

There are two immediate problems with Plaintiffs' TRO request that require denial: first, the requested TRO cannot comply with the Superior Court Rule 48(d)'s specificity requirement; second, Plaintiffs have not offered any evidence to support the TRO request.

A. Plaintiffs Again Have Asked for Different Injunctions in the Same Pleading.

Superior Court Rule 48(d) requires that any injunction order, including a TRO, "describe in reasonable detail the act or acts sought to be restrained." Here, it is impossible for the Court to comply with this requirement because Plaintiffs are repeating their pattern of being ambiguous about what relief they are seeking. The TRO Motion's prayer for relief seeks an "order temporarily restraining the State from setting tax rates . . . until a newly assigned judge rules on Plaintiff's Motion for Preliminary Injunction." Yet, in the page before, Plaintiffs seem to ask for more than stopping rate setting, "Plaintiffs simply ask the Court to order the State to refrain from setting tax rates in the negative rate and excess communities, *and withdraw the rates set and issued* to any negative rate and excess communities." (emphasis added).

Different towns are in different stages of the process and thus will be affected differently depending on the precise nature of relief sought. Some, like Waterville Valley and Newington have received tax rates from the DRA and already issued tax bills to their residents. See Affidavit of Mark DeCoteau, Exhibit 1 hereto; Affidavit of Martha Roy, Exhibit 2 hereto. If the injunction is limited to setting new rates, such Towns may not be affected directly, but if the TRO is a broader request to withdraw rates, such Towns will have to recall bills or issue new bills once new rates are calculated. Plaintiffs are not entitled to a TRO under Rule 48(d) until they can at least explain what precise relief they seek, who will be affected, and how.

B. A Request for a Temporary Restraining Order Must Be Supported by Evidence, and Plaintiffs Offer None.

The second problem with Plaintiff's TRO request is that they have not offered any supporting evidence. Plaintiffs provide only a generic affidavit from counsel affirming the facts in the Motion, but the Motion recites no relevant facts. That is fatal to Plaintiffs' request for a TRO because they have not shown any evidence of an immediate threat of irreparable harm. The only concrete harm Plaintiffs allege from the retention of SWEPT is a "higher effective tax rate than their peers in property-wealthy towns." See Pl. Reply Memo. at 7. Yet, Plaintiffs offer *no* evidence how the setting of rates in the next several days in other towns could possibly affect Plaintiffs' rates such that they need a TRO immediately. They do not even explain the logic. Plaintiffs cannot suffer the injury of a higher effective tax rate until their own towns set that higher effective tax rate. Thus, unless Plaintiffs also get an injunction against their own towns, the requested TRO would not cure Plaintiffs' supposed imminent irreparable harm.

Instead of providing evidence of how they will be immediately harmed, Plaintiffs say they need the TRO so that a new judge can review the existing evidence in the pleadings. *See* Mot. for TRO at 6-7. In other words, Plaintiffs want an immediate injunction with no supporting evidence just on the basis that the Court *might* grant their earlier injunction request. The Coalition is not aware of any such evidence-less emergency injunction being granted in New Hampshire. Plaintiff's proposal is similar to what is sometimes called an "administrative injunction" or "administrative stay" in federal practice. See Nat'l Urban League v. Ross, 977 F.3d 698, 702 (9th Cir. 2020). Those are immediate stays of lower court orders by an appellate court merely to allow time for the consideration of a motion for stay pending appeal. See Doe v. Trump, 944 F.3d 1222, 1223 (9th Cir. 2019). But even those are limited to preserving the status

quo, see id., just like a standard preliminary injunction in New Hampshire, see Kukene v. Genualdo, 145 N.H. 1, 4 (2000).

Here, Plaintiffs are asking the Court to upset the decade-long status quo and practice of every town in the state to assess, collect, and then use the SWEPT for their schools. As detailed below, interrupting the normal functioning of the municipal taxation system with almost zero warning will have serious ramifications for the municipalities in the Coalition. See infra Part II.A. Plaintiffs cite no authority that would allow the Court to issue an emergency TRO with no evidence on the TRO factors, especially when that TRO seeks to upset the status quo in such a dramatic way.

Because Plaintiffs present no evidence on any of the TRO factors, their Motion must be denied.

II. PLAINTIFFS HAVE FAILED TO ESTABLISH THAT THE INJUNCTION FACTORS WEIGH IN THEIR FAVOR.

Even ignoring Plaintiffs' failure to submit any evidence in support of their request for a TRO, the uncontradicted record in front of the Court establishes that Plaintiffs fail on the elements of the preliminary injunction analysis. Accordingly, Plaintiffs' requests for a preliminary injunction and TRO should both be denied.

A. There Is No Irreparable Harm, and Certainly Nothing that Outweighs the Uncontradicted Evidence that an Injunction *Will* Cause Harm.

Plaintiffs only claim two injuries in this case: (1) the mere fact that their constitutional rights under Part I, Art. 8 or Part II, Art. 5, have been allegedly violated, and (2) higher taxes through a "higher effective tax rate than their peers in property-wealthy towns." See Pl. Reply Memo. at 6-7. Neither of these are irreparable harms, since as the State points out, Plaintiff can get a refund of any illegally paid tax through an abatement under RSA 76:16 if the SWEPT is

unconstitutional. Plaintiffs miss the point when they argue that an abatement proceeding is not an appropriate forum to challenge the legality of a tax. No one is suggesting the Plaintiffs take their case to their Select Board now. Rather, the point is that emergency injunctive relief is not required because if the Court determines the SWEPT is unconstitutional, the Plaintiffs can seek an abatement of the illegal taxes, ameliorating any potential harms to them.

Moreover, even if the Court were to accept the shaky premise that there was no other way to remedy Plaintiffs' allegedly higher tax rates, that does not mean an emergency injunction should issue. Here, the balance of harms decisively weighs against the issuance of emergency relief. As detailed in the attached affidavits, if the Court grants Plaintiffs' requested relief to "withdraw the rates," the so-called excess-SWEPT communities will face dramatic fiscal consequences. In Waterville Valley, which has already sent out its tax bills, if the Town cannot use or must otherwise segregate the \$507,623 excess SWEPT Plaintiffs have identified in their Reply Memorandum, the Town will not have sufficient funds in its operating account to fund ongoing obligations in a normal fashion. See DeCoteau Aff. ¶12. If the injunction prohibits further collection, Waterville Valley will be delaying collection of roughly \$ 2 million in tax revenue. See id. The Town's funds on hands are committed to capital projects that are vital to the town like a \$1 million project to improve the Town's drinking water supply, and \$1.8 million for road improvements. See id. ¶13. While it theoretically may be possible to use the committed funds for other purposes, it would require approval from DRA and possibly bond counsel, which would at best take weeks or months. See id.

The unexpected delay of rate setting by itself will deal serious harms to the towns. Rate setting is a necessary precondition to the DRA's warrant, which permits the towns' tax bills, which leads to the towns' revenues. Delays in setting rates leads directly to delays in the

collection of municipal revenues. If municipal billing is delayed, Waterville Valley estimates it will face a \$481,000 cash deficit by 12/31/2022 and a \$1,037,000 deficit by 1/31/2023. See DeCoteau Aff. ¶9. Similarly, Newington will face a \$460,000 cash deficit by December 31, 2022, and \$1.12 Million deficit by 1/31/2023. See Roy Aff. ¶7. The result of delayed tax revenues will put the towns in “crisis mode,” see id. ¶9, with no obvious way out. They will have to choose among things like cutting staff, putting off important capital projects, or possibly delaying or reducing school funding. See id.

Some municipalities, like Waterville Valley, use “Tax Anticipation Notes” (“TANs”) from banks to create reliable cash reserves to pay ongoing expense, instead of relying on inconsistent tax revenues. See DeCoteau Aff. ¶14. TANs however will not be helpful because banks will not lend in anticipation of taxes that may be unconstitutional and uncollectable. See id. ¶15. Moreover, some towns like Newington have not historically used TANs, and even assuming a bank would loan on the security of a possibly unconstitutional tax, the necessary transaction time to put in place temporary financing could be as much as eight weeks. See Roy Aff. ¶13.

The harms are obviously one-sided here. Plaintiffs gain almost nothing from the injunction. At best, the injunction would prevent Plaintiffs’ taxes from going up in some amount they cannot quantify, and which they can get back later through an abatement. That minimal benefit is far outweighed by putting dozens of communities in “crisis” and facing a million-dollar deficit in sixty days.

B. Plaintiffs Cannot Succeed on the Merits¹

1. The Only Evidence Presented Shows the SWEPT Is Uniform in Rate.

Part II, Art. 5 requires that “all taxes be . . . equal in valuation and uniform in rate.” Claremont Sch. Dist. v. Governor, 142 N.H. 462, 468 (1997) (Claremont II). As the Court explained in Claremont II, “[t]he test to determine whether a tax is equal and proportional is to inquire whether the taxpayers' property was valued at the same per cent of its true value as all the taxable property in the taxing district.” See 142 N.H. at 468. Not only does the Court have uncontradicted testimony from the State’s witness that the SWEPT is administered in a uniform and proportionate manner, see State Obj. at 14, the Plaintiffs’ own submissions doom their claim. The Affidavit provided by Plaintiffs confirms that their communities’ SWEPT rates are basically the same, and in some cases lower, than the communities from whom they want SWEPT redistribution. See Table 1 to Hall Aff. (Exh. A to Pl. Reply Memo) (showing roughly similar SWEPT rates for 2021-2022).

2. Part II, Art. 5 Prevents Unequal Rates, Not Retention and Use of Excess SWEPT Revenue.

Because the SWEPT rate itself is uniform, Plaintiffs argue the retention of SWEPT revenue above adequacy renders the SWEPT non-uniform. See Pl. Memo. in Supp. of P.I. at 14. Plaintiffs say in their Motion for TRO that retention of SWEPT “lower[s] SWEPT effective tax rates.” See Mot. for TRO at 4-5. This argument, upon which Plaintiffs’ entire theory of the case is based, is not likely to succeed on the merits for multiple reasons.

¹ The Coalition joins in the State’s Objection, including its argument that there is no likelihood of success because Plaintiffs lack standing. *See* State Obj. at 6-12.

First, Plaintiff's argument has no textual support in the Constitution. Part II, Art. 5 provides only that the Legislature may "impose and levy proportional and reasonable assessments, rates, and taxes." Plaintiffs do not explain how allowing a town to use tax revenues raised in that town for school in that town could ever constitute the "imposition" or "levy" of tax in another town. Other portions of Part II contain express prohibitions on the use of revenues for certain purposes. See, e.g., Part II, Art. 6-a (prohibiting use of certain highway revenues); id. Part II, Art. 6-b (requiring lottery revenues to be used for educational purposes). If the adopters of Part II, Art. 5 meant to include a prohibition on the retention of tax revenue by towns that collect it, they would have used similar prohibitory language.

Second, Plaintiffs' argument runs counter to the Supreme Court's cases. Plaintiffs' mantra is that two late 90's Supreme Court cases, Opinion of the Justices (Sch. Fin.), 142 N.H. 892 (1998) (special abatement) and Claremont Sch. Dist. v. Governor (Claremont III), 144 N.H. 210 (1999) (SWEPT five-year phase in), have "already considered and condemned" the Coalition Communities' retention of SWEPT. See Mot. for TRO at 4. Plaintiffs are wrong. The Supreme Court has never assessed the constitutionality of the current system.

In the 1998 special abatement case, the Legislature proposed a facially uniform state-wide property tax to fund public education. However, the Legislature proposed giving a special abatement equal to the amount of the excess SWEPT (not called SWEPT at the time) generated in a town. The abatement reduced the SWEPT rates paid by taxpayers in excess towns below the rates by other taxpayers. See 142 N.H. at 899-900. In Claremont III, the Legislature tried again with a uniform SWEPT (still not yet called the SWEPT). Instead of providing excess towns with a special abatement, the proposed bill required the excess towns to assess and collect the entire SWEPT, and required the excess to be remitted to the State. However, the bill allowed the

SWEPT to phase in over five years for the excess towns. See 144 N.H. at 213. That meant that in the first five years, the excess towns assessed and collected only a percentage of the uniform SWEPT, again resulting in the excess towns paying a lower rate than other Towns.

In both of these cases, the funding proposal was unconstitutional because taxpayers in different towns would pay different SWEPT rates. Both the special abatement and the phase-in would have allowed excess communities to assess and collect less SWEPT than a uniform rate required. The current SWEPT is completely different. The excess-towns assess and collect the SWEPT at the same rates as Plaintiffs' towns. See Pl. Reply Exh. A Table 1. The State is not permitting the excess towns to collect less SWEPT, and therefore impose a lower rate, like in the abatement and phase-in cases. Instead, the excess-towns, like all other towns, are required by RSA 76:8, II, to raise the entire SWEPT and pay it to the schools.

There is no constitutional violation here because Plaintiffs are not asking for uniform SWEPT rates; they are asking for *lower* rates. Plaintiffs seek to have the excess-communities' SWEPT tax revenues transferred to their towns because their towns' SWEPT revenues are not sufficient to reach adequacy. In other words, they want a portion of the SWEPT a taxpayer pays in another town to supplement the SWEPT they pay to allow their Town to reach adequacy. This necessarily means that taxpayers in such "receiver" towns will pay a lower effective SWEPT rate than taxpayers in "donor" towns. But it is precisely that disparity among SWEPT rates that the Court found problematic in the Special Abatement and Phase-in Cases. Part II, Art. 5 is not violated just by a non-uniform "regressive" tax but also by a non-uniform "progressive tax." Put another way, the Constitution requires uniform taxation not progressive taxation. Thus, the Court cannot order the State to transfer SWEPT revenues from one town to another because it would lead to a non-uniform SWEPT in violation of Part II, Art. 5.

Not only would Plaintiffs' requested transfer of SWEPT violate the Constitution it would not even solve the inequities Plaintiffs complain about. Transferring SWEPT from "property-rich" towns to "property-poor" towns sounds fair on the surface, conjuring the image of taxpayers in lakeside mansions finally paying their fair share. In reality, it is not "progressive" at all. The taxpayers in so-called "property rich" and "property poor" are not that different. For instance, the median household income in Waterville Valley according to the 2020 census is \$76,750,² below New Hampshire's median income of \$77,923. Hopkinton, where Plaintiff Lewis resides, has a median household income over a third higher: \$92,667.³ Plaintiffs make no effort to explain why the Constitution would ever require an average taxpayer in Waterville Valley to pay a higher SWEPT rate than a much richer Hopkinton resident.

No matter the adequacy amount, any uniform statewide property tax will create a surplus in communities whose total property valuation is more than sufficient to generate adequacy, and a deficit in towns whose property base is insufficient to generate adequacy. Surpluses and deficits by themselves do not violate the Constitution. The Supreme Court has already held there is no constitutional problem in the mere fact that a uniform tax allows excess-towns to send more than adequacy amounts to their school through SWEPT surpluses. See Opinion of the Justices (Reformed Pub. Sch. Fin. Sys.), 145 N.H. 474, 478 (2000) ("[T]he legislature may authorize local school district to dedicate additional resources to their schools or develop educational

² The data is available by searching for Waterville Valley in the Census' data. *See* [https://www.census.gov/search-results.html?searchType=web&cssp=SERP&q=Waterville Valley town, Grafton County, New Hampshire](https://www.census.gov/search-results.html?searchType=web&cssp=SERP&q=Waterville%20Valley%20town,%20Grafton%20County,%20New%20Hampshire)

³ *See* Census Quick Facts, Hopkinton, *available at* <https://www.census.gov/quickfacts/fact/table/hopkintontownmerrimackcountynewhampshire,NH/INC110220> (last visited November 14, 2022).

programs beyond those required.”). While there is a constitutional violation if the SWEPT does not pay for adequacy in some towns, see id. at 477 (constitutional violation if state aid does not cover adequacy), the current system does not have that problem because the State supplements the SWEPT with educational grants under RSA 198:40-a, :41, and :42.

The Supreme Court has never addressed the current funding system and, at the very least, Plaintiffs’ constitutional claims face serious legal hurdles and may themselves cause constitutional problems. Plaintiffs therefore cannot show they are likely to succeed on the merits.

C. The Public’s Interest.

Finally, Plaintiffs’ requested injunction does not advance the public interest. Plaintiffs are trying to rush adjudication of complicated standing and constitutional issues. Plaintiffs claim the legal issues are decided when they are anything but, and as the attached affidavits show, delaying municipal tax collection has real world harms. The Coalition believes that if it had more than a week to prepare its opposition, it would be able to provide the Court with even more facts from its members about how the delay or cessation of municipal taxation would harm the towns. It would also be able to more fully develop its legal arguments. The public’s interest is best served if the Court avoids these harms and makes a decision in the ordinary course of litigation with a fully developed record and the participation of all relevant parties, especially those communities that have the greatest stake in the Court’s decision.

IV. INTERVENTION SHOULD BE GRANTED AND A STRUCTURING CONFERENCE SHOULD BE SCHEDULED.

Finally, Plaintiffs have objected to the Coalition’s intervention. Again, Plaintiffs do not address the relevant standard and offer no evidence. They do not argue the Coalition does not meet the minimal intervention standard of having a “right involved” and a “direct and apparent

interest therein.” The attached affidavits demonstrate millions of dollars of municipal tax revenue are potentially at stake, threatening ongoing capital projects and ordinary expenditures on things like personnel. The “direct and apparent interest” is obvious. Plaintiffs claim no prejudice other than to complain about a delay in briefing, but that can no longer be a concern since the Coalition has now filed this Objection.

Plaintiffs’ only argument as to why the Coalition should not be allowed to intervene is that the State is already adequately defending the Coalition’s interests. This argument must be rejected. Plaintiffs do not cite any cases that hold a party with a concrete interest in a dispute cannot intervene because an existing party to the dispute will make similar arguments. That is not the test. In any event, the State is not representing the Coalition. It stated explicitly that it “is not able to speak” to the communities’ harms, and, moreover, that it believes they are necessary parties to the litigation. See State Surreply at 3. Furthermore, Plaintiffs have basically admitted the Coalition should participate because they claim they were forced to seek a TRO when the Coalition did not agree to the proposal to stop sending tax bills. See Mot. for TRO at 6. It is fundamentally unfair for Plaintiffs to seek preliminary relief that will cause million-dollar budget deficits for the Coalition’s members, claim the Coalition’s refusal to give Plaintiffs what they want creates an emergency, and then object when the Coalition tries to participate.

Because Plaintiffs have not presented any argument on the actual intervention standard, and because the evidence submitted shows an obvious “direct and apparent interest”, the Court should grant the intervention. The Coalition requests the Court schedule another structuring conference to allow the Coalition to meaningfully participate outside the context of emergency relief. The Coalition believes the current schedule is far too aggressive in terms of trial timing and other deadlines and would like to participate in creating the schedule in this case.

WHEREFORE, the Coalition respectfully requests that this Honorable Court:

- A. Grant the Coalition's intervention;
- B. Deny Plaintiffs' Motions for Temporary Restraining Order and Preliminary Injunction;
- C. Schedule a structuring conference; and
- D. Grant such other relief as is necessary and just.

Respectfully submitted,

COALITION COMMUNITIES

By Its Attorneys,

SHEEHAN PHINNEY BASS & GREEN, P.A.

Dated: November 14, 2022

By: /s/ John-Mark Turner
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Abbygale S. Martinen, Bar No. 272938
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Manchester, NH 03101
(603) 627-8143
jturner@sheehan.com

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing pleading was filed via the Court's electronic system, on counsel of record.

/s/ John-Mark Turner
John-Mark Turner

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 and has approximately 679 year-round residents.
3. The Town is approximately 42,000 acres, of which 41,300 acres are part of the White Mountain National Forest.
4. The Town is a member of the Coalition Communities. I am the Chairman of the Coalition Communities. The Coalition has sought to intervene in this case because the Coalition’s members are united in their opposition to the so-called donor-receiver town model. In other words, the Coalition is united against transferring SWEPT revenue from one municipality to another.
5. Under the current education tax structure, the Town retains any excess SWEPT and puts it towards local education funding.

6. The Town received its local education and SWEPT rates from the DRA on October 20, 2022.¹ The Town has already sent out tax bills to its residents on October 26, 2022. Residents have already started paying those tax bills.

7. For Tax Year (“TY2022”), which funded the Town’s Fiscal Year 2022,² the Town’s taxes raised in support of education are as follows:

2022 Education Funding			
	Tax Amount	Tax Rate	Percent of Tax Rate
Total Education Taxes	\$1,466,652	\$2.97/1,000	28.0%
Local Education Taxes	\$1,039,181	\$2.10/1,000	19.8%
SWEPT Taxes	\$427,471	\$0.87/1,000	8.2%
Plaintiff’s “Excess SWEPT”	\$181,917	\$0.37/1,000	3.5%

An illustration of the Town’s 2022 Tax Rate Calculation is attached hereto as **Exhibit A**.

8. A temporary restraining order as requested by the Plaintiffs could invalidate the current tax warrant and suspend collections. This could have drastic repercussions for the Town’s current cash flow.

9. I directed the preparation of the below cash flow analysis for the Town, which illustrates the impact to the Town’s cash flow if the remainder of tax Year 2022 tax collections are delayed.

¹ The Town receives its tax rates in the fall of the current tax year, which are applied to the final tax billing cycle. The Town issues its first tax bill of the tax year in May, which consists of half of the previous year’s tax rate. The Town’s second tax bill at the end of the year is based off of the tax rate

² The Town’s fiscal year runs from January 1 to December 31 each year.

<u>Estimated Expenses for Remainder of Calendar Year/Fiscal Year 2022</u>		
County Tax Bill Due in December 2022	\$ 570,000	
WV School District Invoices	\$ 360,000	
Capital Reserves Transfers	\$ -	
December NHRS Invoice	\$ 36,000	
December Health Trust Invoice	\$ 45,000	
Payroll Expenses (4 payrolls at \$30,000 each and one time contractually obligated benefits payouts)	\$ 120,000	
Misc. Accounts Payable due before 12/31/22	\$ 250,000	
December Subtotal		\$ 1,381,000
Total Cash on Hand		\$ 900,000
Estimated Cash Deficit by 12/31/2022 if Tax Collections are delayed		\$ (481,000)
<u>Estimated Expenses for January/Fiscal Year 2023</u>		
January NHRS Invoice	\$ 36,000	
January Health Trust Invoice	\$ 45,000	
Misc. Accounts Payable due before 1/31/2023	\$ 175,000	
Payroll Expenses for January 2023	\$ 120,000	
WV School District Invoices	\$ 180,000	
January 2023 Subtotal		\$ 556,000
Total Two Month Uses of Cash		\$ 1,937,000
Total Cash on Hand		\$ 900,000
Estimated Cash Deficit by 01/31/2023 if Tax Collections are delayed		\$ (1,037,000)

10. The estimated cash deficient above does not account for the extra costs of reissuing a new property tax collections warrant along with new tax bills and/or issuing a special local school tax warrant and tax bills to supplement the loss of revenues caused by suspension of “excess SWEPT” of \$181,917 in 2022 as estimated by Plaintiffs.

11. There are no good alternative sources of revenue for the Town to make up a \$1M unexpected deficit in our revenues in a such a short time frame.

12. The Town does maintain an Operating Account Fund, which is used by the Town as a cash flow balance between tax billings. However, I do not believe the Town will have sufficient funds in its operating accounts to fund ongoing obligations in a normal fashion and segregate out the \$507,623 that Plaintiffs claim is excess SWEPT revenue in 2021 and 2022. If the Court were to suspend all collections, the Town still has almost \$2M in tax revenue to collect from the most recent tax bill.

13. The Town does have additional money on hand, but that money is committed to capital projects, and it is not available for operating expenses without permission from the DRA and bond counsel. The capital projects to be paid from this additional money are vital to the town and include a roughly \$1 million project to improve the town's drinking water system and a \$1.8 million contract for road improvements.³ If the town needed to source funds for continued operation from these capital accounts, it would need to get permission from the DRA and bond counsel, which could take weeks if not months just to determine whether or not we could use those funds for operating expenses.

14. Another possibility to make up the deficit is through the use of "Tax Anticipation Notes," or TANs. Those are loans from a financial institution that cover a municipality's ongoing costs, like payroll and vendor payments. They allow a municipality to pay its costs on a regular basis without having to wait for the actual receipt of tax revenues, and without having to deplete a municipality's cash reserves. TANs are paid back when the municipality receives its tax revenues.

³ The Town also expects to present a warrant article in the 2023 budget cycle for a \$20-30 million dollar project to replace the Town's 50-year-old wastewater treatment plant.

15. Unlike other expenses, however, I do not believe TAN funding will be available to cover the extra costs associated with the return or sequestration of SWEPT revenues. In my experience, banks will only issue TANs when the future tax revenue will definitely occur and is reasonably certain in amount. If the Court issues an injunction or order that the SWEPT is or may be unconstitutional, I am concerned the uncertainty of the Town's expected tax revenues will make it difficult if not impossible for the Town to use TANs for any purpose.

16. I am the Town tax collector as well as the Town Manager. Plaintiff's requested injunction causes many administrative complications depending on what exactly the Court ordered. I understand Plaintiffs may want the DRA to issue new rates to towns like Waterville Valley that have already received their rates. The retraction of the issued rates will cause several problems.

17. First, the Town cannot assess and collect the SWEPT until the DRA sets rates and issues a warrant to the Town. As I understand the current litigation schedule, a trial is scheduled in June 2023. If DRA is not able to set new rates until after that, the substantial delay in the collection of tax revenues (both SWEPT and local education taxes) will severely erode the Town's Operating Account Fund and threaten the Town's ability to complete its important capital projects, unless there are draconian cuts at the Town.

18. Second, once new rates are finally calculated, the Town will have to issue replacement or supplemental bills to all of its residents, at significant time and expense. The residents who escrow their taxes with a mortgage company will have insufficient escrow accounts and will have to adjust their mortgage payments.

This ends my testimony.

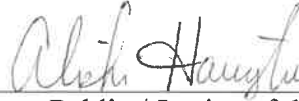
Dated: November 14, 2022



Mark Decoteau, Town Manager, Waterville Valley

STATE OF NEW HAMPSHIRE
COUNTY OF Grafton

Signed and sworn to (or affirmed) before me on this 14 day of November, 2022, by
Mark Decoteau.



Notary Public / Justice of the Peace

My Commission Expires: 3/9/2027

Alisha Harrington
Notary Public, State of New Hampshire
My Commission Expires 03/09/2027

EXHIBIT A



2022
\$10.60

Tax Rate Breakdown Waterville Valley

Municipal Tax Rate Calculation			
Jurisdiction	Tax Effort	Valuation	Tax Rate
Municipal	\$3,209,088	\$494,986,152	\$6.48
County	\$568,527	\$495,024,552	\$1.15
Local Education	\$1,039,181	\$494,986,152	\$2.10
State Education	\$427,471	\$491,584,052	\$0.87
Total	\$5,244,267		\$10.60

Village Tax Rate Calculation			
Jurisdiction	Tax Effort	Valuation	Tax Rate
Total			

Tax Commitment Calculation	
Total Municipal Tax Effort	\$5,244,267
War Service Credits	(\$7,400)
Village District Tax Effort	
Total Property Tax Commitment	\$5,236,867

EXHIBIT 2

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 MARTHA ROY

I, Martha Roy, hereby depose and swear as follows:

1. My name is Martha Roy, and I am the Town Administrator in the Town of Newington, New Hampshire (the "Town").
2. The Town was incorporated in 1713 and has approximately 811 residents.
3. The Town is approximately 8.2 square miles of land area and 4.1 square miles of inland water area.
4. Under the current education tax structure, the Town retains any excess SWEPT and puts it towards local education funding.
5. The Town received its local education and SWEPT rates from the DRA on November 2, 2022. The Town has already sent out tax bills to its residents on November 5, 2022. Residents have already started paying those tax bills.
6. A temporary restraining order as requested by the Plaintiffs could invalidate the current tax warrant and suspend collections. This could have drastic repercussions for the Town's current cash flow.

7. I prepared the below cash flow analysis for the Town, which illustrates the impact to the Town’s cash flow if the remainder of Tax Year 2022 tax collections are delayed.

Estimated Expenses for Remainder of Calendar Year/Fiscal Year 2022		
County Tax Bill Due in December 2022	\$ 900,000	
Newington School District Invoices	\$ 400,000	
Capital Reserves Transfers	\$ 500,000	
December NHRS Invoice	\$ 60,000	
December Health Trust Invoice	\$ 50,000	
Payroll Expenses (4 payrolls at \$100,000 each and one time contractually obligated benefits payouts)	\$ 500,000	
Misc. Accounts Payable due before 12/31/22	\$ 350,000	
December Subtotal		\$ 2,760,000
Total Cash on Hand		\$ 2,300,000
Estimated Cash Deficit by 12/31/2022 if Tax Collections are delayed		\$ (460,000)
Estimated Expenses for January/Fiscal Year 2023		
January NHRS Invoice	\$ 60,000	
January Health Trust Invoice	\$ 50,000	
Misc. Accounts Payable due before 1/31/2023	\$ 200,000	
Payroll Expenses for January 2023	\$ 200,000	
Newington School District Invoices	\$ 150,000	
January 2023 Subtotal		\$ 660,000
Total Two Month Uses of Cash		\$ 3,420,000
Total Cash on Hand		\$ 2,300,000
Estimated Cash Deficit by 01/31/2023 if Tax Collections are delayed		\$ (1,120,000)

8. The estimated cash deficit above does not account for the extra costs of reissuing a new property tax collections warrant along with new tax bills and/or issuing a special local school tax warrant and tax bills to supplement the loss of revenues caused by suspension of “excess SWEPT” of \$453,834 in 2022 as estimated by the Plaintiffs.

9. I do not know of any way the Town could make up a \$1.12M unexpected deficit in our revenues, without curtailing budgeted expenditures on Town services. At that point, we would be operating in crisis mode and would need to explore the following budget cuts:

- a. We would need to make immediate cuts to our Town staff because salaries make up approximately 50% of the Town's yearly budget;
- b. We would need to explore using funds already budgeted for capital improvement projects, such as major road work, recreational facilities, and emergency management equipment;
- c. We may need to delay making payment on the County Tax Bill, which could result in payment of a high interest rate; and
- d. We may need to speak with the school district in terms of delaying payment for school funding.

10. The Town may also need to convene a special town meeting to address the lack of funding, in addition to numerous additional meetings of the Town Administrator, the Board of Selectmen, and the various Town departments.

11. The timing of this potential cash deficit makes it much more difficult to resolve. The Town is close to the end of its budget year, which means that most of its funds have already been spent. In addition, the Town is only allowed to spend up to 1/12th of its budget each month starting in January 2023, until Town Meeting approves the new year budget in March 2023.

12. Finally, a cash deficit puts the Town at a significant disadvantage as compared to other towns because the Town has not historically used "Tax Anticipation Notes," or TANs. TANs are loans from a financial institution that cover a municipality's ongoing costs, like

payroll and vendor payments. In the past the Town has saved funds and then made expenditures from those saved funds rather than rely on TAN loans.

13. The Town has historically prioritized saving its funds rather than borrowing funds, therefore, if the Town were required to apply for a TAN to make up for a cash deficit, it could take as long as eight weeks for the application to process because the Town does not have the credit history. At this point in the fiscal year, applying for a TAN would bring the Town into the next fiscal year. The Town would face additional obstacles to obtaining a TAN, due to the fact that the Town's audit has not been finalized (an essential prerequisite to obtaining a TAN) and the fact that there is uncertainty as to the Town's ability to collect future taxes in order to repay the TAN.

This ends my testimony.

Dated: November 14, 2022

Martha Roy
Martha Roy, Town Administrator, Newington

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

Signed and sworn to (or affirmed) before me on this 14 day of November, 2022, by
Martha Roy.

Sylvia M Bly
Notary Public / ~~Justice of the Peace~~
My Commission Expires: 7/27/27

