

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 DEFENDANTS’ MOTION
TO EXCLUDE TESTIMONY OF JOHN BRODERICK**

For the reasons set forth herein, Plaintiffs object to Defendants’ Motion to Exclude Testimony of John Broderick (Aug. 18, 2025). In support, Plaintiffs state as follows:

As a preliminary matter, Defendants’ motion should be summarily rejected based on untimeliness and gamesmanship. Defendants have known since the July 8, 2025 status conference that Plaintiffs may call Justice Broderick to testify at the preliminary injunction hearing, which Plaintiff confirmed in their witness list filed August 6, 2025. Defendants did not seek to exclude Justice Broderick’s testimony prior to the originally scheduled hearing date of August 12, 2025. But now, not even two full days before the new hearing date of August 20, 2025, they have filed a last-minute motion to exclude a plainly relevant witness, which serves only to waste valuable preparation time prior to the hearing.

Defendants’ motion to exclude Justice Broderick is substantively identical to its other two motions to exclude Plaintiffs’ experts, Attorney Deborah Greenspan and Dr. Dylan Gee. Should the Court wish to engage with the substance of this motion to exclude Justice Broderick despite Defendants’ obvious gamesmanship, the Court should deny the motion for the same reasons stated

in Plaintiffs' recently filed objection regarding their proposed experts. Plaintiffs incorporate that objection by reference here (Pls.' Obj. Mots. Exclude Experts, Aug. 18, 2025).

Like Defendants' other two motions, the motion to exclude Justice Broderick's testimony is entirely premised on the flawed assumptions that this case presents purely legal questions surrounding statutory interpretation and that no witness's testimony could possibly be relevant to the Court's assessment of those legal questions. Defendants are incorrect. Similar to Plaintiffs' expert Attorney Greenspan, Justice Broderick will speak to the materiality of Defendants' breach of contract. "Whether a breach of contract is material is a question of *fact*." *Found. for Seacoast Health v. Hosp. Corp. of Am.*, 165 N.H. 168, 181 (2013) (emphasis added). As the former Administrator of the Settlement Fund, Justice Broderick is likely better qualified than anyone to explain to the Court how the challenged amendments fundamentally alter the nature and terms of the Settlement Fund claims process; in other words, that the amendments "go to the root or essence of the agreement between the parties" such that Defendants' breach is "vital to the existence of the contract." *See Ellis v. Candia Trailers and Snow Equip., Inc.*, 164 N.H. 457, 467 (2012) (quoting 23 Williston on Contracts § 63:3 at 438-39 (4th ed.))

Justice Broderick will not merely express his personal disagreement with the challenged amendments, or that he thinks they are not "good public policy." (*See* Defs.' Mot. Exclude Justice Broderick ¶ 10.) He can speak directly to the materiality of Defendants' breach, making his testimony plainly relevant for purposes of Rule 401 and highly probative for purposes of Rule 403. The Court should permit him to provide lay testimony, based on his experience administering the Settlement Fund claims process, about how the challenged amendments go to the root or essence of the contract between the parties. *See State v. Boulton*, 174 N.H. 470, 477-78 (2021) (citing N.H. R. Ev. 701 and explaining that "[t]estimony based upon a witness's personal knowledge gained

through employment is admissible as lay testimony, so long as the witness does not testify to scientific or technical processes which an average lay person would not be able to comprehend.”)

There is no basis to exclude Justice Broderick’s testimony. Defendants’ motion should be denied.

Respectfully submitted,

Dated: August 19, 2025

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

By their attorneys,

RILEE & ASSOCIATES, P.L.L.C.

NIXON PEABODY LLP

/s/ Cyrus F. Rilee, III

/s/ W. Daniel Deane

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CERTIFICATE OF SERVICE

I certify that on August 19, 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