

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

SUPERIOR COURT

Docket No. 217-2025-CV-00480

Andrew Foley, et al.

v.

State of New Hampshire, et al.

DEFENDANTS' OBJECTION TO PLAINTIFFS' MOTION TO RECONSIDER

The State of New Hampshire, et al., by and through counsel, the New Hampshire Department of Justice, submits the following Objection to Plaintiffs' Motion for Reconsideration, stating as follows:

1. "A party intending to file a Motion for Reconsideration . . . shall state with particular clarity, points of law or fact that the court has overlooked or misapprehended..." N.H. Superior Court Rule 12(e).

2. "Motions for reconsideration are poorly named. The title suggests that whenever a litigant is disappointed, he is free to ask the court to mull it over again, this time this time favorably to his position, presumably on the theory that by mere repetition – perhaps raising the level of rhetoric – the court will see it his way. This view of a motion to reconsider is erroneous." *Northwest Bypass Group v. U.S. Army Corps. Of Eng'rs.*, 552 F. Supp. 2d 137, 144 (D. N.H. 2008).

3. Such is the case presently before this Court. Plaintiffs fail to offer any new evidence or any errors in the court's legal analysis. They do not point to any law or fact that the court overlooked or misapprehended.

4. Rather, they increase the rhetoric and insist that the court missed the point by distinguishing the cases the court cited and repackaging the same facts.

5. Plaintiffs arguments fail, and the court should reject their request for reconsideration.

I. Plaintiffs' attempt to repackage their breach of contract claims is unpersuasive.

6. Plaintiffs' arguments in their motion for reconsideration do not differ from those in their original motion: the 2025 amendments to the Youth Development Center (YDC) Claims Administration and Settlement Fund Act (the Act) breached a contract between the State of New Hampshire and the claimants in the YDC settlement fund. Taking a phrase from the Court's opinion out of context, Plaintiffs attempt to use that as a stepping off point to try to demonstrate that the Court misapprehended their position that there are vested components of a contractual relationship between the parties.

A. No contractual relationship

7. Plaintiffs' quotation of this court's opinion that "[t]he Court expressly finds that Plaintiffs are likely to prove they entered contractual relationships with the State. The Court expressly finds that the Settlement Fund Act 'likely creates a contract for the resolution of a claim filed by a former YDC resident'" is incomplete and misleading. Pl. Mot. p. 2 (quoting *in part* Opinion at 14). Plaintiffs' argument that the Court somehow acknowledges that a contractual relationship exists between the claimants and the State ignores entirely the Court's opinion two pages earlier when,

quoting *Prof. Firefighters of N.H. v. State of N.H.*, 167 N.H. 188 (2014), the Court finds that “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.” *Id.* at 194.

8. This Court correctly concludes that the “general terms of offer and acceptance are not enough to bind the State to the 2024 version of the Act.” Opinion at 16.

9. Plaintiffs ignore the Court’s application of the unmistakability doctrine – a “cannon of contract construction” – which “mandates that a challenged legislative enactment must evince a clear intent of the state to be bound to a particular contractual obligation.” Opinion at 13 (citing *American Federation of Teachers N.H. v. State of N.H.*, 167 N.H. 294, 301 (2015)). Plaintiffs’ reconsideration request ignores entirely the Court’s well-reasoned conclusion that “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.” Opinion at 14-15.

10. With this complete context of the Court’s analysis, Plaintiffs’ assertion that the Court “agreed” with the notion that the YDC claimants entered into a “contractual relationship” with the State is both incorrect and misleading.

B. The 2025 Amendments to the Act did not impermissibly alter vested components of a contractual relationship

11. Plaintiffs’ attempts to distinguish the authorities cited by the Court while simultaneously rehashing the same facts are insufficient support for a motion for

reconsideration. “A motion for reconsideration allows a party to present, [with particular clarity,] points of law or fact that a court has overlooked or misapprehended.” *Curtis Commons, LLC v. Arel*, 2025 N.H. Super. Lexis 2* (quoting *Broom v. Cont’l Cas. Co.*, 152 N.H. 749, 752 (2005)). Furthermore, “a party is not permitted to introduce a new legal argument which could have been raised and argued earlier. *Id.* (citing, *Taylor v. Sch. Admin. Unit #55*, 170 N.H. 322, 331 (2017)). “Neither can a party use a motion for reconsideration to re-litigate issues the court has already decided.” *Id.* at *4 (citing, *NW Bypass Group*, 552 F. Supp. 2d at 144).

12. First and foremost, Plaintiffs do not offer any new facts to support their request for reconsideration. Plaintiffs still contend that the 2025 amendments to the Act granting the Attorney General veto authority over the administrator’s award and placing the administrator within the Executive Branch violates the YDC claimants’ supposed contract with the State. The relentless attempts to squeeze these facts past well-settled authority is the crux of this ill-fated reconsideration request.

1. Plaintiffs continue to ignore the unmistakability doctrine to their detriment

13. Plaintiffs rely upon the notion that the Act “speaks in the language of contract” in their effort to show that the State legislature intended to create a binding agreement with the YDC claimants. Pl. Mot. at 4. Addressing that point, this Court properly noted that “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.” Opinion at 16. This statement is predicated upon the cannon of contract interpretation – the unmistakability doctrine – which is carefully laid out by the Court. Opinion at 13. Finding no clear intent for the State to be contractually bound by the

terms of the Act, this Court correctly recognized that there is also a complete absence of any “language within the Act that expressly forbids amendments” to its terms. Opinion p. 15.

14. Plaintiffs’ attempt to distinguish *National Education Ass’n v. Retirement Bd. Of the R.I. Employees’ Retirement System*, 172 F.3d 22 (1st Cir. 1999), by focusing on the facts of the case is misguided, as they completely overlook the guiding principles of the decision - principles upon which this Court properly relied. Plaintiffs unsuccessfully argue that the First Circuit, analyzing a public benefit program for contract terms, was reluctant to find a binding contractual obligation “without either clear contractual language or language explicitly precluding amendment.” Pl. Mot. at 4. Plaintiffs completely ignore the fact that the *NEA* decision reaffirmed the well-settled principle that, “absent some clear indication that the legislature intends to bind itself contractually, the presumption is that ‘a law is not intended to create a private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.’” *Id.* at 27 (citing, *Dodge v. Board of Education*, 302 U.S. 74, 79 (1937)). This Court, much like the authorities upon which it relies, correctly focuses upon the fact that legislatures are not in the business of using statutes to create contracts, as such an effort on the part of a legislature requires unmistakable clarity in the language of the statute. That is not the case here.

15. This Court correctly applied the principles set forth by the First Circuit when it expressed its hesitance in finding a contractual obligation because “the clear statement requirement for ‘legislative’ contracts has been regularly imposed by the Supreme Court and followed by this court. [citations omitted] The policy reasons for

protecting legislative power against implied surrender are too obvious to warrant much elaboration, [citations omitted] and it is easy enough for a statute to explicitly authorize a contract or to say explicitly that the benefits are contractual promises...” *Id.* Plaintiffs continued efforts to contort the same facts in an effort to reach a contract between themselves and the State must fail, as there is no clear creation of a contractual obligation here.

2. Amendments to the Act confirm the Legislature’s intent not to be bound to contractual terms

16. When it comes to the amendments to the Act, Plaintiffs’ request for reconsideration does not object to amendments that they like and that favor their cause – it challenges only the amendments they deem objectionable. These challenges to the Court’s Opinion rehash the same arguments (“[a]s previously argued” – Pl. Mot. at 6). In 2023 and 2024, the Act was amended in ways that Plaintiffs argue were agreed-upon, and thus permissible. Pl. Mot. p. 6. However, if an amendment to the Act, like the one passed in 2025, involved terms with which they did not agree, Plaintiffs claim that the legislation breached their alleged contract with the State. In other words, Plaintiffs effectively argue that the Legislature yielded to them absolute veto power over any legislative changes affecting the claims fund.

17. That Plaintiffs would make such remarkable assertion betrays a glaring weakness at the heart of their case. Because Plaintiffs cannot point to any *specific* statutory language preventing the Legislature from enacting the amendments challenged in this case, they must resort to arguing that *all* of RSA 21-M:11-a cannot be amended without their permission. But this is the exact sort of drastic incursion into the Legislature’s essential powers that the “unmistakability doctrine” is designed to prevent.

See Prof'l Fire Fighters of N.H. v. State of N.H., 167 N.H. 188, 194 (2014) (“[T]o construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of a legislative body.” (citation and quotation marks omitted)); *id.* (“The doctrine serves the dual purposes of limiting contractual incursions on a State’s sovereign powers and of avoiding difficult constitutional questions about the extent of state authority to limit the subsequent exercise of legislative power.” (citation and quotation marks omitted)). It is for *this reason* that the “general terms of offer and acceptance are not enough to bind the State to the 2024 version of the Act.” Opinion at p. 16.

18. “The principal function of a legislature is not to make contracts, but to make laws that establish the policy of the state. . . . 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 be to limit drastically the essential powers of a legislative body.” *NEA – RI*, 172 F.3d at 27 (citing *National R.R. Passenger Corp. v. Atchison, Topeka and Santa Fe Ry. Co.*, 470 U.S. 451, 465-66 (1985)). This Court correctly noted that there is no clear and unequivocal expression in the Act to evidence a contract, or that there were to be no amendments to its terms. These facts, unchanged from Plaintiffs’ initial arguments, support this Court’s rejection of Plaintiffs’ request for reconsideration.

3. Settlement Fund Act v. Claims procedure

19. Plaintiffs’ final, inappropriate attempt to squeeze the same facts through their request for reconsideration involves an argument that the Court improperly conflated changes to the claims process with amendments to the Act. Plaintiffs seem to

argue that the legislature’s contemplation of amendments to the claims process did not involve the alteration of terms with the same impact upon the claims process as amendments to the Act. Pl. Mot. at 8-10. Plaintiffs provide no legal support for the proposition that the perceived magnitude of a subsequent statutory amendment bears on whether that amendment is evidence that the Legislature did not intend a statute to operate as a binding public contract. Nor is it clear that the amendments at issue here are of a lesser magnitude than the ones Plaintiffs seem to take issue with (which included, among other things, a significant expansion of fund-eligible claims and substantial increase in maximum award amounts).

20. Again, as set forth more fully above, Plaintiffs have identified no language in RSA 21-M:11-a that satisfies the unmistakability doctrine. The Legislature’s contemplation of amendments to the Act further precluded a finding that the Act created a contract between the YDC claimants and the State. The greater “magnitude” of the 2025 amendments to the Act, as opposed to the anticipated changes to the claims process, once again ignore the relevant analysis. They are insufficient to warrant reconsideration.

II. Plaintiffs’ equal protection argument does not warrant reconsideration

21. Plaintiffs’ acknowledgment that they merely disagree with the Court’s conclusion that the rational basis standard applies to reviewing their equal protection challenges and that they offer no new arguments on that point precludes that issue from reconsideration. Further, Plaintiffs’ attempt to direct the Court’s attention to prior briefing on the issue should, likewise, be disregarded as no new facts or legal arguments are being offered.

III. Plaintiffs offer no new evidence of irreparable harm

22. Correctly determining that the Plaintiffs would not likely succeed in proving that the Act established a contract between the YDC claimants and the State, the Court correctly stated that it need not reach the issue of irreparable harm. The Court went on to analyze the harm alleged by the Plaintiffs and concluded that there was no evidence of immediate, irreparable harm. In seeking reconsideration, Plaintiffs raise the same immediate, irreparable harm claims they raised at the outset: trauma to the claimants, assertions that the administrator will not be independent, the prospect that the Attorney General will veto claims, and that a claimant's return to litigation will mean a long time before their claims can be resolved. As noted above, the Court acknowledged these arguments, but properly ruled that none of these purported harms were immediate or irreparable, nor could they be prevented by a preliminary injunction. Plaintiffs have not identified any facts or law that the Court overlooked or misapprehended in so concluding.

IV. Conclusion

For the reasons stated above, this Court should deny Plaintiffs' request for reconsideration.

WHEREFORE, the State of New Hampshire, et al., respectfully requests that this Honorable Court:

- A. Deny Plaintiffs' request for reconsideration of this Court's September 12, 2025, Opinion; and
- B. Grant such other and further relief as justice may require.

Respectfully submitted,

By Select Client Pronoun attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: October 14, 2025

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CERTIFICATE OF SERVICE

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

Date: October 14, 2025

/s/ Samuel Garland
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