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### **Superior Court Rules School Funding Plan Unconstitutional**

In a suit brought by two school districts and nineteen SAU's, Hillsborough County Superior Court Judge William Groff ruled New Hampshire's school funding law is unconstitutional. In siding with the school districts, Judge Groff wrote lawmakers have "completely failed" to set forth the criteria of an adequate education.

Londonderry School District, Merrimack School District, and New Hampshire Communities for Adequate Funding of Education, a non-profit organization consisting of nineteen SAU's and towns, brought the suit. They alleged that the proposed education funding system of House Bill 616 (HB 616) was unconstitutional on four grounds: (1) it failed to define, cost out, and ensure delivery of a constitutionally adequate education; (2) it required municipalities to fund a constitutionally adequate education through local taxes; (3) it eliminated "donor communities" and imposed unreasonable and disproportionate tax burdens on "property poor" communities; and (4) it violated the New Hampshire Constitution's equal protection clause because it created a separate class of "donor communities" that retained all the revenue they raised through the statewide education tax.

Judge Groff focused his opinion on the Supreme Court's line of Claremont decisions. In siding with the school districts, Judge Groff wrote "the Legislature has completely failed to fulfill its constitutional duty and 'adopt specific criteria implementing the guidelines' as required by the Supreme Court" in Claremont II.

On the issue of the cost of a constitutionally adequate education, the Court wrote, "the Legislature must, in addition to specifically and substantially defining an adequate education, provide a reasonable method to determine what an adequate education will cost." According to the court, HB 616 merely established "aspirational guidelines."

The Court also stated that the Legislature had "abdicated its duty." The court found that HB 616 did not establish what an adequate education would cost, but rather, only provided a system based upon each municipalities ability, or lack thereof, to raise sufficient funds through property taxes. The court ruled this system did not ensure that an adequate education would be provided, and was therefore unconstitutional. Additionally, the Court wrote that because the Legislature failed to determine the cost of an adequate education, the Court was unable to determine whether the State met its duty to provide an adequate education, regardless of how much money was actually appropriated.

Continuing, the Court also ruled the current system unconstitutional because it did not require school districts to fully comply with minimum standards, as established by the State, until school year 2013-2014. Because schools were not required to immediately comply with these minimum standards, there would be little accountability. Such accountability standards are an essential component to the State's duty to provide a constitutionally adequate education. The absence of these accountability standards undoubtedly makes the current system unconstitutional. Therefore, the Court ruled HB 616 was unconstitutional.

The Court also addressed the disproportional taxing system in the Bill. To be constitutional, a tax must be administered in a manner that is equal in valuation and uniform in rate throughout the State. In determining HB 616 was unconstitutional, the Court stated it created a non-uniform tax rate and that "no constitutional justification can be articulated." According to the Court, the taxing system in HB 616 would result in "property rich" municipalities being permitted to retain excess funds that should be earmarked for the Statewide Enhanced Education Tax (SEET) as required by RSA 198:40-c and 198:41. As such, the system is unconstitutional.

Despite this clear and decisive ruling by the Court, this may only be the first step in yet another round of New Hampshire "education funding" cases. The State has 30 days to appeal the decision to the New Hampshire Supreme Court. The effects of this ruling, and any subsequent ruling by the Supreme Court will undoubtedly affect all NHSBA members. NHSBA will be tracking the course of this case and will be at the forefront of providing members with timely and vital information as to how these rulings will affect New Hampshire School Boards.