonborough Academy; the hot water heater and boilers, walk-in coolers, HVAC controls, roof top AHU units, and drop ceilings at Moultonborough Central. These improvements are critical because many of the systems that keep our schools running are at or near their end of life and must be replaced. The funding for these projects will be jeopardized if the Town is required to remit excess SWEPT to the State.

9. In addition, the Town is trying to expand access to sewer lines in order to protect the lakes in the Town from continued runoff and increasing algal and cyanobacterial blooms. While this is a new project, it is a critical priority for our Town which has 15 square miles of inland water area. As further example of the critical need for increased sewer access around our lakes, the State of New Hampshire, in the 1970s, created the Winnepesaukee River Basin Program, a state-owned sewer collection system and wastewater treatment facility serving 10 Lakes Region communities, to help increase the quality of the water on the surrounding lakes. Only a small portion of this system benefits the Town of Moultonborough—a town with 89

¹ The Town's school budget for 2024-2025 will not be set until the Town Meeting in May.

linear miles of shoreline. The Town intends to conduct a further study into the costs of expanding sewer access to its residents, however, it estimates that it could cost as high as \$1 million per mile to extend the sewer.

10. If the Town is required to make up the difference for the excess SWEPT funds, it will be unable to put Town funds towards this critical need.

11. Overall, if the Court's Order is not stayed pending appeal, it will set completion of the Town's projects back years, increase taxes for our residents, take away resources and limit our ability to provide public services for our community, residents, taxpayers, and the children that attend our schools.

This ends my testimony.

Dated: December 18, 2023


Charles Smith

STATE OF NEW HAMPSHIRE
COUNTY OF Carroll

Signed and sworn to (or affirmed) before me on this 18 day of December, 2023, by
Charles Smith.

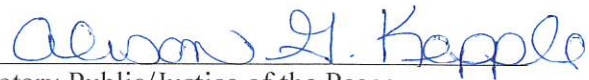

Notary Public/Justice of the Peace
My Commission Expires: 10-19-2027



EXHIBIT 4

STATE OF NEW HAMPSHIRE

ROCKINGHAM COUNTY

SUPERIOR COURT

Docket No. 215-2022-CV-00167

Steven RAND et al.

v.

STATE OF NEW HAMPSHIRE

AFFIDAVIT OF MATTHEW SCRUTON

I, Matthew Scruton, hereby depose and swear as follows:

1. My name is Matthew Scruton, and I am the Town Administrator of Rye, NH (the “Town”).
2. The Town is a member of the Intervenor, Coalition Communities (“Coalition”).
3. I am offering this testimony to support the Coalition’s request that the Court reconsider and/or stay its order that, beginning with the current budget cycle, “SWEPT funds generated in excess of the adequacy aid to which any community is statutorily entitled must be remitted to the DRA.”
4. The total SWEPT revenue for Rye in FY25 is projected to be \$4,644,090, which is \$2,264,409 over adequacy.
5. That amount, if remitted to the State, will negatively impact our Town and schools.
6. Rye has several critical projects that may potentially be negatively impacted if we lose such a substantial portion of our revenues, as taxpayers may be less inclined to approve funding capital projects if their taxes substantially increase. First, Harbor Road bridge is in

partial failure, with only one lane of the road open. The Town needs to expend an estimated \$975,000 in the next budget cycle to keep this vital road open. We also have culverts that need to be replaced on Perkins Road that are estimated to cost \$307,000. Additionally, we have to purchase a front-line emergency response winter maintenance vehicle for approximately \$350,000 and also in the near future will have a fire truck and ambulance to purchase that will exceed \$1,000,000 in costs.

7. Our fuel island, at our transfer station, is a 40-year-old system and parts are no longer readily available for it. The town has concerns about continuing to operate it as it is old and does not have all the safety and environmental features that newer pumps have. Because the fuel island is above our Town's aquifer, it must be replaced as soon as possible. The cost to replace the fuel island will likely be approximately \$1,400,000.

8. The Town also faces an imminent need to remediate and clean Parsons Creek, a major outlet to the Atlantic Ocean in close proximity to our beaches. Parsons Creek is impaired, and in the last 4-5 years has had abnormally high levels of bacteria, including fecal coliform bacteria dangerous to human health. As a result, the State has ordered beach closures in Rye on a more and more frequent basis. This is an existential threat to our Town, which relies on its beaches and summer tourism. Our beaches are also a vital state resources, drawing visitors from all over the country to New Hampshire. The Town has to invest significant resources over the next several budget cycles to develop a watershed management plan, to identify problem areas of the Creek, and to remediate conditions leading to bacterial contamination.

9. The Town has also just started to implement a capital improvement and maintenance program to repair and replace failing infrastructure in the Town. One example is road repair and paving. Major roads in town like Wallis Road, Washington Road, and South

Road, are all in poor condition, past their useful life, and need repaving. To pave these roads, which total approximately 38,200 ft, the town will spend approximately \$1,146,000.

10. Increasing taxes to make up for a loss of \$2,264,409 would be a terrible burden to our residents. Because of some of the costs and projects listed above, the Town's tax rate increased 15% in 2023. To make up for the lost revenue, Rye would likely have to increase its tax rate again. Many of our residents cannot shoulder additional tax increases of that magnitude. Though Rye has a reputation for being a wealthy town, in fact many of our residents are elderly and on fixed incomes. According to 2022 census data, approximately 31.3% of our residents are older than 65, much higher than the county average of 20.4%, and over 5% of our residents are in poverty. We also have a substantial amount of workforce, affordable and low-income housing in Rye. Increasing tax rates leads to increasing rents for much of this housing stock, making housing unaffordable for our lower income residents.

11. Without raising taxes and cutting vital municipal projects, the remitted SWEPT revenue will have to come from cuts to our schools' budget. Yet, our schools have planned capital projects that cannot be put off. Rye's school buildings have not had a strategic CIP in many years, and as a result deferred maintenance has created some critical needs. These needs have been captured in a 5-year CIP, which projects spending between \$400,000-500,000 over each of the next five years. For instance, our elementary and junior high school restrooms have not been renovated in approximately 40 years. There are missing doors and have unusable stalls. One of the school buildings will also need a roof to better protect the building. Even if these need expenditures were put off, the \$2,264,490 excess SWEPT amount will constitute a large percentage of the entire school budget. Cutting that much would require intolerable changes to the schools such as reduced maintenance and capital improvements.

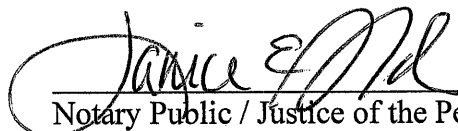
This ends my testimony.

Dated: December 19, 2023


Matthew Scruton, Town Administrator, Rye

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

Signed and sworn to (or affirmed) before me on this 19th day of December 2023, by
Matthew Scruton.


Notary Public / Justice of the Peace
My Commission Expires: Jan. 23, 2024

