THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

No. 217-2025-CV-480

Andrew Foley, et al.

v.

State of New Hampshire, et al.

MOTION EXCLUDE TESTIMONY OF JOHN BRODERICK

The defendants, by and through counsel, submit the following motion to exclude the testimony of John Broderick from the August 20, 2025 preliminary injunction hearing:

Introduction

1. The plaintiffs have listed John Broderick, the former Claims Administrator of the YDC settlement fund, as a witness they may call during the August 20 hearing. Because the plaintiffs do not provide any report that would satisfy the requirements of RSA 516:29-b, they presumably do not intend to call Administrator Broderick as an expert. But they have identified five exhibits in their exhibit list that provide some indication of what testimony they intend to elicit from Administrator Broderick. They are:

- A June 30, 2025 public bulletin that Administrator Broderick issued related to the amendments challenged in this case (Exhibit 15);
- A June 30, 2025 Boston Globe article entitled "YDC fund administrator warns new N.H. law will remove him, amid concerns of fairness (Exhibit 16);
- A July 21, 2025 public bulletin that Administrator Broderick issued related to his resignation (Exhibit 25);

- A July 22, 2025 InDepthNH.org article entitled "Ayotte Says Broderick Resigned YDC Fund Post; He says, 'I didn't resign. They Took My Job Away'" (Exhibit 26); and

- A July 31, 2025 op-ed published in InDepthNH.org written by Administrator Broderick entitled "It's Just Not Right" (Exhibit 27).

2. This case presents questions of statutory construction. Extrinsic evidence is irrelevant to the Court's analysis and inadmissible to prove the plaintiffs' claims. Administrator Broderick likewise cannot offer testimony about whether he agrees with the challenged amendments or whether he thinks they are good public policy; those questions are reserved for the Legislature. And several of Administrator Broderick's public statements are incorrect as a matter of law. Administrator Broderick's testimony should therefore be excluded in its entirety.

Discussion

A. Administrator Broderick's testimony is not admissible to prove the plaintiffs' claims.

3. Relevance is the threshold prerequisite for evidence to be admissible. N.H. R. Evid. 401, 402. Administrator Broderick's anticipated testimony is not relevant to prove the plaintiffs' claims and is therefore inadmissible.

4. The plaintiffs advance claims under the contract clauses and equal protection provisions of the State and Federal Constitutions. They also contend that the defendants have breached an enforceable public contract that exists between them and the State by operation of RSA 21-M:11-a.

5. "When evaluating a contract clause claim, a court must first determine whether a change in state law has resulted in a substantial impairment of a contractual relationship." *Am. Fed'n of Teachers-N.H. v. State*, 167 N.H. 294, 301 (2015) (citation and quotation marks omitted). "This inquiry, in turn, 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.* (citation and quotation marks omitted).

6. When, as here, a plaintiff contends that a statute creates enforceable contract or vested rights, courts apply the "unmistakability doctrine." *Id.* This requires a court to engage in statutory interpretation to determine whether "the challenged legislative enactment evinces the clear intent of the state to be bound to particular contractual obligations." *Id.* Likewise, when determining whether a statutory amendment substantially impairs a vested right under existing law, a court must first interpret the amendment's language and then compare the amendment, as interpreted, against the vested contractual right in question. *See, e.g.*, *State Employees' Ass'n of N.H. v. State*, 161 N.H. 730, 738–40 (2011) (conducting this analysis); *see also City of Mancheseter v. Bellenoit*, 2024 N.H. 28, ¶¶ 46–49 (MacDonald, C.J., dissenting) (conducting this analysis). In other words, all three of the components present legal questions of pure statutory interpretation.

7. So, too, does the plaintiffs' equal protection claim. In determining whether the challenged amendments treat similarly situated persons differently, the Court must again engage in statutory construction. *See, e.g.*, *State v. Lilley*, 171 N.H. 766, 775–76 (2019) (interpreting ordinance to determine whether it discriminated on basis of gender). Likewise, whether the amendments impinge "statutory or common law rights applicable at the time of injury," *Ocasio v. Fed. Express Corp.*, 162 N.H. 436, 448–49 (2011), is a legal question.

8. The same is true with respect to the plaintiffs' standalone breach of contract claim. Whether RSA 21-M:11-a creates a contract is a legal question resolved through statutory construction, as previously discussed. In any event, it is a matter of black-letter law that

sovereign immunity bars claims arising out of alleged implied-in-law contracts with the State. *XTL-NH, Inc. v. N.H. State Liquor Comm'n*, 170 N.H. 653, 657–58 (2018).

9. It is well settled that "[t]he interpretation of a statute presents a question of law." *In the Matter of Landgraf*, 176 N.H. 724, 727 (2024). "A witness, expert or otherwise, may not testify to conclusions of law." *Dartmouth Coll. v. N. Branch Constr., Inc.*, No. 2009-CV-00152, 2014 N.H. Super. LEXIS 4, at *16 (Mar. 24, 2014) (citing *Saltzman v. Saltzman*, 124 N.H. 515, 524 (1984)); *cf. Julmist v. Prime Ins. Co.*, 92 F.4th 1008, 1022 (11th Cir. 2024) ("We have repeatedly said, in a number of contexts, that we do not need, want, or accept expert testimony on questions of law."). To the extent that the plaintiffs would seek to elicit testimony from Administrator Broderick about how RSA 21-M:11-a should be interpreted or construed, that testimony is plainly inadmissible. Administrator Broderick's testimony should be excluded if offered for this purpose.

B. Administrator Broderick may not offer testimony on whether he agrees with the challenged amendments or whether they are good public policy.

10. It is evident from Administrator Broderick's public statements that he disagrees with the amendments challenged in this case and does not believe that they are good public policy. Administrator Broderick is free to hold these beliefs, but they do not bear on the issues before this Court.

11. These assertions are instead "public policy arguments . . . made in the wrong forum." *Doe v. Comm'r, N.H. Dep't of Health and Human Servs.*, 174 N.H. 239, 260 (2021) (citations omitted). "Because [the judiciary's] function is not to make laws, but to interpret them, any public policy arguments relevant to the wisdom of the statutory scheme and its consequences should be addressed to the General Court." *Id.* (citation and quotation marks omitted). Put differently, "courts are not concerned with whether a statute is wise, reasonable, or expedient."

Petition of Boston & Maine Corp., 109 N.H. 324, 325 (1969). "As is always the case with legislative enactments, the wisdom of the measure proposed is for the legislature, and not within the prerogative of [courts] to determine." *Opinion of the Justices*, 111 N.H. 136, 143 (1971).

12. Administrator Broderick is certainly entitled to his own opinions as to the wisdom of the challenged amendments. He can express these beliefs to the media and he can lobby the Legislature to change the law. What he cannot do, however, is offer testimony as to his policy preferences as evidence in a judicial proceeding concerning whether recent legislative changes are constitutional. The doctrine of judicial review "authorizes courts to determine whether a law is constitutional, not whether it is necessary or useful" or "whether [a law] reflects wise policy." *State v. LaFrance*, 124 N.H. 171, 178 (1983).

C. Several of Administrator Broderick's public statements are inadmissible because they are pure legal conclusions that are manifestly wrong as a matter of law.

13. Administrator Broderick has asserted publicly that, under the challenged amendments, the defendant in the underlying litigation now gets to decide who is the Claims Administrator and is able to veto claims awards. *See, e.g., id.* (asserting that, under the amendments, the "defendant get[s] to choose and remove the judge in their case and get[s] to reject any jury verdict with which it disagrees"). In this same vein, he has asserted that the State abused and traumatized claimants. *See, e.g.*, Pls.' Ex. 25 (describing the claimants as "the very people the state had earlier abused"). He also has asserted that he was forced out of his position as Claims Administrator by operation of the amendments. *See, e.g.*, Pls.' Ex. 26 (asserting that his position "was taken from [him], without cause, by statutory amendment on July 1, 2025"). These statements are all beyond the scope of appropriate testimony and incorrect in any event.

14. Whether the challenged amendments operate in the manner Administrator Broderick alleges is a question of statutory interpretation. As previously discussed, a witness

cannot testify as to the proper interpretation of a statute because that is a legal question beyond the scope of appropriate testimony. For this reason alone, Administrator Broderick cannot provide testimony on how the amendments as issue in this case operate as a matter of law.

15. But Administrator Broderick's legal assertions are also incorrect. In asserting that "the defendant" is now able to decide who is Claims Administrator and can veto claims awards, Administrator Broderick appears to be interchangeably referring to several different actors as "the State." This flexible usage is incorrect as a legal matter.

16. The State of New Hampshire refers to the people of the State who created the State as a body politic, N.H. Const. pt. 2, art. 1, and retained in themselves the State's sovereign power, N.H. Const. pt. 1, art. 7. As used in this sense, "the State" has always retained the power to determine whether claimants receive compensation under the claims fund (or indeed whether the claims fund even exists) because the fund is a creature of statute enacted in the name of the people.

17. The State consists of three branches of government. *See* N.H. Const. pt. 2, art. 2 [Legislature, How Constituted]; art. 41 [Governor, Supreme Executive Magistrate]; art. 72-a [Supreme and Superior Courts]. One of those branches is the judicial branch, which, among other things, placed many claimants at YDC and other facilities through the juvenile justice system. Administrator Broderick was just as much an agent of the State as a judicial branch employee as he would have been as an executive branch employee.

18. Notably, though, the plaintiffs do not allege in the underlying litigation that the entire State, as a body politic, abused them. The plaintiffs instead assert claims against a single executive branch agency—DHHS—concerning how it operated the YDC and other facilities decades ago. Individual criminal actors who are alleged to have perpetrated the abuse in question

have been or are being prosecuted by executive branch officials. DHHS is not led today by the same people who operated it decades ago.

19. Administrator Broderick thus imputes to government actors today responsibility for the plaintiffs' alleged past injuries. This is manifestly wrong as a matter of law and fact. Indeed, this type of rhetoric saps Administrator Broderick's statements of any credibility and impartiality. His assertions in this regard are political ones that hold no evidentiary value in a court of law.

20. The same is true of Administrator Broderick's assertion that he was forced out of his position by operation of the amendments. This assertion appears to be premised on the view that the amendments effectively repealed RSA 21-M:11-a, III and replaced the previous version of that provision, thus requiring a new Administrator to be appointed by the Governor and approved by the Executive Council. But the amendments in question do not, on their face, purport to repeal and replace RSA 21-M:11-a, III. They instead substitute numerous references to the Supreme Court and the judicial branch with references to the Governor and Executive Council and the executive branch. In doing so, the amendments shift the Administrator from the judicial branch to the executive branch and change how the Administrator is appointed and terminated. The remainder of RSA 21-M:11-a, III remains intact. Any suggestion that the amendments eliminated the prior version of RSA 21-M:11-a, III and replaced it with an entirely new version is incorrect.

21. There is, moreover, no indication in the amendments to RSA 21-M:11-a, III that they were intended to operate retrospectively to terminate the current Administrator and require the appointment of a successor. *See State v. Fuller*, 169 N.H. 154, 160 (2016) ("As a general rule, statutes are presumptively intended to operate prospectively." (citation and quotation marks

omitted)). Rather, a far more sensible reading of the amendments is that they operate to require an orderly transition of the Administrator from the judicial branch to the executive branch. This reading effectuates the overall purpose of RSA 21-M:11-a, *Rand v. State*, 2025 N.H. 27, ¶ 7, by maintaining a process by which claimants can seek to resolve their claims. This construction also operates "in harmony with the overall statutory scheme," *id.*, by continuing to give effect to the other provisions of RSA 21-M:11-a, which were not amended and remain in force.

D. Administrator Broderick's testimony should be excluded under Rule 403.

22. Even if Administrator Broderick's testimony was minimally relevant to some issue before the Court, it should still be excluded under Rule 403. Rule 403 provides that "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

23. This case presents concrete legal questions that must be resolved through the established tools of statutory construction. Administrator Broderick's public statements are policy pleas based on incorrect assertions of law. It would be highly prejudicial to the defendants for these types of statements to inform how this Court assesses the legal questions before it.

24. For similar reasons, allowing Administrator Broderick's testimony would confuse the issues and waste time. Administrator Broderick's opinions are based on incorrect statements of law and fact. He seeks to impute to current government officials allegations related to how a single executive branch agency operated decades ago. He also incorrectly asserts that the amendments operated to remove him from office. This testimony would serve no purpose other than to obscure the straightforward legal issues before the Court and unnecessarily use up limited judicial resources.

Conclusion

25. For the foregoing reasons, the Court should exclude Administrator Broderick's testimony from the August 20 preliminary injunction hearing.

WHEREFORE, the defendants request that this Honorable Court:

A. Grant this motion;

B. Exclude Administrator Broderick's testimony from the August 20 preliminary injunction hearing; and

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

Respectfully submitted,

Governor Kelly Ayotte; Attorney General John Formella; State of New Hampshire

By their attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: August 18, 2025

By: /s/ *Samuel Garland*

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the Court's electronic filing system to all parties of record.

Date: August 18, 2025

/s/ *Samuel Garland*
Samuel Garland