The State of New Hampshire

MERRIMACK COUNTY **SUPERIOR COURT**

ANDREW FOLEY, et al

v.

STATE OF NEW HAMPSHIRE, et al

Docket No.: 217-2025-CV-00480

ORDER ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, Andrew Foley, Ronald Miles and Jane Doe #231, brought this action on behalf of themselves, and the class of complainants who allege abuse suffered while juveniles in State custody and State-operated facilities,[1] against Defendants, the State of New Hampshire, Governor Kelly Ayotte in her official capacity, and Attorney General John Formella (the "AG") in his official capacity, challenging the constitutionality of two recent amendments to the Youth Development Center ("YDC") Claims Administration and Settlement Fund Act (the "Settlement Fund Act" or the "Act"). See Doc. 1 (Compl.). Plaintiffs now move for a preliminary injunction enjoining Defendants from enforcing the challenged amendments. Doc. 8 (Pl.'s Mot. Prelim. Injunction). Defendants object. Doc. 11 (Def.'s Obj.). The Court held a hearing on the motion over the course of two days—August 20, 2025, and August 27, 2025—where the parties presented evidence and oral arguments on the merits of Plaintiffs' motion. For the following reasons, Plaintiffs' motion for a preliminary injunction is DENIED.

[1] The Court notes that Plaintiffs bring this claim as a class action suit and Defendants do not challenge the asserted class.

Background

By way of general background, the Court recounts that there is a detailed history of alleged abuse, sexual and/or physical, by individuals who were residents at the YDC. See generally Meehan v. State of New Hampshire, No. 217-2020-CV-00026. Since Meehan came forward in 2018, roughly 1,500 individuals have brought claims against the State alleging abuse by staff at the YDC.[2] See Ex. 2 (representing that over 1,400 claims were filed as of May 23, 2025).

On May 27, 2022, the New Hampshire legislature passed the Settlement Fund Act, RSA 21-M:11-a, expressing that

> [t]he state wishes to acknowledge those claims and the suffering which has been endured by the victims of abuse by establishing a trauma-informed, victim-centered alternative to litigation for the efficient and fair resolution of those claims.

2022 N.H. Laws Ch. 122 (H.B. 1677). Attorney General Formella echoed those sentiments in a public release following the Act's passage. See Ex. 18. The Act created the YDC Claims Administration ("YDCCA") and a settlement fund (the "Fund") as an alternative option for relief for victims of alleged YDC abuse. See 2022 N.H. Laws Ch. 122 (H.B. 1677); Ex. 18. Generally, the Act established procedures for the administration and resolution of abuse claims submitted to the YDCCA and specified an administrator to carry out those functions. See 2022 N.H. Laws Ch. 122 (H.B. 1677).

On October 7, 2022, Justice John Broderick was appointed administrator by unanimous vote of the New Hampshire Supreme Court. He testified that his role as administrator was to assess what he thought happened to a YDC complainant based on

[2] The exact number has not been presented to the Court and both parties, during arguments, have represented a general expectation that there are around 1,500 total claims.

the totality of circumstances presented to him. Justice Broderick stated that being neutral and independent was essential to his job and to the claimants because it showed that decisions were reached without fear or favor towards any party. He did not consider the dollar value of any claims of abuse when determining whether the claimant's allegations were credible.

The first claims were submitted in January of 2023. Ex. 2 at 3. In the first year, only 92 individuals filed claims with the YDCCA. Id. at 6. To increase participation, the AG and counsel for the plaintiffs worked to amend the Settlement Fund Act. See Exs. 19–21. The Act was amended in 2023, see 2023 N.H. Laws Ch. 79 (H.B. 2) (replacing "investigator" with "fact facilitator" and adjusting when a claimant waived his or her right to seek additional relief), and 2024, see 2024 N.H. Laws Ch. 92 (S.B. 591) (making significant changes to the overall claims process, payment of awards, and management of the settlement fund). Following those changes, 1,370 claims were filed. Ex. 2 at 6.

The 2024 version of RSA 21-M:11-a provided, in relevant part, the following:

> I. (a) 'Administrator' means an independent, neutral attorney admitted to the practice of law in New Hampshire, chosen in the manner set forth in paragraph III to administer [YDC] claims pursuant to this section. The administrator shall have all of the duties and authority granted pursuant to RSA 542, except as otherwise provided in this section.
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> . . .
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> II. There is hereby established in the state treasury the [Settlement Fund] which shall be kept distinct and separate from all other funds. The fund shall be administered by the [AG], who shall use the funds for the purpose of administering claims of former YDC residents as defined in this section. The fund shall be nonlapsing and continually appropriated to the department of justice until June 30, 2032, after which date the fund shall lapse . . . unless earlier discontinued by the [AG], in consultation with the administrator, or as otherwise provided by law.

III. There is further established in the judicial branch a temporary full-time or part-time position known as the youth development center claims administrator, to be appointed by the supreme court. . . . The supreme court shall appoint an administrator agreed to by the [AG] and counsel for claimants. If the [AG] and counsel for claimants are unable to agree upon and administrator, the supreme court shall select the administrator from the candidates submitted to the court by the [AG] and counsel for the claimants . . . The administrator shall report to the chief justice of the supreme court or the chief justice's designee for employment-related purposes, but the supreme court shall have no authority to review the administrator's decisions. . . . The supreme court may remove the administrator if, after a request for removal received from the [AG] or claimants' counsel, or upon the court's own motion, the court determines that good cause for removal exists. Once appointed, the administrator shall process claims as provided herein and may settle claims at such amounts as may be agreed upon between the AG designee and each claimant, or at amounts which are determined by the administrator, giving due consideration to the guidelines adopted by the joint fiscal committee as provided in paragraph IV.

IV. (a) . . . the [AG] . . . shall develop and present to the joint fiscal committee a claims process consistent with this section including the development of claims forms, . . . and the guidelines for valuing claims for settlement purposes . . .

(b) . . . The goal of the guidelines shall be to ensure the fair and uniform valuation of claims so that the claims of similarly situated claimants are valued similarly. . . . Once approved, the guidelines shall be binding on the AG designee and the administrator. The claims process and guidelines may be revised periodically as deemed necessary by the administrator, again with input from the claimants' counsel and the [AG], and with the approval of the joint fiscal committee.

VII. (a) Any former YDC resident may file a claim. . . .

(c) A former YDC resident's participation in this claims process is voluntary and does not affect any rights the claimant may have unless and until the claimant accepts the administrator's decision on the claim. A former YDC resident who elects not to participate in the claims process, or a claimant who does not accept the administrator's decision, retains the right to pursue a claim in a judicial or other forum. . . .

(d) This section constitutes the state's offer to resolve completely and finally all of the former YDC resident's claims through the claims process established. By filing a claim, the claimant agrees that he or she will participate in the claims process, and, if the claimant accepts the administrator's determination on the claim, such acceptance shall be the

> final and binding settlement of all claims in accordance with subparagraph IX(a), even if the claimant does not receive any payment from the fund. The submission of a claim shall constitute an agreement in writing to submit the claim to arbitration as provided in RSA 542:1.
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> . . .
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> IX. (a) When a claimant requests that the administrator hold a live resolution proceeding, the proceeding shall be conducted in accordance with the procedures approved by the joint fiscal committee. . . . When a claimant accepts the administrator's decision on the claim, a claimant fully waives his or her right to seek other or additional monetary relief in any forum from the state of New Hampshire . . .
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> (e) . . . The administrator's decision regarding the claim shall be final and non-appealable, and the provisions of RSA 542:8, RSA 542:9, and RSA 542:10 shall not apply, provided, however, that either the claimant or the AG designee may request the administrator to reconsider a decision on grounds that it contains mathematical mistakes, miscalculations, or a scrivener's error. Such a request to reconsider a decision must be made within 10 days of the issuance of the administrator's decision.
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> . . .

The joint fiscal committee approved a written claims process in September of 2022. See Ex. 8 at Preface. That claims process was amended in 2023 and 2024 following the legislature's changes to the Settlement Fund Act. Id. The latest version of the claims process provides that ""[i]t may be revised from time to time pursuant to Subsection IV(b) of the [Settlement Fund Act]." Id. Further, the claims process expressly states that "[i]n any case of conflict between this Claims Process and the Statute, the Statute shall govern." Id.

Under the 2024 version of the Act, former YDC residents were given until June 30, 2025, to file a claim with the YDCCA. On June 27, 2025, New Hampshire's legislature passed House Bill 2. See 2025 N.H. Laws (H.B. 2). Included in that bill were

several amendments to the Settlement Fund Act.[3] See id. The amendments were added near the end of the legislative process with little, if any, deliberation or public comment. The amendments at issue were made to Section III and Section IX(e). The amendments to Section III (1) placed the administrator within the Executive branch, (2) gave the governor, with the consent of the executive council, the power to appoint the administrator, and (3) allowed the governor to "remove the administrator at any time, as the administrator serves at the pleasure of the governor." See id. at 437. Further, the legislature added the following language to Section IX(e):

> Upon the expiration of the reconsideration period, the AG designee and the claimant shall have 30 days to accept or decline the administrator's decision regarding the claim. If the AG designee and claimant do not both affirmatively accept the administrator's decision within 30 days after the expiration of the reconsideration period, then the claim shall be deemed withdrawn, and the claimant shall retain the right to pursue their claim in a judicial or other forum.

Id. at 439. This language is referred to as the "AG Veto."

Following these changes, Justice Broderick posted a public notice, stating that the amendment to Section III ended his term as the administrator after June 30, 2025. See Ex 25. Justice Broderick further provided that a transition period would be in place from that date until July 31, 2025, by which he would issue a final decision on any claims that were pending for evaluation prior to July 1, 2025. Id. Both parties represented at the June 27 hearing that Justice Broderick issued roughly 15 decisions during the transition period and that the deadline for their acceptance is between September 2 and September 8 of 2025. John Doe #334 testified that his decision issued after July 1 and that he accepted it. No other evidence concerning the status of

[3] The Court notes that there are other changes to the Settlement Fund Act, see 2025 N.H. Laws at 438, 440 (H.B. 2), which Plaintiffs do not challenge.

decisions issued during the transition period was submitted at the hearing. Additionally, neither party elaborated on the status of other claims filed and pending with the YDCCA. Justice Broderick's notice indicates that other claims requiring resolution are likely paused. See id.

Justice Broderick, although acknowledging that the AG sent a letter stating that he could continue as administrator, testified that he resigned because the amendments created a new administrator position. Further, he opined that he was not offered that position and even if he were, he would not have accepted it because he feels that the "AG Veto" is unfair to the claimants. He elaborated his belief that the "AG Veto" makes what was a trauma-informed process instead, trauma-inducing. Further, he opined that the State made a promise, and the 2025 amendments broke that promise.

Three individuals who filed claims with the YDCCA, Miles, Jane Doe #231, and Doe #334 (collectively referred to as the "Claimants"), testified at the hearing. Doe #334 had his claim ruled on by Justice Broderick after the July 1 effective date for the 2025 amendments to the Settlement Fund Act. All three offered that they entered the YDCCA process because it promised a neutral and independent administrator, a claims process that is "victim-centered" and "trauma informed," the finality of the administrator's decision, and confidentiality. The Claimants testified that these promises gave them a belief that they would obtain a fair result. Further, the Claimants stated they understood that by entering the process they did not waive their rights to pursue their claims in court but that their claims would be placed at the end of the docket if they ultimately pursued that route. The Claimants stated that they would not have entered the YDCCA had they known it would not provide the aforementioned features.

Miles testified that he felt the changes make the State, who is defending against YDC claims, the judge and the jury in the claims process. He further offered that the changes caused him to lose his voice, made him feel like he was being swept under the rug, and brought up trauma to the point that his sobriety was challenged. Doe #321 stated that the changes made her feel like she was being victimized again, that there was a betrayal, that she could not be heard in a fair way, and that she could not get justice. She further voiced a concern that if these changes could be made then changes regarding her privacy could also be made in the future. Doe #334 testified that he felt the administrator could no longer be neutral with the 2025 changes. He characterized the amendments as a slap in the face by the state. He further voiced that the changes had affected his mental state, made him feel victimized, and removed any finality. Doe #334, though, admitted to accepting Justice Broderick's decision and that he had not thought about what he would if the "AG Veto" were invoked.

Dr. Dylan Gee, a certified expert in childhood trauma and mental health across the lifespan, testified about the effects the 2025 amendments have had on the former YDC residents. She opined that many former YDC residents suffer from institutional betrayal trauma because they view the State as responsible for the abuse they suffered while entrusted to the State's care. Dr. Gee stated that the 2025 amendments have caused Plaintiffs significant irreparable psychological harm. She elaborated that Plaintiffs have suffered an additional institutional betrayal that increases life stress, causes revictimization, and causes mental harm. Dr. Gee pointed to Doe #334 as an example, offering that he showed the 2025 amendments have exacerbated his mental health struggles. Dr. Gee concluded by offering that the amendments fundamentally

impair Plaintiffs' ability to trust the system, the claims process, and other peoples, and that such a loss in trust impairs Plaintiffs' ability to recover in court.

Analysis

Plaintiffs now move for preliminary injunction to enjoin Defendants from enforcing the amendments to the Settlement Fund Act that change the appointment and retention of the administrator and add an "AG Veto." Doc. 8. At the hearing, Plaintiffs clarified that they are asking the Court to instruct Defendants to follow the 2024 version of RSA 21-M:11-a.[4] In support of this request, Plaintiffs argue that (1) they are likely to succeed on the merits of their claims, (2) there is no other adequate remedy at law available to stop enforcement of the offending amendments, and (3) there has been, and continues to be, immediate irreparable harm. Id. Plaintiffs offer the testimony of Claimants and Dr. Gee as further evidence of irreparable harm. Defendants object, claiming that the Plaintiffs have not shown a likelihood of success on the merits or an immediate danger of irreparable harm. Doc. 11.

"A preliminary injunction is a provisional remedy that preserves the status quo pending a final determination of the case on the merits." DuPont v. Nashua Police Dep't, 167 N.H. 429, 434 (2015). The issuance of a preliminary injunction "has long been considered an extraordinary remedy." N.H. Dep't of Envtl. Servs. v. Mottolo, 155 N.H. 57, 63 (2007). Therefore, an injunction should not issue unless the moving party shows that it would likely succeed on the merits, there is an immediate danger of irreparable harm, and there is no adequate remedy at law. ATV Watch v. N.H. Dep't of Resources and Econ. Dev., 155 N.H. 434, 437 (2007); see DuPont, 167 N.H. at 434.

[4] Plaintiffs elaborated that they are not asking the Court to reinstate Justice Broderick but rather to order Defendants to follow the 2024 version of section III.

The likelihood of success on the merits factor "is the touchstone of the preliminary injunction inquiry." Maine Educ. Ass'n Benefits Tr. v. Cioppa, 695 F.3d 145, 152 (1st Cir. 2012); see AZNH Revocable Tr. v. Spinnaker Cove Yacht Club Ass'n, Inc., 176 N.H. 119, 130 (2023) (approving of the trial court's denial of a preliminary injunction on only the likelihood of success on the merits factor). Indeed, "[i]f the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity." Maine Educ. Ass'n Benefits Tr., 695 F.3d at 152.

"The granting of an injunction is a matter within the sound discretion of the Court exercised upon a consideration of all the circumstances of each case and controlled by established principles of equity." DuPont, 167 N.H. at 434 (brackets and quotation omitted). "[B]ecause the division between equity and law is not precise courts have considerable discretion in determining whether equity should intervene to aid litigants in the protection of their legal rights." Sands v. Stevens, 121 N.H. 1008, 1011 (1981) (ellipses and quotation omitted). The party seeking equitable relief must "demonstrate that it is appropriate under the circumstances of the particular case." B&C Mgmt. v. N.H. Div. of Emergency Srvcs., 175 N.H 20, 26 (2022). Id. With these principles in mind, the Court turns to the merits of Plaintiffs' request.

I. Likelihood of Success on the Merits

a. *Contract Clauses Claim*

Plaintiffs claim that the challenged amendments violate the Contract Clauses of the State and Federal Constitutions, see N.H. CONST. pt. I, art. 23; U.S. CONST. art. 1, § 10, because they impair prior vested contractual rights in the claims process created by the 2024 version of the Settlement Fund Act. In essence, Plaintiffs argue that they

entered a contract for a specific claims process outlined in the 2024 version of the Act when they filed their claims before the June 30 deadline, and the 2025 amendments substantially impair on that contract. Specifically, Plaintiffs assert that (1) moving the administrator to the executive branch, (2) permitting the governor to appoint and terminate the administrator at will, and (3) permitting the AG to veto a decision by the administrator substantially impair the contracts they formed with the state. Defendants object, asserting that the Settlement Fund Act did not create a binding contract with Plaintiffs. In the alternative, Defendants argue that (1) Plaintiffs have failed to show that the amendments substantially impair any vested rights and (2) the amendments serve a significant and legitimate public purpose.

"Whether or not a statute is constitutional is a question of law[.]" Prof. Fire Fighters of N.H. v. State of N.H., 167 N.H. 188, 192 (2014). "The party challenging a statute's constitutionality bears the burden of proof." Am. Fed'n of Teachers—N.H. v. State of N.H., 167 N.H. 294, 300 (2015) (quotation omitted). "In reviewing a legislative act, [the Court] presume[s] it to be constitutional and will not declare it invalid except upon inescapable grounds." Id. (quotation omitted). Thus, unless there is a clear and substantial conflict that exists between the statute and the constitution, the Court will not construe the statute to be unconstitutional. Id. Where there are doubts as to a statute's constitutionality, "those doubts must be resolved in favor of its constitutionality." Prof. Fire Fighters, 167 N.H. at 193 (quotation omitted).

Because the State Constitution affords the same protections as the Federal Constitution with respect to impairment of a contract, see Am. Fed'n of Teachers, 167 N.H. at 300; Prof. Fire Fighters, 167 N.H. at 193, the Court evaluates Plaintiffs' claim

under the State Constitution and relies upon federal law only to aid its analysis, see State v. Ball, 124 N.H. 226, 231–33 (1983). In evaluating a Contract Clause claim, the Court first determines "whether a change in state law has resulted in the substantial impairment of a contractual relationship." Prof. Fire Fighters, 167 N.H. at 193. This analysis "has three components: whether there is a contractual relationship, whether a change in law impairs that contractual relationship, and whether the impairment is substantial." Id. (quotation omitted). A legislative enactment that constitutes a substantial impairment of a contractual relationship will survive a contract clause challenge if it has a significant and legitimate purpose. Id.

The Court finds that Plaintiffs are unlikely to meet the first component of the test because they cannot show that RSA 21-M:11-a creates the contractual rights they claim to exist. Rather, the Court believes that the management of the administrator and the claims process are general policy of the YDCCA. The "party alleging that contractual rights arose from a statutory enactment faces a heavy burden." Id. Indeed, the hurdle of proving a contractual relationship in this instance is higher because "normally state statutory enactments do not of their own force create a contract with those whom the statute benefits." Id. at 193–94 (brackets and quotation omitted). "Policies, unlike contracts, are inherently subject to revision and repeal, and to construe laws as contracts when the obligation is not clearly and unequivocally expressed would limit drastically the essential powers of a legislative body." National R. Passenger Corp. v. A.T. & S.F.R. Co., 470 U.S. 451, 466 (1985). Thus, "absent some clear indication that the legislature intends to bind itself contractually, the presumption is that a law is not intended to create private contractual or vested rights but merely declares a policy to be

pursued until the legislature shall ordain otherwise." Prof. Fire Fighters, 167 N.H. at 194 (quotation omitted).

The Court applies the unmistakability doctrine to determine whether the 2024 version of RSA 21-M:11-a created the contractual rights asserted by Plaintiffs. See Am. Fed'n of Teachers, 167 N.H. at 301. The unmistakability doctrine is a canon of contract construction, Grass Valley Terrace v. United States, 49 Fed. Cl. 629, 637 (2000), that mandates that a challenged legislative enactment must evince a clear intent of the state to be bound to a particular contractual obligation, Am. Fed'n of Teachers, 167 N.H. at 301; see Grass Valley Terrace, 49 Fed. Cl. at 637 (declaring that the surrender of a government's sovereign authority must be unmistakably expressed). "Contractual arrangements, including those to which the sovereign itself is a party, remain subject to subsequent legislation by the sovereign." Bowen v. Pub. Agencies Opposed to Soc. Sec. Entrapment, 477 U.S. 41, 52 (1986) (quotation omitted). "Thus, a contract with a sovereign government will not be read to include an unstated term exempting the other contracting party from the application of a subsequent sovereign act . . . nor will an ambiguous term of a grant or contract be construed as a conveyance or surrender of sovereign power." Grass Valley Terrace, 49 Fed. Cl. at 637 (quoting United States v. Winstar Corp., 518 U.S. 839, 878 (1996)). "The underlying presumption is that contracts with the government will be subject to later contrary legislation unless there is a clear promise otherwise in the contract itself." Id.

In reviewing an enactment under the unmistakability doctrine, the Court proceeds "cautiously both in identifying a contract within the language of a regulatory statute and in defining the contours of any contractual obligation." Am. Fed'n of Teachers, 167 N.H.

at 301. The Court begins "by examining the statutory language itself and perform[s] a close analysis of the statutory provision at issue." Id. (internal citations omitted). "When interpreting statutory language, [the Court] first look[s] to the language of the statute itself, and, where possible, construe[s] that language according to its plain and ordinary meaning." Caron v. N.H. Dep't of Employment Security, 175 N.H. 540, 544 (2022). The Court discerns the legislature's intent from the statute as written, construing all words, phrases, and parts of the statute together, and it will not add language the legislature did not see fit to include. Id.

Although the Settlement Fund Act likely creates a contract for the resolution of a claim filed by a former YDC resident, the Court believes that Plaintiffs are unlikely to succeed on the merits of their claim that the Act created vested contractual rights in the administrator position or the claims process. Indeed, the legislature stated that the Act is an offer to enter into a claims process and that a former YDC resident's filing of a claim is an agreement to participate in the claims process. RSA 21-M:11-a, VII(d). Further, the YDC resident's giving up rights to pursue a simultaneous claim against the state in court is likely sufficient consideration. However, based on the language of the statute, the AG and joint fiscal committee's annotation of the claims process, see Ex. 8, and the legislature's conduct, the Court does not believe that the contractual obligations asserted by Plaintiffs—specific procedures for the management of the administrator and no institution of an "AG Veto"—are present in RSA 21-M:11-a. See Am. Fed'n of Teachers, 167 N.H. at 301.

Looking to the Act's language, the Court cannot find a clear and unmistakable intent by the legislature to be bound to the contractual obligations asserted by Plaintiffs.

There is no language within the Act that expressly forbids amendments to the claims process or to the management of the administrator's position. Like the First Circuit, the Court is hesitant to infer a contractual obligation where a statute does not explicitly preclude amendments to a created plan. See National Educ. Ass'n—Rhode Island v. Retirement Bd., 172 F.3d 22, 27 (1st Cir. 1999); see also State ex rel. Humphrey v. Philip Morris USA, Inc., 713 N.W.2d 350, 363 (Minn. 2006) (applying similar reasoning to the review of a settlement agreement and determining the state did not expressly waive its right to impose further regulations or fees on the affected industry). Further, prior silence on the concept of an "AG Veto" in the 2024 version of the Act should not be construed as indicating the legislature's intention to be bound from ever adopting one. See Bellenoit, 2024 N.H. 28, ¶ 15 (determining that an ordinance's prior silence concerning whether an employee could restore sick leave without repayment cannot be construed as the city's intention to be forever bound to the concept that sick benefits can be restored without repayment).

While some terms in the statute indicate the creation of a contract to engage in arbitration of YDC claims, see RSA 21-M:11-a, VII(d), no language expressly states that any particular claims process will be utilized. Nor is there any language stating that claimants are entitled to the claims process or administrator role that existed at the time they filed. Cf. White v. United States, 175 Fed. Cl. 226, 230, 237–38 (2025) (noting that the regulations governing a compensation fund included language that claimants could request application of the formulas that existed at the time they filed a claim and then determining that such language showed a mutuality of intent to be bound by that process). The unmistakability doctrine requires a more particularized identification then

that which is conveyed by boilerplate terms of offer and acceptance. See State ex rel. Humphrey, 713 N.W.2d at 363 (determining that boilerplate release language in a settlement is not enough under the unmistakability doctrine). Therefore, the general terms of offer and acceptance are not enough to bind the state to the 2024 version of the Act with respect to the claims process or the administrator position.

Rather than use language binding the state and claimants to a specific claims process, the legislature included language in the 2024 version that indicates the claims process can be amended. Indeed, the legislature assigned final approval of the claims process and any amendments to that process to the joint fiscal committee. See RSA 21-M:11-a, IV. Further, the legislature empowered the administrator to amend the claims process with approval by the joint fiscal committee. See RSA 21-M:11-a, IV(b). These provisions have remained consistent since the original Act's passage. See 2022 N.H. Laws Ch. 122 (H.B. 1677). The legislature would not have allowed for such amendments if it intended to be bound by the original claims processes outlined in the statute. That the annotated claims process also states it can be amended and that, in case of conflict, the statute controls, see Ex. 8, reinforces that the legislature did not intend to be bound by a specific claims process. Additionally, the legislature's prior amendments to the claims process in 2023 and 2024 show that it did not intend to bind itself to earlier versions of the claims process. See National R. Passenger Corp., 470 U.S. at 466.

In light of the above analysis, the Court finds that Plaintiffs have not shown that they are entitled to the asserted contractual obligations in the 2024 version of the Act. The unmistakability doctrine requires an express intent by the legislature to be bound to

the prior version of the statute, and the Court does not find such an intent in the 2024 version of the Act. Accordingly, the Court believes that Plaintiffs have not shown a likelihood of success on the merits of their contract clauses claim. See Prof. Fire Fighters, 167 N.H. at 193.

b. *Breach of Contract Claim*

Plaintiffs argue that the 2024 version of the Settlement Fund Act is a binding contract that the legislature materially breached when it amended the portions of the act relating to the administrator and the "AG Veto." The Court agrees with Defendants and finds that because Plaintiffs are unlikely to show that the 2024 version of the Act created the asserted contractual obligations, Plaintiffs are also unlikely to succeed on the merits of their breach of contract claim. The legislature did not bind itself to the 2024 version of the Act. Therefore, without contractual obligations, there can be no breach from the amendments. See Lassonde v. Stanton, 157 N.H. 582, 588 (2008) ("A breach of contract occurs when there is a failure without legal excuse to perform any promise which forms the whole or part of a contract." (quotation and brackets omitted)). Thus, the Court finds that Plaintiffs have not shown a likelihood of success on their breach of contract claim.

c. *Equal Protection Clause Claim*

Plaintiffs argue that the challenged amendments violate the equal protection guarantees under the State and Federal Constitutions. See N.H. CONST. pt. I, arts. 2 & 12; U.S CONST. amend. 14. Plaintiffs assert that the amendments created two classes of claimants: (1) those who timely filed a claim and received a decision before the 2025 amendments went into effect; and (2) those who timely filed a claim and will receive a

decision after the 2025 amendments go into effect. Because the claimants in the second class will go before a different administrator whose decision is subject to a veto by the AG, Plaintiffs argue that they are treated disparately, and such treatment cannot survive intermediate scrutiny. Defendants object, claiming that the amendments are subject to a rational basis test and Plaintiffs cannot show that the classification was arbitrary or without some reasonable justification. In the alternative, Defendants assert that any created classification would survive intermediate scrutiny because the state has a compelling interest in preserving the separation of powers.

As the Federal equal protection offers no greater protection than the State equal protection guarantee, the Court evaluates Plaintiffs' claim under the State Constitution first and cites to federal authority only for guidance. In re Sandra H., 150 N.H. 634, 637 (2004); see Ball, 124 N.H. at 231–33. "The equal protection guarantee is essentially a direction that all persons similarly situated should be treated alike." State v. Ploof, 162 N.H. 609, 626 (2011) (quotation omitted). "Holding that persons who are not similarly situated need not be treated the same under the law is a shorthand way of explaining the equal protection guarantee. Whether applying a strict scrutiny, intermediate, or rational basis standard of review, [the Court] determine[s] whether differences between the classes justify disparate treatment under the law." In re Sandra H., 150 N.H. at 638.

The Court must determine the appropriate standard of review to apply and does so "by examining the purpose and scope of the State-created classification and the individual rights affected." State v. Lilley, 171 N.H. 766, 772 (2019).

> Classifications based upon suspect classes are subject to strict scrutiny: the government must show that the legislation is necessary to achieve a compelling government interest and is narrowly tailored. Classifications which affect a fundamental right may be subject to strict scrutiny depending

> on the nature of the right and the manner in which it is affected. Below strict scrutiny is intermediate scrutiny, which is triggered when the challenged classification involves important substantive rights, and which requires the government to show that the challenged legislation is substantially related to an important government interest. Finally, absent a classification based upon suspect classes, affecting fundamental rights, or involving important substantive rights, the constitutional standard of review is that of rationality. Our rational basis test requires that legislation be rationally related to a legitimate government interest. Under this test, the party challenging the statute . . . must show that whatever classification is promulgated is arbitrary or without some reasonable justification.

Id. at 772–73 (internal citations omitted).

At the very least, the 2025 amendments likely created two classes of similarly situated claimants who are treated disparately—those who filed a claim before the June 30 deadline and received a decision without being subject to an "AG Veto," and those who filed a claim before the June 30 deadline but will receive a decision made by a different administrator and subject to an "AG Veto." See In re Concord Teachers (N.H. Retirement Sys.), 158 N.H. 529, 538 (2009) (accepting the argument that teachers who retired after a law went into effect were treated differently than teachers who retired prior to the law going into effect). However, the Court agrees with Defendants and believes that the rational basis standard applies to this classification.

While the right to recovery under tort is a fundamental right, see Brannigan v. Usitalo, 134 N.H. 50, 54–58 (1991) (affirming that the right to recover for personal injuries is an important substantive right), that right is only tangential to the main issue raised by Plaintiffs—what procedures they are afforded in the processing of their claims. Indeed, Plaintiffs are not asserting a loss of the right to recovery but are rather claiming that the procedures under which they can recover have been changed to their detriment. The Court is not aware of, nor have Plaintiffs identified, any fundamental

right to have a particular procedure apply. Accordingly, the Court concludes that the rational basis standard of review applies. See Ploof, 162 N.H. at 626–27 (agreeing with the trial court that while RSA 135-E affects the fundamental right to liberty, the classification created by the statute only affects the defendant's right to have certain rules and procedures applied to the civil commitment proceedings); cf. Brannigan, 134 N.H. at 58 (determining that a cap on non-economic damages violates the equal protection clause under an intermediate scrutiny review).

Under the rational basis standard, "the party challenging the statute bears the burden of showing that the statutory classification does not bear a rational relationship to a legitimate state interest." Ploof, 162 N.H. at 627; see also Cmty. Res. for Just., Inc. v. City of Manchester, 154 N.H. 748, 761 (2007) (quoting Heller v. Doe, 509 U.S. 312, 320–21 (1993)) (stating that the defendant to a statute has no obligation to produce evidence when there is a rational basis standard of review; the challenger must negate every conceivable basis which may support the statute). When conducting a rational basis review, the Court presumes that the challenged legislation is valid and "will not examine the factual basis relied upon by the legislature as justification for the statute . . .. [The Court's] sole inquiry is whether the legislature could reasonably conceive to be true the facts on which the challenged legislative classifications are based." Cmty. Res. for Just., 154 N.H. at 762. "Where a classification realistically reflects the fact that the two groups are not similarly situated in certain circumstances, and the legislation's differing treatment of the groups is sufficiently related to a government interest, it will survive an equal protection challenge." In re Sandra H., 150 N.H. at 638 (internal quotation and brackets omitted).

Presuming that the 2025 amendments are valid, Plaintiffs have failed to show that they can meet their burden under the rational basis standard. Plaintiffs have not submitted an argument addressing the rational basis standard, nor have they entered any evidence that establishes the 2025 amendments are not related to a legitimate government interest. On the other hand, Defendants have advanced that the 2025 amendments are meant to ensure that oversight of the expenditure of public funds remains with the branch of government responsible for spending such funds and that all claimants have an opportunity to benefit from the Fund. The Court finds that these are legitimate state interests. Therefore, in the absence of clear evidence to the contrary, the Court cannot conclude that Plaintiffs have shown a likelihood of success on the merits of their equal protection claim.

II. Immediate Irreparable Harm

Although, given the above analysis, the Court likely does not need to engage in an analysis of immediate irreparable harm, see Maine Educ. Ass'n Benefits Tr., 695 F.3d at 152; AZNH Revocable Tr., 176 N.H. 119, 130, it does so because, even were there a likelihood of success, Plaintiffs have not shown that they will suffer such a harm. In making this determination, the Court is cognizant of, and sympathizes with, the trauma detailed by Claimants over the two-day hearing. Further, the Court acknowledges the breach in trust caused by the last-minute amendments. However, the ultimate purpose of a preliminary injunction is to preserve the status quo. Thus, in the context of immediate irreparable harm, a preliminary injunction prevents the claimed harm from happening. See Maine Educ. Ass'n Benefits Tr., 695 F.3d at 152 (requiring a showing of irreparable harm in the absence of an injunction).

Here, the trauma asserted by Plaintiffs, which could be a harm for the purposes of a preliminary injunction in the right circumstances, has already happened. Further, and in view of Justice Broderick's resignation, Plaintiffs did not present clear evidence of a credible risk of immediate irreparable harm should a new administrator be selected or the "AG Veto" be permitted. With respect to the "AG Veto," there is no evidence that it presents a risk of immediate irreparable harm. Doe #334 testified that he accepted Justice Broderick's decision on his claim even after the 2025 version of the Act went into effect. Plaintiffs have indicated that most other claimants similar to Doe #334 have also accepted Justice Broderick's decision on their claims. See Doc. 27 ¶ 5 (Pl.'s Mot. for Emergency TRO). There is no evidence that the AG has invoked, or plans to invoke, the "AG Veto" with respect to Justice Broderick's outstanding decisions. Indeed, the latest filing by Plaintiffs indicates that the AG has approved some already. See id.

Furthermore, Plaintiffs' right to pursue their claims in court against the state or individual offenders has not been abridged. See RSA 21-M:11-a, IX(e) (stating that a claim is deemed withdrawn should the AG not affirmatively accept the administrator's decision, and, in such a situation, claimant retains the right to pursue their claim in a judicial or other forum). Thus, even if the "AG Veto" were used, Plaintiffs have not lost the right to recovery on their claims. While the Court recognizes that, under the current representations, the Plaintiffs' claims would be placed at the end of a trial courts' docket were they to pursue the claim in court following a withdrawal, the Court does not believe that any delay created by this process is evidence of immediate irreparable harm.

As for the administrator position, Justice Broderick has resigned and Plaintiffs have not shown that a new administrator cannot, or will not, be independent or fail to

comply with the Settlement Fund Act. Indeed, the Act has not changed the foundational nomination process for an administrator—the governor must appoint an individual that both the AG and claimants agree upon or pick from the names submitted by the two. RSA 21-M:11-a, III. Additionally, the requirement that the claims process be victim-centered and trauma-informed remains, RSA 21-M:11-a, IX(c), and the administrator is still bound to follow the guidelines and claims process, RSA 21-M:11-a, III (directing the administrator to process claims as provided in the Act), IV(b) (binding the administrator to the approved guidelines for evaluating claims). Finally, an administrator is presumed to be capable of reaching a just and fair result. See McKay v. N.H. Compensation Appeals Bd., 143 N.H. 722, 729 (1999). Thus, absent any evidence to the contrary, Plaintiffs assertions that the administrator cannot be independent or that the AG will veto pending claims is speculative and insufficient to demonstrate an immediate irreparable harm.[5]

[5] The Court also recognizes a potential problem inherent in granting the relief which Plaintiffs seek and uses this opportunity to briefly discuss the issue. The Court is unaware of any authority that permits courts to order a legislature to revert to a prior version of a statute or to order the executive branch to enforce a prior version of a statute. Rather, the Court can supply a limiting construction or a partial invalidation that narrows the scope of an unconstitutional statute, see, e.g., State v. Gubitosi, 157 N.H. 720, 727 (2008) (creating a limiting construction of an overly broad statute), sever an unconstitutional provision from a statute, see, e.g., Associated Press v. State of N.H., 153 N.H. 120, 141–43 (2005), or simply invalidate a statute for being unconstitutional, see State v. Pierce, 152 N.H. 790, 793 (2009); State v. Probst, 151 N.H. 420, 422 (2004). Directing the legislature or executive to revert to, and enforce, a prior version of a statute would likely violate the Separation of Powers Clause because the Court would be usurping the essential powers of the other branches. See In re S. N.H. Medical Ctr., 164 N.H. 319, 327 (2012); N.H. CONST. pt. I, art. 37 (noting the separation of powers), pt. 2, art. 5 (stating that the power of the legislature is to make laws), pt. 2, art. 41 (stating that the power of the executive is to execute the laws), pt. 2, art. 72-a (stating that the judiciary power is vested in the courts). Therefore, even if Plaintiffs succeeded on all grounds, the Court does not believe it could grant the relief that they seek. But given the posture of the case before it and the analysis above, the Court need not, and does not, reach any conclusion as to the identified problem with Plaintiffs' requested relief.

Accordingly, the Court concludes that Plaintiffs have not shown a likelihood of success on the merits or an immediate irreparable harm with respect to all three of their claims.

Conclusion

For the foregoing reasons, Plaintiffs' motion for preliminary injunction is DENIED.

SO ORDERED.

September 12, 2025

Hon. Daniel I. St. Hilaire
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 09/12/2025