STATE OF NEW HAMPSHIRE
Superior Court
Rockingham, ss.
Case No. 215-2022-CV-00167

Steven Rand et al.,

Plaintiffs,

v.

The State of New Hampshire,

Defendant.

PLAINTIFFS' OBJECTION TO DEFENDANT'S MOTION FOR RECONSIDERATION

Plaintiffs, through their undersigned counsel, hereby object to the "Defendant's Motion for Reconsideration," stating as follows:

1. As in many of its previous filings in this case, the State's Motion for Reconsideration mischaracterizes the plaintiffs' claims and then relies on those mischaracterizations to present arguments that this Court has already rejected numerous times. This latest Motion also distorts the central holdings of *Claremont v. Governor,*142 N.H. 462 (1997) (*"Claremont II")* about the nature of taxes used to meet the State's constitutional duty to provide an adequate education. The Motion also misapplies the narrow ruling in the New Hampshire Supreme Court's recent "SWEPT" opinion, *Rand v. State*, 2025 N.H 27.

2. Rather than offering any response to this Court's detailed evidentiary findings or trying to defend the current funding levels or tax rates, the State begins its reconsideration request by once again seeking an escape route from its constitutional responsibilities through a

repetition of its challenge to the legal standing of the plaintiff taxpayers. However, in its "Order on the Merits," this Court explained in detail its conclusion that the plaintiff property owners and taxpayers suffer "concrete, personal injuries" because of the State's chronic failure to pay for a constitutionally adequate education, which forces their local school districts to use nominally "local" education property taxes to fill in the gap between the cost of an adequate education and the level of funds the State actually provides. The Court pointed out the significant difference between the tax rates imposed in the communities where the plaintiffs reside and the rates in nearby property-wealthy towns, which can afford to spend more per pupil than the plaintiffs' towns, while keeping tax rates lower. Order on the Merits, p. 6, 30. The Court also noted that the testimony of Plaintiff Jessica Wheeler Russell in particular supported the plaintiffs' claim that "any shortage in Adequacy Funding results in a violation of Part II, Article 5, to the detriment of property owners like plaintiffs who pay disproportionately high local equalized school tax rates." Order, p. 14. Thus, the plaintiffs have standing because their injuries are quite specific and quantifiable: to help cover the State's educational duties, the plaintiffs must pay taxes at higher rates than their peers in property-wealthy towns.[1]

3. The State argues that the municipalities where the plaintiffs reside are necessary parties because only these municipalities could grant plaintiffs the tax relief they seek. Motion ¶¶ 7, 10. In support of this argument, the State cites a New Hampshire Supreme Court order in *Merrimack Premium Outlets. LLC v. Town of Merrimack*, 2025 N.H. LEXIS 51, *8-10 (February 28 2025), a case in which the issue was the validity of an assessment conducted by the town of the value of the subject property. In this case, however, plaintiffs do not challenge the municipal

[1] Plaintiffs contend that they also have standing under Part I, Article 8 of the New Hampshire Constitution, but the Court declined to reach this issue because of its conclusion that plaintiffs have shown "concrete and personal injuries . . ." Order on the Merits, p. 5, fn 1.

assessments of the value of their properties under the abatement process provided by RSA 76:16, et seq, but rather the constitutionality of the tax rate imposed on them. These tax rates not set by the municipalities where plaintiffs live. They are set by the State Department of Revenue Administration. *See* RSA 21-J:3 XV (stating that one of the core duties of the Commissioner is to set tax rates) and RSA 21-J:35 (describing in detail the process for the Commissioner to do so). Municipalities have no authority under state law to set local or state tax rates. Thus, the State cannot downshift to the municipalities where plaintiffs live the responsibility for the disproportionate tax rates imposed on them. The plaintiffs' injuries in this case are directly caused by the State, and the State is entirely capable of redressing those injuries. As the Supreme Court has said, it is up to the State, and specifically the Legislature, to cure the constitutional flaws in the State's tax system: "If modern conditions make ancient divisions or plans for distributing the tax burden inequitable, it would seem to be a plain legislative duty to enact such constitutional laws as will remedy the defect." *Claremont II*, 142 N.H. at 471(citations omitted). The system that causes these disproportionate tax rates was created by the State. Only the Legislature can fix this system and bring New Hampshire's school funding into compliance with our Constitution.

4. The State's Motion next addresses the interplay between Part II, Article 83 and Part II, Article 5. Specifically, the State asserts that the plaintiffs "cannot maintain a Part II, Article 83 claim through a Part II, Article 5 violation," and "cannot obtain Part II, Article 83 remedies through Part II, Article 5 standing." Motion ¶¶ 10, 11. The State's perspective on the relationship between these two constitutional provisions is illogical and incorrect. Because of the way the State chooses to fund (or not fund) education, the question of whether taxes used to fund education are unconstitutional under Article 5 cannot be answered until the

question of the cost of adequacy is addressed. *See Claremont II,* 142 N.H. at 471 ("**To the extent that the property tax is used in the future to fund the provision of an adequate education**, the tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State.") (emphasis added). In other words, in order to prove their Article 5 claim in its entirety, the plaintiffs needed to also prove an Article 83 claim. To assert that the plaintiffs cannot challenge the adequacy funding level would prevent the plaintiff taxpayers, or any others, from ever pursuing such a tax claim.

5. The Motion continues by asserting that the plaintiffs' Part II, Article 5 injury is not remedied by a declaration that parts of RSA 198:40-a violate the State's obligation under Part II, Article 83. Motion ¶ 9. That is not true. If the State remedies the constitutional violation, by adequately funding public education, the taxpayers' injury will come to an end. It is undisputed that plaintiffs pay school property taxes at rates that are significantly higher than the rates paid by taxpayers in communities with great property wealth per student. Order on the Merits, p. 6, 30. The Court's declaration regarding the insufficiency of the State's current adequacy funding shows that some of these "local" taxes are in fact state taxes which are used to meet the State's constitutional duty. Thus, the declaration about the unconstitutionally low adequacy funding levels proves the validity of plaintiffs' tax claim and their resulting injuries. The Court's order leaves it to the State to remedy those injuries. If the violations continue, it will not be due to the interplay between plaintiffs' Article 5 and Article 83 claims, but rather because of the State's refusal to remedy the constitutional violations.

6. The State's Motion distorts the central holding of *Claremont II* to support its arguments. The State casts this landmark case as one that just struck down a particular tax scheme. This characterization vastly understates the importance of *Claremont II,* which

explained the State's underlying constitutional obligation regarding tax rates and set out clear standards that state taxes must meet to comply with Part II, Article 5.

7. In, particular, the State takes issue with the Court's explanation that, because adequacy funding is insufficient, local taxes are "converted" to a state tax. *See* Motion ¶¶ 5, 13. This is a disingenuous reading of *Claremont II* and subsequent cases, which make clear that local taxes used to fund the State's obligation to fund an adequate education are state taxes. *Claremont II*, 142 N.H. at 469-470. This Court's use of the term "converted" merely explains why taxes initially labeled "local" become, in fact and law, state taxes.

8. The State has created a patchwork school funding system, relying in part on the Statewide Education Property Tax (SWEPT) and on an assortment of other taxes that are funneled into the Education Trust Fund. Because the combination of this funding does not come close to paying for the State's own definition of an adequate education, "local" taxes must cover the rest of the cost. The State's defiance of numerous court orders directing that it adequately fund education has led to the confusing mix of taxes. The State seeks to benefit from the confusion it creates by clouding the issues, distorting the holding of *Claremont II*, and arguing semantics.

9. In its Motion, the State contends: "A manifestly different tax regime exists in in State today." Motion ¶ 19. For property taxpayers in the plaintiffs' communities and many others, this is a preposterous statement. (See the discussion of tax rate disparities in *Claremont II* at 470, and note the similarities, nearly twenty-seven years later, in the discussion of current tax rate differences in Order on the Merits, at pages 6 and 30.)

10. While diminishing the importance of *Claremont II*, the State's Motion stretches the Supreme Court's recent *Rand* decision to cover far more than it actually does. The Rand

decision is only concerned with SWEPT, which is only about 8% of the total spending on public education, while local property taxes are about 61%.[2] And that opinion addressed only two specific components of SWEPT: the retention of excess SWEPT in property-wealthy communities and the setting of negative local tax rates to offset the SWEPT in unincorporated locations. *Rand*, 2025 N.H. 27, ¶ 1. In its opinion, the Court emphasized that its holding was distinguishable from its previous decisions regarding the taxes used to fund education:

> This scheme is materially different from other education property tax schemes that we have found to violate Part II, Article 5. *See Claremont School Dist. v. Governor*, 142 N.H. 462, 470 (1997) (*Claremont II*) (holding that an education property tax involving disproportionate tax rates between towns violated Part II, Article 5); *Opinion of the Justices (School Financing)*, 142 N.H. 892, 899-902 (1998) (holding unconstitutional a proposed education tax scheme which subtracted, from the tax bills of taxpayers in "excess" communities, a special abatement in the amount of excess education tax revenue, thereby reducing the effective rate of the state tax for those taxpayers); *Claremont School Dist. v. Governor (Statewide Property Tax Phase-In)*, 144 N.H. 210, 213-17 (1999) (holding that an education property tax scheme which phased in the full uniform tax rate over five years for certain towns, while imposing the full rate immediately on the remaining towns, violated Part II, Article 5).

Id. ¶ 14. Accordingly, the *Rand* decision on the two specific SWEPT questions does not control the scope or substantive issues before this Court in the rest of the case.

11. Moreover, this Court's ruling is consistent with the Supreme Court's decision in *Rand*, as it focuses on the actual rates paid by taxpayers. In *Rand*, the Supreme Court held that

[2] In 2023-24 SWEPT was $363,786,975. Total public education revenue was $4,013,400,773. So SWEPT was 9% of this funding system. In addition to SWEPT, the State provided $446,495,649 in adequacy grants, which was 11% of total public education spending. Thus, all of the "adequate education" funding was 20% of the total revenue. The State also provided "Extraordinary Grants," "Hold Harmless Grants," SPED grants, and Building Aid. These programs totaled $322,669,568 and amounted to an additional 8.0% of total revenue. Thus, total state aid to school districts was 28% of all revenue. Federal aid was 8% ($335,292,202) and local taxation paid for 61% of the cost of public schools. *See* NHDOE data at https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/summary-revexp-fy2024-excluding-newfound.pdf and www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/sonh/adequacy-fy-24-muni-summary-4.1.24_0.pdf

because the actual SWEPT tax rates were assessed uniformly across the state, the retention of excess SWEPT funds by property-wealthy towns did not violate Part II, Article 5, notwithstanding the fact that the practice leads to taxpayers paying different effective rates. *Id*. ¶ 16. In support of its reasoning, the Court stated that "there is no evidence in the record that these 'effective rates' are actually paid by taxpayers." *Id.*

12. That is materially different than the taxes now at issue. Due to the State's inadequate funding, the "local" taxes used to fund an adequate education are assessed, and paid, at widely disproportionate rates by the plaintiff taxpayers. The unequal tax rates that exist across the state are not mere "theoretical indirect effects" on municipalities. *See* Motion ¶¶ 27-29. These tax rates are real. And they have a direct, adverse, and continuing financial impact on the property taxes paid by plaintiffs and thousands of other property owners across the state. They are in complete violation of *Claremont II* and Part II, Article 5 of the New Hampshire Constitution.

13. The Court's opinion in *Rand* also held that the DRA's setting of negative local property tax rates to offset the SWEPT rate in some locations violated Part II, Article 5. *Rand*, 2025 N.H. 27, ¶ 1. The Court stated the practice "is in direct conflict with our conclusion that any statewide education property tax 'must be administered in a manner that is equal in valuation and uniform in rate throughout the State.'" *Id.* ¶ 23 (citing *Claremont II*, 142 N.H. at 471). Because the offsets made the SWEPT rate effectively zero in some places, those taxpayers were paying a different rate than the rest of the state where the SWEPT was assessed and paid. The constitution does not tolerate unequal tax rates, whether as in the case negative SWEPT rate municipalities, taxpayers paying a lower rate, or in the case of taxpayers in low-wealth districts,

taxpayers shouldering a higher tax rate owing to the State's failure to adequately fund public schools.

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Deny the State's Motion for Reconsideration; and

B. Grant such further relief as the Court deems just and equitable.

Dated: September 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Objection has been served via the court's electronic filing system to all parties of record on this 7th day of September 2025.

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