

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

Docket No. 215-2022-CV-00167

Steve Rand, et al.

v.

State of New Hampshire

MOTION TO STAY THE COURT’S NOVEMBER 20, 2023 ORDER

The State of New Hampshire, by and through counsel, the New Hampshire Attorney General’s Office, hereby moves to stay the court’s November 20, 2023 Order on Cross-Motions For Partial Summary Judgment pending appeal. In support thereof, the State provides as follows:

1. The plaintiffs have asserted two different claims in this case: (1) a claim that the Statewide Education Property Tax (“SWEPT”) as administered by the Department of Revenue Administration (“DRA”) is unconstitutional; and (2) a claim that the State is failing to fund an adequate education in accordance with Part II, Article 83 of the New Hampshire Constitution.

2. On November 20, 2023, this court issued an order on cross-motions for partial summary judgment on the plaintiffs’ SWEPT claim, declaring that the SWEPT, as administered by the DRA, is unconstitutional and ordering the DRA to collect excess SWEPT and not to offset the equalized SWEPT rate via negative local tax rates. The order further requires the communities that generate excess SWEPT to remit the excess to the DRA, and requires the funds to be used exclusively for satisfying the State’s constitutional adequacy obligations.

3. The defendants are seeking this day an order from this court directing that the November 20, 2023 order be treated as a final decision on the merits to enable immediate appeal of it.

4. The defendants are also seeking a stay of the November 20, 2023 order pending appeal because the SWEPT is an integral part of the education funding system the General Court has established to fund public schools. In planning their budgets every year, local municipalities and school districts rely upon the SWEPT and the adequate education grants they receive following its collection. The court's order changes how the SWEPT is presently administered, in a way that will result in the DRA holding excess SWEPT funds in a separate account from local jurisdictions that generate excess SWEPT. The DRA will have to segregate those excess funds by local jurisdiction and essentially hold them in escrow until the New Hampshire Supreme Court finally resolves this matter to avoid irreparably harming the local jurisdictions that generate excess SWEPT should the New Hampshire Supreme Court reverse this court's decision. The DRA will also have to account for excess SWEPT that municipalities were unable to collect because certain taxpayers did not pay them and will need to create a system for ensuring that when a municipality collects the delinquent excess SWEPT payment, that payment is remitted to the DRA. The DRA lacks express statutory authority carry out these activities; thus, if a municipality does not remit excess SWEPT voluntarily or chooses not to collect delinquent SWEPT payments, the DRA has no statutory authority to compel municipalities to do these things.

5. The DRA is also presently subject to no legislative direction regarding how to use the excess SWEPT funds remitted to it. Thus, while the excess SWEPT funds may be held by the DRA in a separate fund pending the final outcome of this litigation, the DRA cannot use the funds or otherwise transfer them absent legislative direction. As a result, excess SWEPT funds, after having been extracted from taxpayers, in some cases by compulsory processes such as lien and tax sale, will essentially be stranded and unusable pending the appeal of this matter.

6. Finally, raising the SWEPT from the unincorporated places and holding it will have an unknown impact on those persons who live or hold property in those places. Those taxpayers have not been afforded notice and an opportunity to be heard in this proceeding.

7. For all of these reasons, the State believes a stay of this court's November 20, 2023 order pending appeal is prudent and justified and should be issued in this case.

8. Plaintiffs' counsel has been contacted for their position on this motion and object to the relief requested. Intervenors' counsel has been contacted for their position on this motion and assents to the relief requested.

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

- A. Granting this motion;
- B. Staying this court's November 20, 2023 order declaring the SWEPT unconstitutional as administered until the matter is finally resolved on appeal; and
- C. Granting such further relief as the court deems just and equitable.

Respectfully submitted,

STATE OF NEW HAMPSHIRE

By their attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: December 20, 2023

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CERTIFICATE OF SERVICE

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

Date: December 20, 2023

/s/Anthony J. Galdieri