

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

CONNECTICUT STATE DEPARTMENT	:	
OF SOCIAL SERVICES, ET AL.	:	
	:	Civ. Action No.
v.	:	3:99 CV 2020 (SRU)
	:	
TOMMY THOMPSON	:	

**RULING ON THE DEFENDANT'S  
MOTION FOR RECONSIDERATION**

Tommy G. Thompson, the Secretary of Health and Human Services, has moved for partial reconsideration of the court's January 8, 2003 Order Implementing the Ruling on the Parties' Cross-Motions for Summary Judgment (doc. # 101). The motion argues principally that the court should not reach the constitutional issues in this case because there is an adequate regulatory basis for the court's decision. For the following reasons, the motion for reconsideration (doc. # 102) is denied.

Initially, it is worth noting that the motion for reconsideration was filed months late. Under Local Rule of Civil Procedure 7(c) (formerly Rule 9(e)), motions for reconsideration must be filed within ten days of the filing of the decision or order from which relief is sought. The motion facially seeks reconsideration of the order implementing the court's ruling on cross-motions for summary judgment, which was filed less than ten days before the motion for reconsideration. The motion for reconsideration, however, actually addresses the decision of the constitutional issues in this case.<sup>1</sup> That decision was made and filed by the court on September 10, 2002; the order implementing that decision

---

<sup>1</sup> Indeed, the defendant notified the court of his intention to move to reconsider the court's decision of the due process issues in a November 15, 2002 telephone conference, i.e., nearly two months before the order implementing the decision on the cross-motions for summary judgment was issued.

simply incorporated by reference the September 10, 2002 decision's analysis of the constitutional issues that are the subject of the motion for reconsideration. Thus, any motion for reconsideration of the court's decision of the constitutional issues should have been filed last September. Notwithstanding the late filing of the motion for reconsideration, the court will reach the merits of the motion.

As the defendant notes, the standard for granting a motion for reconsideration is "strict." A motion for reconsideration "is not simply a second opportunity for the movant to advance arguments already rejected." Shrader v. CSX Transportation, Inc., 70 F.3d 255, 257 (2d Cir. 1995). Here, the defendant is expanding upon an argument previously raised. The defendant made reference to the argument now contained in his motion for reconsideration during a November 15, 2002 telephone conference with the court and raised it again, albeit briefly, in the defendant's December 13, 2002 Objections to Plaintiff-Beneficiaries' Proposed Order (doc. # 98) (arguing that it is "unnecessary and inappropriate for the Court's order to reference due process"). The court rejected that argument. Although defendant has now briefed the issue fully, that briefing does not raise an argument that the court overlooked. At the time it entered the order, the court was fully aware of the general principle that courts should avoid reaching constitutional issues when doing so is unnecessary to decision of matters before them. Accordingly, because the principle now raised by the defendant was both previously raised by the defendant and previously known to the court, the defendant has failed to meet the threshold requirement for a motion for reconsideration under Rule 59(e) of the Federal Rules of Civil Procedure.

In addition, the court declines to exercise its discretion to reconsider the order or the underlying decision. The fundamental premise of the cases cited by the defendant is that the court should exercise

discretion to avoid reaching constitutional issues that are unnecessary to its decision. Here the constitutional issues reached in the decision are quite necessary to the court's ruling. The defendant has the authority to rewrite the regulations that were litigated, at great expense and over a significant period of time, during the pendency of this case. Were the court to eliminate the alternative, constitutional basis for its ruling, the defendant would have the power to moot the ruling of the court and thereby render meaningless both the order and the underlying efforts that the parties and the court expended in this case. Under these unique circumstances, retention of the court's alternative basis of decision is necessary to preserve the vitality of the ruling. The defendant, of course, remains free to amend the pertinent regulations notwithstanding the ruling and order in this case; he is precluded only from amending them in a way that violates the due process rights of the plaintiffs, as set forth in the ruling and order.

Accordingly, the defendant's motion for partial reconsideration (doc. # 102) is denied.

It is so ordered.

Dated this \_\_\_\_ day of February 2003 at Bridgeport, Connecticut.

---

Stefan R. Underhill  
United States District Judge