

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 TREAT NOVEMBER 20, 2023 ORDER AS A FINAL DECISION ON THE MERITS

The State of New Hampshire, by and through counsel, the New Hampshire Attorney General's Office, hereby moves pursuant to New Hampshire Superior Court Civil Rule 46(c) for an order directing that the court's November 20, 2023 Order on Cross-Motions For Partial Summary Judgment a final decision on the merits. 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.

3. The plaintiffs' adequate education funding claim remains pending and unresolved at this juncture.

4. New Hampshire Superior Court Civil Rule 46(c) allows this court to direct that an order resolving a distinct claim in a civil case be treated as a final decision on the merits if the court's order:

- a. Explicitly refers to Rule 46(c);
- b. Identifies the specific order to be treated as a final decision on the merits;
- c. Articulates the reasons and factors warranting such treatment; and
- d. Finds that there is an absence of any just reason for delay as to the claim that is to be severed from the remainder of the case.

5. Numerous reasons and factors warrant treatment under Rule 46(c) in this case.

6. *First*, the SWEPT is integral to the education funding system the General Court established to fund public schools. *Second*, in planning their budgets every year, local municipalities and school districts rely upon the SWEPT and the adequate education grants they will receive following its collection. *Third*, 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 jurisdiction and hold them in escrow until the New Hampshire Supreme Court finally resolves this matter. While those funds are held in escrow, the municipalities that generated them will not be able to spend or otherwise rely on those amounts until the SWEPT issue is finally resolved on the merits. *Fourth*, the DRA will have to account for excess SWEPT that municipalities were unable to collect because certain taxpayers did not pay the tax and will need to create a system for ensuring that when a municipality collects the delinquent excess SWEPT payment, that the excess payment is remitted to the DRA. *Fifth*, the DRA lacks express statutory authority to fully carry out many of these activities; thus, if a municipality does not remit excess SWEPT voluntarily to the DRA or chooses not to collect delinquent SWEPT payments, the

DRA has no statutory authority to compel municipalities to do these things. *Sixth*, raising SWEPT from the unincorporated places and holding it will have an unknown impact on those persons who live or hold property in those places. *Seventh*, the SWEPT issue presents only questions of law that can be efficiently and effectively briefed and resolved by the New Hampshire Supreme Court in a timely way.

7. Given the central importance of the SWEPT to the education funding system, and the impacts generating and holding excess SWEPT will have on local communities and the people who live there, all of the above reasons and factors together justify treating this court's November 20, 2023 order declaring the SWEPT unconstitutional as administered as a final decision on the merits.

8. Finally, there is no just reason for delaying the final resolution of that claim.

9. Plaintiffs' counsel have been contacted for their position on this motion and assent to the relief requested. If this motion is granted, Plaintiffs' counsel believe that any appeal should be expedited and that the transcript requirement should be waived. Intervenor's counsel has been contacted for their position on this motion and assent to the relief requested.

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

- A. Granting this motion;
- B. Directing that this court's November 20, 2023 order declaring the SWEPT unconstitutional as administered a final decision on the merits in accordance with New Hampshire Superior Court Civil Rule 46(c); 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

By: /s/ Anthony J. Galdieri
Anthony J. Galdieri, Bar # 18594
Solicitor General
Samuel R.V. Garland, Bar # 266273
Senior Assistant Attorney General
New Hampshire Dept. of Justice
33 Capitol Street
Concord, NH 03301
(603) 271-3650
anthony.j.galdieri@doj.nh.gov
samuel.r.v.garland@doj.nh.gov

and

STINSON LLP
John R. Munich (admitted pro hac vice)
J. Nicci Warr (admitted pro hac vice)
7700 Forsyth Blvd., Suite 1100
St. Louis, MO 63105-1821
(314) 863-0800
john.munich@stinson.com
nicci.warr@stinson.com

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