THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

Case No. 217-2025-CV-00480

Andrew Foley;
Ronald "Chuck" Miles; and
Jane Doe #231
On behalf of themselves and all those similarly situated

v.

The State of New Hampshire;
New Hampshire Governor, Kelly Ayotte, in her official capacity; and
New Hampshire Attorney General, John Formella, in his official capacity

OBJECTION TO STATE'S MOTIONS TO EXCLUDE EXPERTS

For the reasons set forth herein, Plaintiffs object to Defendants' two Motions to Exclude Testimony of Dylan Gee, Ph.D. (Index #27) and Deborah E. Greenspan (Index #28). In support, Plaintiffs state as follows:

Defendants seek to exclude two of Plaintiffs' proposed witnesses, experts Dylan Gee, Ph.D, and Deborah Greenspan, largely on relevance grounds. In essence, Defendants claim that these experts have no relevant testimony to offer because they cannot opine on purely legal issues or their own policy preferences, that their testimony lacks probative value, and that their opinions are unsupported. (*See generally* Defs.' Mot. Exclude Attorney Greenspan; Defs.' Mot. Exclude Dr. Gee.)

Perhaps these contentions would hold water if these experts were being offered for any of the purposes Defendants suggest—to interpret an ambiguous statute, opine on the existence of a

contract,[1] or criticize the challenged amendments based on public policy. But this is not why Plaintiffs are calling these experts.

Pursuant to New Hampshire Rule of Evidence 401, evidence is relevant if "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." As Plaintiffs have previously explained, Attorney Greenspan will provide expert testimony "regarding the significance of the challenged amendments to the Settlement Fund claims process," specifically "that the challenged amendments to the Settlement Fund substantially undermine its neutrality and independence and constitute material changes that alter the very nature of the Fund." (Pls.' Reply in support of Mot. Prelim. Inj. at 6-7 (citing Greenspan Aff. ¶¶ 26-32).) In other words, Attorney Greenspan, relying on her extensive expertise in this area, will be able to explain why an administrator's neutrality is an essential condition of settlement funds. Fairness is not a mere policy preference; it is a requirement.

Although in Plaintiffs' view this should be a given, Defendants continue to deny that the neutrality of the Administrator is an important condition of the Settlement Fund that Plaintiffs agreed to participate in. Defendants maintain that "[t]he claims process prescribed in RSA 21-M:11-a has not substantively changed in the wake of the 2025 amendments. . . . The victim-centered, trauma-informed process in which the Administrator receives information from a Claimant has not changed." (Defs.' Obj. Prelim. Inj. at 21.) Plaintiffs strongly disagree and will offer Attorney Greenspan's expertise in designing, implementing, and operating complex

[1] Although Defendants spend nearly half of each motion discussing these first two points, Defendants concede in their motion to exclude Attorney Greenspan that "[t]o be fair, though, it does not appear that the plaintiffs intend her testimony to operate in this way. Attorney Greenspan does not purport to offer opinions on any of the purely legal questions the plaintiffs' claims present." (Defs.' Mot. Exclude Attorney Greenspan ¶ 8.) While it is misleading for Defendants to suggest that Plaintiffs' claims present "purely legal questions," Defendants are correct that Attorney Greenspan's testimony is not being offered for these purposes, nor is Dr. Gee's.

settlement processes to explain why an administrator's impartiality is an essential and material component of settlement funds. Her opinions are relevant to this issue. *See* N.H. R. Ev. 401.

Regarding Dr. Gee, Defendants again ignore the primary purpose of her testimony. Dr. Gee will testify to "the psychological impacts and harm caused by implementation of the challenged amendments" because Plaintiffs and other class members "are a highly vulnerable population by virtue of the prior trauma they endured as children, and that the changes to the Settlement Fund will likely be experienced as further institutional betrayal, which is particularly and uniquely harmful to them given their history of abuse by the State." (Pls.' Reply in support of Mot. Prelim. Inj. at 7 (citing Gee Aff. ¶¶ 16, 17, 20, 21).) Defendants attempt to disregard Dr. Gee's testimony about the "effects" of the amendments as being irrelevant to the Court's analysis. Defendants' reasoning is circular: the challenged amendments have not caused Plaintiffs any harm, so of course testimony about the harmful "effects" of the amendments is irrelevant. Defendants are essentially asking this Court to adopt their legal theory before the preliminary injunction hearing and prevent Plaintiffs from introducing any evidence surrounding irreparable harm. The Court should reject this ploy and allow Plaintiffs to make their case. Given that the upcoming preliminary injunction hearing will turn in large part on whether Plaintiffs have met their burden of demonstrating irreparable harm, Dr. Gee's testimony on the harmful psychological effects of the statutory amendments is plainly relevant. *See* N.H. R. Ev. 401.

Defendants' next argument that Attorney Greenspan and Dr. Gee mischaracterize the entity of "the State" is also misplaced. These experts have not been asked to opine on the structure of New Hampshire state government. In any event, the experts discuss the State in conditional terms based on the victims' understanding, not necessarily their own. (*See, e.g.,* Gee Aff. ¶ 12 ("*the way the victims reasonably see it*, the party most responsible for their abuse—the State—has taken

control of the process for deciding the merits of their claims") (emphasis added); Greenspan Aff. ¶ 31 ("It strains credulity to believe that a claimant would ever file a claim in the Settlement Fund and agree to stay their individual lawsuits if they knew that the State—*the party alleged to be responsible for the harm they suffered*—would replace the independent and impartial Administrator . . .") (emphasis added).) Experts routinely accept premises or assumptions like these in rendering opinions.

Regardless, Defendants' position on the proper definition of "the State" has already been repeatedly rejected in the underlying YDC action. *See, e.g., Meehan v. State*, No. 217-2020-CV-00026, Order on State Defs.' Motions to Dismiss the Master Complaint Nos. 1 and 2 at 1 n.1 (N.H. Super. Aug. 15, 2023) (Schulman, J.) (*Meehan* Index #455) (noting that all of the agencies and entities named in the YDC Master Complaint, such as the State of New Hampshire, DHHS, DYDS, DCYF, etc. "are part of the Executive Branch of the State of New Hampshire. Thus, the only real defendant is the State itself"); *see also id.* Order on Plaintiff's Mot. in Limine (Judicial Estoppel) at 6-7 (N.H. Super. March 9, 2024) (Schulman, J.) (*Meehan* Index #674) (declining to adopt the State's position that the "State Defendants" in the civil YDC cases are not the same party as the State of New Hampshire criminally prosecuting former YDC employees). This Court should adopt Judge Schulman's reasoning and reject Defendants' contention that the experts' understanding of the State is "political" or otherwise flawed.

Defendants also argue that the testimony of both experts should be excluded under Rule 403, again premised on their misleading contention that these experts will only offer legal conclusions or policy preferences. As stated above, Attorney Greenspan will offer testimony concerning the importance of neutrality and impartiality to the Settlement Fund (and all settlement funds). And, Dr. Gee will offer testimony about the severe, irreparable harm that will be suffered

by Plaintiffs and the other class members if the challenged amendments are implemented. Contrary to the State's contention, the testimony of both experts carries high probative value to multiple central issues in this case. By contrast, there is minimal risk of unfair prejudice or confusion, given that this testimony will be presented to the Court rather than a jury.

Finally, like their other arguments, Defendants' contention surrounding the requirements of RSA 516:29-a is premised on the false assumption that the experts' opinions "are based on manifestly incorrect statements of law and fact." (*See* Defs.' Mot. Exclude Attorney Greenspan ¶ 24; Defs.' Mot. Exclude Dr. Gee ¶ 25.) As stated above and in their affidavits, both Attorney Greenspan and Dr. Gee have extensive expertise in their respective fields, and they draw on this wealth of knowledge in forming their opinions. Attorney Greenspan describes over half a dozen cases and programs she has been involved in or with which she is familiar, and which she can compare to the Settlement Fund at issue in this case (Defs.' Mot. Exclude Attorney Greenspan ¶¶ 9, 17-25), and Dr. Gee's entire affidavit is interwoven with applicable academic literature in the area of child psychology, particularly regarding the lifelong impacts of childhood trauma (*see generally* Def.'s Mot. Exclude Dr. Gee.) To the extent Defendants take issue with how the experts applied their experience to their conclusions, that is an issue of weight, not admissibility.

Consistent with the foregoing, both Attorney Greenspan and Dr. Gee will offer relevant and highly probative testimony at the upcoming preliminary injunction hearing regarding the importance of neutrality to the Settlement Fund and the irreparable harm suffered by Plaintiffs by Defendants' destruction of that neutrality. This Court should conclude that there is no basis to exclude the testimony of either expert, and deny Defendants' motions.

Respectfully submitted,

Dated: August 18, 2025

PLAINTIFFS ANDREW FOLEY, RONALD "CHUCK" MILES, and JANE DOE #231 (on behalf of themselves and all those similarly situated)

By their attorneys,

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CERTIFICATE OF SERVICE

I certify that on August 18, 2025, I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's e-filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case.

/s/ W. Daniel Deane