

THE STATE OF NEW HAMPSHIRE

Grafton, SS.

Docket No. 215-2022-cv-00167

SUPERIOR COURT

Rand, et al

v.

State of New Hampshire

OBJECTION OF CONVAL PETITIONERS TO RAND PETITIONERS' MOTION TO CONSOLIDATE

1. Steven Rand, Randvest, Inc., Dr. Robert Gabrielli, the Gabrielli Family Limited Partnership, Jessica Wheeler Russell, and Adam Russell (“*Rand* petitioners”) filed a case against the State of New Hampshire on June 29, 2022, alleging disproportionate and therefore unconstitutional tax rates in Plymouth, located in the Pemi-Baker School District, and Penacook, located in the Merrimack Valley School District.

2. On July 8, 2022, the *Rand* petitioners filed a motion to consolidate with the *ConVal* case, which was filed on March 13, 2019, and is pending in Rockingham County Superior Court. The *Rand* petitioners acknowledge that all parties to the *ConVal* suit – both the petitioners and the State defendants – object to the consolidation of this suit with the *ConVal* litigation.

3. Contrary to the representations made by the *Rand* petitioners, the two suits are distinct cases with different parties, different facts, different legal issues, and different arguments.

4. First, none of the *Rand* petitioners are taxpayers in any of the *ConVal* districts. The *ConVal* case concerns the level of base adequacy funding in the petitioning districts.¹ There are, therefore, no common events or transactions at issue in the two cases. See N.H. Super. Ct. R. 12(b) (providing that the court “*may*” consolidate cases “arising out of the same transaction or event or involving common issues of law, and/or fact”). Whether the tax rates in Plymouth or Penacook are inequitable is not at issue in the *ConVal* case. The State of New Hampshire is the only common party amongst approximately 25 parties to the two suits.²

5. Second, the facts necessary to prove each respective case are distinct. In *ConVal*, the petitioners will demonstrate at trial, scheduled for April 2023, that the base cost of a constitutionally adequate education is at least 300% greater than the minimal base adequacy funding provided by RSA 198:40-a, II(a), exclusive of the differential aid in RSA 198:40-a, II(b-e). In *Rand*, however, the petitioners must demonstrate the totality of funding provided by the State, including differential aid, is inadequate in the Pemi-Baker and Merrimack Valley School districts, resulting in disproportionate and unconstitutional taxation. Differential aid includes funding related to students who are eligible for a free or reduced-price meal, are English language learners, who receive special education services, and who are in the third grade and have certain test scores. RSA 198:40-a, II.

¹ Those districts are: Contoocook Valley School District, Winchester School District, Mascenic School District, Monadnock School District, Fall Mountain School District, Claremont School District, Newport School District, Hillsboro-Deering School District, Grantham School District, Oyster River Cooperative School District, Manchester School District, Windham School District, Derry Cooperative School District, Hill School District, Mascoma Valley Regional School District, Nashua School District, Lebanon School District, and Hopkinton School District.

² *Rand* asserts that individual defendants have been dismissed as parties in the *ConVal* case. This is not true. Governor Sununu and Commissioner Edelblut remain as defendants in their official capacity in the *ConVal* case. They are not defendants in the *Rand* case.

6. The inclusion of differentiated aid renders the discovery necessary for the *Rand* petitioners' claims very different than that required for the *ConVal* case. The *ConVal* petitioners have sought to streamline their case and focus solely on the base adequacy provided by the State and not on differentiated aid. The *Rand* petitioners expressly include these more complicated factors into their arguments regarding education funding, thereby necessitating discovery and arguments on a multitude of factors not relevant to the *ConVal* case. It would be a waste of the parties' resources to involuntarily force the distinct cases to be tried together.

7. Furthermore, the *ConVal* litigation has substantially advanced in the four years since it was filed. Dispositive motions have been briefed, argued, ruled upon, and appealed. Significant written discovery has been exchanged, the *ConVal* petitioners have disclosed experts, and depositions are scheduled to begin the week of July 23, 2022. Consolidating the mature *ConVal* litigation with the nascent *Rand* case would effectively require a re-do of completed phases of the *ConVal* litigation, perhaps delaying trial and certainly increasing the cost to the *ConVal* petitioners while providing virtually no economic benefit to the sole common party, the State of New Hampshire.

8. Third, both the arguments and the requested relief are distinct between the two cases. While both allege that the State's education funding scheme is unconstitutional, *ConVal* petitioners allege that the amount of funding being provided as base adequacy to the 18 petitioner districts from 2019 forward is too low and the State needs to provide increased funding. By contrast, in *Rand*, the petitioners allege that the method of taxation is disproportionate due to the insufficiency of *all* adequacy funding, not just base adequacy funding, and request injunctive relief changing the tax rates.

9. The *ConVal* and *Rand* cases have different parties, comprise different legal issues requiring different discovery and different arguments, and are in vastly different stages of maturity. There would be no judicial economy of consolidating these two cases in light of these significant differences.

WHEREFORE, the ConVal school districts respectfully request that this Honorable Court:

- A. Deny the *Rand* petitioners' Motion to Consolidate;
- B. Grant such further relief as may be appropriate.

Respectfully submitted,

**CONTOOCCOOK VALLEY SCHOOL DISTRICT,
MASCENIC REGIONAL SCHOOL DISTRICT,
MONADNOCK REGIONAL SCHOOL DISTRICT,
WINCHESTER SCHOOL DISTRICT,
FALL MOUNTAIN SCHOOL DISTRICT,
CLAREMONT SCHOOL DISTRICT,
NEWPORT SCHOOL DISTRICT,
HILLSBORO-DEERING SCHOOL DISTRICT,
GRANTHAM SCHOOL DISTRICT,
MANCHESTER SCHOOL DISTRICT,
WINDHAM SCHOOL DISTRICT,
DERRY COOPERATIVE SCHOOL DISTRICT,
HILL SCHOOL DISTRICT,
MASCOMA VALLEY REGIONAL SCHOOL DISTRICT,
NASHUA SCHOOL DISTRICT,
LEBANON SCHOOL DISTRICT,
HOPKINTON SCHOOL DISTRICT, AND
OYSTER RIVER COOPERATIVE SCHOOL DISTRICT**

By their attorneys,
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By:/s/ Elizabeth E. Ewing
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CERTIFICATION OF SERVICE

I hereby certify that a copy of this Objection has this day been served via email on all parties via the Court's electronic case filing system.

/s/ Elizabeth E. Ewing
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