STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. KENSC-CV-22-54

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES, et al.,

Defendants.

ORDER ON PLAINTIFFS' MOTION FOR LEAVE TO AMEND AND SUPPLEMENT THE COMPLAINT

Pending before the Court is Plaintiffs' Motion for Leave to Amend and Supplement the Complaint. Defendants oppose this request. For the following reasons, Plaintiffs' motion is granted in part and denied in part.

PROCEDURAL HISTORY

On March 1, 2022, Plaintiffs filed a two-count Class Action Complaint for Injunctive and Declaratory Relief against the Maine Commission on Indigent Legal Services ("MCILS")[1] and the agency's Executive Director and Commissioners. Count I of the initial complaint sought relief under 42 U.S.C § 1983 for alleged violations of Class Members' Sixth Amendment rights, asserting that Class Members were being denied their right to counsel as a result of Defendants' ongoing failure to adequately supervise, administer, and fund indigent-defense services. Count II

[1] The Court is aware that the agency has recently changed its name to the "Maine Commission on Public Defense Services." The Court, however, continues to refer to the agency as "MCILS," as the Court has not received a motion to rename the agency for purposes of this action.

Entered on the Docket: 5/23/2024

of the initial complaint, which alleged that MCILS failed to adopt rules required by law, was dismissed by order dated June 2, 2022. The Class was certified on July 13, 2022.

Discovery commenced and the parties thereafter engaged in a series of judicial settlement conferences and independent negotiation sessions. At the request of the parties, this matter was temporarily stayed in March 2023 so the parties could focus on negotiating a settlement. Those negotiations resulted in two proposed Settlement Agreements for which the parties jointly asked the Court to preliminarily approve. *See* M.R. Civ. P. 23(e). By order dated September 13, 2023, the Court declined to preliminarily approve the first Proposed Settlement and identified various concerns that prevented it from doing so. Moreover, notwithstanding the parties' attempt to address some of those concerns, the Court likewise declined to approve the parties' Amended Proposed Settlement for the reasons detailed in the Combined Order issued by the Court on February 27, 2024. Of central concern to the Court was the Amended Settlement's failure to adequately address the shrinking roster of attorneys available to provide indigent legal services and the growing number of unrepresented Class Members—a problem that had emerged and/or worsened since the time the initial Complaint was filed.

In addition to denying the parties' request for preliminary settlement approval, the Court's Combined Order designated a Subclass, for case management purposes, consisting of Class Members who remain unrepresented after initial appearance or arraignment (minus any Class Members who have waived their right to counsel). The Court furthermore directed that the class action proceed in two phases: (1) in Phase 1, the Court will adjudicate federal and state claims and defenses regarding non-representation as they relate to the Subclass above, and (2) in Phase 2, the Court will adjudicate claims regarding the alleged systemic conditions and practices that pose an "unconstitutional risk" of deprivation of counsel. The Combined Order indicated

that "[m]otions may be filed to amend pleadings and add parties for Phase 1 proceedings," identifying a March 8, 2024 deadline for the filing of such motions, if any.

On March 8, 2024, Plaintiffs filed their Motion for Leave to Amend and Supplement Complaint, shortly after which Defendants appealed the Court's February 27 Combined Order to the Law Court. The Law Court dismissed Defendants' appeal as interlocutory by order dated May 1, 2024. Accordingly, this matter has returned to this Court, and a decision on Plaintiffs' Motion for Leave to Amend and Supplement the Complaint is in order.

Count I of the proposed Amended Complaint, brought under 42 U.S.C § 1983, alleges that the originally named defendants—as well as the State of Maine, the Attorney General, and the Governor—are violating Class Members' Sixth Amendment rights in three ways: (1) by failing to provide attorneys to the Subclass within a reasonable time after the right to counsel attaches and at all critical stages of the proceedings; (2) by failing to develop and implement an effective system for appointment of counsel for indigent defendants; and (3) by administering the lawyer-of the-day program in a manner that creates an unconstitutional risk of ineffective representation. Count II brings a claim under the Maine Civil Rights Act ("MCRA"), *see* 5 M.R.S. § 4682, against the same Defendants identified in Count I, asserting that Defendants have violated Class Members' rights under Article 1, Section 6 of the Maine Constitution in the three ways detailed above. Additionally, Plaintiffs seek relief in the form of a declaration that Defendants have denied Class Members the right to counsel under the state and federal constitutions and in the form of an injunction requiring Defendants to provide Class Members with constitutionally guaranteed counsel, *inter alia*.

In Count III of the proposed Amended Complaint, Plaintiffs add a claim for a Petition for a Writ of Habeas Corpus on behalf of the Subclass of unrepresented individuals. The Petition

names as respondents the Sheriffs allegedly responsible for unlawfully restraining Subclass members as well as the State of Maine. Defendants oppose Plaintiffs' proposed amendments.

STANDARD OF REVIEW

"Once a responsive pleading is served, a party may amend the pleading 'by leave of court,' which 'shall be freely given when justice so requires.'" *Paul v. Town of Liberty*, 2016 ME 173, ¶ 9, 151 A.3d 924 (quoting M.R. Civ. P. 15(a)). "A motion to amend may be denied based on one or more of the following grounds: undue delay, bad faith, undue prejudice, or futility of amendment." *Montgomery v. Eaton Peabody, LLP*, 2016 ME 44, ¶ 13, 135 A.3d 106. "When a proposed amended complaint would be subject to a motion to dismiss, the court is well within its discretion in denying leave to amend." *Id.* (quotation marks omitted). A proposed amended complaint is the proper subject of a motion to dismiss "when it appears beyond doubt that a plaintiff is entitled to no relief under any set of facts that he might prove in support of his claim." *Argereow v. Weisberg*, 2018 ME 140, ¶ 12, 195 A.3d 1210 (quotation marks omitted).

Moreover, under M.R. Civ. P. 15(d), "the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." "Such a motion will often avoid the delay and expense associated with commencement of a second action involving related facts, and should ordinarily be granted unless the opposing party can demonstrate that allowing the motion will prejudice his position or unreasonably delay the litigation." *Steinberg v. Elbthal*, 463 A.2d 731, 733 (Me. 1983).

DISCUSSION

Defendants argue that this Court should deny Plaintiffs' Motion because their new claims are futile and because permitting the amendments would prejudice Defendants.[2] On the issue of futility, Defendants primarily object to (1) the addition of claims against MCILS and the naming of the State of Maine as a party in Counts I-II, (2) the addition of the Attorney General as a party, (3) the addition of the Governor, (4) the addition of a claim under the MCRA (Count II), and (5) naming the State as a defendant in the Habeas count (Count III). These issues are addressed in turn.

1. MCILS and the State of Maine (Counts I-II)

Defendants argue that MCILS does not have the "power" to provide the relief demanded in Plaintiffs' proposed Amended Complaint. They furthermore argue that MCILS and/or the State of Maine are not "persons" under 42 U.S.C § 1983 and the MCRA, and the sovereign immunity doctrine otherwise forecloses the claims against the State.

---

[2] Defendants' allegations of prejudice in large part rest on the assumption that Plaintiffs' claims regarding nonrepresentation and actual denial of counsel constitute new claims that were not fairly included in the original Complaint. While the Amended Complaint certainly expands the scope of this action in some respects—and although there have been new factual developments since this action was originally filed—the Court has previously observed that nonrepresentation and actual denial of counsel were theories asserted in the original Complaint. *See Combined Order*, at 13 n.7 (February 27, 2024). The Law Court concluded similarly and rejected Defendants' contention that this Court, in its Combined Order, "'identif[ied] a new claim alleging actual denial of counsel, and designat[ed] a subclass to pursue a newly identified claim.'" *See SJC's Order Dismissing Appeal*, at 2 n.1 (alterations in original); *see also, id.* (noting that Plaintiffs' Complaint alleges that "'[l]ike all of the Class members, the Class representatives are being denied their right to counsel in violation of the Sixth Amendment to the U.S. Constitution and Article 1, § 6 of the Maine Constitution as a result of MCILS's failure to adequately supervise, administer, and fund indigent-defense services'" (alterations and emphasis in original)). This Court accordingly rejects Defendants' allegations of prejudice to the extent they rest on the assumption that Plaintiffs' claims of nonrepresentation and actual denial of counsel are new. Moreover, Defendants have otherwise failed to convince the Court that granting Plaintiffs' motion to amend will result in prejudice.

With respect to Defendants' first contention, the Court disagrees with MCILS's characterization of its legal authority. This contention is at odds with the plain language in Title 4, and Plaintiffs' requested relief is consistent with what MCILS is statutorily obligated to do: "[P]rovide efficient, high-quality representation to indigent criminal defendants . . . consistent with federal and state constitutional and statutory obligations." 4 M.R.S. § 1801. The Legislature has also tasked MCILS with "[d]evelop[ing] and maintain[ing] a system that employs public defenders, uses appointed private attorneys and contracts with individual attorneys or groups of attorneys" and "consider[ing] other programs necessary to provide quality and efficient indigent legal services." *Id.* § 1804(3)(A). While the judiciary is responsible for "assign[ing]" counsel to those deemed indigent, *see* M.R.U. Crim. P. 5(e), 44(a)(1); 15 M.R.S. § 810(2)-(3), MCILS is responsible for "provid[ing]" counsel and maintaining a pool of qualified attorneys from which assignments may be made, *see* 4 M.R.S. §§ 1801, 1804(3)(A). The judiciary's role in the process in no way mitigates MCILS's statutory obligations or otherwise renders MCILS an improper party to this action.

Whether MCILS and the State qualify as "persons" for purposes of 42 U.S.C § 1983 and the MCRA is a different question. Both 42 U.S.C § 1983 and the MCRA provide a cause of action for those whose constitutional rights have been violated by a "person." *See* 42 U.S.C § 1983 ("Every *person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects . . . any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights . . . secured by the Constitution and laws, shall be liable . . . ." (emphasis added)); 5 M.R.S. § 4682(1-A) ("A person whose exercise or enjoyment of the rights secured by the United States Constitution . . . or of the rights secured by the Constitution of Maine . . . has been interfered with, or attempted to be

interfered with, may institute . . . a civil action for legal or equitable relief whenever *any person*, whether or not acting under color of law . . . [i]ntentionally interferes" with the constitutional rights in certain enumerated ways (emphasis added)).

Defendants correctly observe that under the principles set forth in *Will v. Mich. Dep't of State Police,* 491 U.S. 58 (1989) and *Jenness v. Nickerson*, 637 A.2d 1152 (Me. 1994), the State does not qualify as a "person" within the meaning of § 1983 or the MCRA. *Will* 491 U.S. at 64; *Jenness*, 637 A.2d at 1158. It appears, however, that the courts in *Will* and *Jenness* were presented with claims for damages and other retrospective relief. And in fact, an exception to the *Will-Jenness* rule exists—consistent with *Ex Parte Young*, 209 U.S. 123 (1908)—for claims seeking prospective injunctive relief against state officials acting in their official capacity. *Will,* 491 U.S. at 71 n.10; *Wyman v. Sec'y of State*, 625 A.2d 307, 310-11 (Me. 1993).[3]

Still, the *Ex Parte Young* exception does not appear to permit a § 1983 or MCRA action directly against the State of Maine or one of its agencies; rather, it allows actions against *state officers* only. *See id.*; *see also Brown v. Newberger*, 291 F.3d 89, 92 (1st Cir. 2002); *O'Neill v. Baker*, 210 F.3d 41, 47 (1st Cir. 2000). Thus, it does not appear that MCILS or the State of Maine are "persons" for purposes of § 1983 or the MCRA. Consequently, MCILS and the State are not proper parties for Counts I and II of the proposed Amended Complaint.

Nevertheless, Maine precedent suggests that when a party seeks declaratory and prospective injunctive relief with respect to constitutional questions—as Plaintiffs do in the

---

[3] While 42 U.S.C § 1983 and the MCRA are distinct statutory regimes, the MCRA was modeled after § 1983, and courts have therefore interpreted them coextensively. *See Jenness*, 637 A.2d at 1158 (explaining that "[t]he MCRA was patterned after 42 U.S.C. § 1983" (quotation marks omitted)); *Estate of Bennett v. Wainwright*, 548 F.3d 155, 178-79 (1st Cir. 2008) ("[T]he protections provided by the Maine Civil Rights Act, including immunities, are coextensive with those afforded by 42 U.S.C. § 1983.").

Amended Complaint—an action may be maintained against a state agency independent of § 1983 and the MCRA. *See NECEC Transmission LLC v. Bureau of Parks & Lands*, 2022 ME 48, ¶ 3, 281 A.3d 618, *as revised* (Sept. 8, 2022) (entertaining action for declaratory judgment and injunctive relief against Maine Bureau of Parks and Lands, among others, where the plaintiffs alleged that retroactive application of a citizen initiative was unconstitutional); *see also Parker v. Dep't of Inland Fisheries & Wildlife*, 2024 ME 22, ¶ 4, —A.3d— (concluding that it was error for Superior Court to dismiss complaint for declaratory judgment against the Maine Department of Inland Fisheries and Wildlife where plaintiffs brought a justiciable claim seeking a declaration that Maine's Sunday hunting ban was unconstitutional). Accordingly, the Court concludes that Plaintiffs may pursue a claim brought under Maine's Declaratory Judgment Act, and that they may seek declaratory and injunctive relief against MCILS for constitutional violations if proven.

It is less clear, however, whether the doctrine of sovereign immunity would foreclose such an action against the State of Maine itself. Judge Duddy recently commented on this lack of clarity in *NECEC Transmission LLC v. Bureau of Parks & Lands*, observing that although the Law Court has yet to recognize an exception to sovereign immunity that allows for suit against Maine's constitutionally derived branches of government, "an action seeking declaratory judgment regarding constitutionality" may "mudd[y] the availability of the sovereign immunity defense"—particularly in cases where "judicial review [of State action] . . . [is] integral to the constitutional framework." No. BCD-CIV-2021-00058, 2021 WL 6125325, at *8 n. 15 (Me. B.C.D. Dec. 16, 2021) (citing out-of-state decisions and opining that sovereign immunity may not be available in cases where "judicial review [of State action] . . . [is] integral to the constitutional framework"). Any claim of sovereign immunity by the State of Maine may accordingly be in question here, as it would seem well settled that the State itself is

constitutionally vested with an affirmative obligation to furnish counsel to indigent criminal defendants. *See Gideon v. Wainwright*, 372 U.S. 335, 342-43 (1963); *State v. Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702 ("For those who cannot afford counsel, the constitutional right imposes an affirmative obligation on the State to provide court-appointed counsel if the defendant faces incarceration.").

The Court, however, declines to conclusively resolve this issue in this Order, as it is mindful of the posture in which the question presents: on a motion to amend the pleadings. Thus, in view of Maine's "liberal policy towards motions to amend" and in the absence of a convincing showing that an amendment adding the State of Maine would be plainly futile, the Court will allow the addition of the State of Maine as a party if Plaintiffs pursue a claim for declaratory judgment seeking injunctive relief. *Jones v. Suhre*, 345 A.2d 515, 518 n.5 (Me. 1975).

To be clear, however, the State, just like MCILS, cannot be added as a Defendant in Counts I and II of the proposed Amended Complaint as drafted. However, given the liberal standard of notice pleading in Maine State courts, and because the Amended Complaint does provide notice to MCILS and to the State that they are seeking declaratory and injunctive relief based on alleged constitutional violations, they can both be treated as defendants for purposes of a cause of action under Maine's Declaratory Judgment Act and will be permitted to ask for declaratory and injunctive relief apart from Counts I and II, if any constitutional violations can be proven at trial.

2. Governor Janet Mills

Defendants furthermore contend that amending the Complaint would be futile to the extent it seeks to add Governor Janet Mills as a defendant. Defendants advance several

arguments as to why this is so, among them, that the injunctive relief sought is unavailable pursuant to *Kelly v. Curtis*, 287 A.2d 426 (Me. 1972).

In *Kelly*—which considered whether the judicial branch could issue a writ of mandamus against the Governor—the Law Court framed the issue as follows: "When the conduct of the Governor is in question, . . . the issue is whether our governmental system, constitutionally structured to create three separate and co-ordinate branches exercising sovereign power, contemplates that the Governor of the State, insofar as he performs, or is required to perform, acts in his official capacity as the Chief Executive, may be ordered to act by the judicial branch through mandamus or equivalent judicial process." *Id.* at 429. In answering this question, the Law Court explained that "[t]he Governor's immunity from judicial coercion by court order in the performance of his official duties, ministerial or discretionary, has never been questioned in this State . . . ." *Id.* "On the contrary, the principle that one co-ordinate branch of government must refrain from ordering another branch to perform its official duty has been re-affirmed." *Id.*

Thus, under the Court's reading of *Kelly*, the Governor, as the Chief Executive, is accorded special treatment under Maine law and cannot be ordered to act through an injunction or other judicial process issued by the Court. Accordingly, the Court concludes that the injunctive relief sought by Plaintiffs is not available against the Governor. Moreover, the Court finds that complete relief may be afforded without the addition of the Governor as a party. The Court therefore denies Plaintiffs' Motion to Amend to the extent is seeks to add Governor Mills as a defendant in this action.

3. Attorney General Aaron Frey

Defendants next assert that it would be futile to permit the addition of the Attorney General as a party because he is not responsible for appointing counsel and because Plaintiffs'

alleged harm was neither caused by the Attorney General nor is the harm capable of being redressed by him.

As noted, a state officer acting in his official capacity may be subject to suit in an action for prospective injunctive relief. *Ex Parte Young*, 209 U.S. at 156-60; *see also Will,* 491 U.S. at 71 n.10; *Wyman*, 625 A.2d at 310-11. Personal action by a defendant individually is not a necessary condition of injunctive relief against state officers in their official capacity. *Luckey v. Harris*, 860 F.2d 1012, 1015 (11th Cir. 1988). Rather, it is sufficient that the state officer, "by virtue of his office, ha[ve] some connection" with the allegedly unconstitutional conduct. *Ex Parte Young*, 209 U.S. at 157. "[W]hether [this connection] arises out of general law, or is specially created by the act itself, is not material so long as it exists." *Id.*

Moreover, the Law Court has explained that a "proper party defendant is any officer, office, department, agency, authority, commission, board, or institution against whom the plaintiff has alleged a right to final relief." *Me. State Empl. Ass'n SEIU Local 1989 v. Dep't of Corr.*, 682 A.2d 686, 689 (Me. 1996). For instance, a state entity or official is properly named as a defendant when the party "may be charged with providing part of the relief sought ... or with insuring [another actor's] compliance with any judgment." *Id.*

Under these standards, the Court will permit amendment of the Complaint to add the Attorney General as a party, subject of course to any motion to dismiss that the Attorney General may file through separate counsel or otherwise. Plaintiffs in this case seek an injunction requiring continuous representation of counsel to all members of the Subclass within 48 hours of initial appearance as well as other equitable relief, including release from custody and/or dismissal of charges. The Attorney General, by virtue of his office, has some connection to the

unconstitutional conduct complained of and the relief sought. *See Ex Parte Young*, 209 U.S. at 157. Indeed, the Law Court has described the Attorney General's role as follows:

> The Attorney General, in this State, is a constitutional officer endowed with common law powers. *See*, Constitution of Maine, Article IX, Section 11. As the chief law officer of the State, he may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may, from time to time require, and may institute, conduct, and maintain all such actions and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order, and *the protection of public rights.*

Superintendent of Ins. v. Attorney Gen., 558 A.2d 1197, 1199 (Me. 1989) (emphasis in original).

Moreover, by statute, the "Attorney General may, in the Attorney General's discretion, act in place of or with the district attorneys, or any of them, in instituting and conducting prosecutions for crime . . . ." 5 M.R.S. § 199. He is also vested with "full responsibility for the direction and control of all investigation and prosecution of homicides and such other major crimes as the Attorney General may deem necessary for the peace and good order of the State of Maine." 5 M.R.S. § 200-A. Thus, in light of the Attorney General's authority to control prosecutions and his "responsibility to act in the best interests of the people of Maine," *see Opinion of the Justices*, 2015 ME 27, ¶ 22, 112 A.3d 926, the Court concludes—at least at this preliminary stage—that the Attorney General "may be charged with providing part of the relief sought" or with insuring "compliance with any judgment." *SEIU Local* 1989, 682 A.2d at 689.

4. MCRA (Count II)

Defendants argue that Plaintiffs' claim under the MCRA would be subject to a motion to dismiss, contending that (1) none of the defendants identified in the Amended Complaint are "persons" subject to suit under 5 M.R.S. § 4682 and (2) Plaintiffs have failed to allege the conduct necessary to support an MCRA action.

The Court has already touched on Defendants' first point in its discussion above: Although state officials acting in their official capacity are not considered "persons" *in an action for damages or retrospective relief* under the MCRA or § 1983, *see Jenness*, 637 A.2d at 1158-59, an exception to this rule exists in cases where, as here, a plaintiff seeks *prospective injunctive relief* against state officials acting in their official capacity. *Will,* 491 U.S. at 71 n.10; *Wyman*, 625 A.2d at 310-11; *Jenness*, 637 A.2d at 1158 (explaining that "[t]he MCRA was patterned after 42 U.S.C. § 1983" (quotation marks omitted)); *Estate of Bennett*, 548 F.3d at 178-79 ("[T]he protections provided by the Maine Civil Rights Act, including immunities, are coextensive with those afforded by 42 U.S.C. § 1983."); 5 M.R.S. § 4682(1-A) (permitting "equitable relief" as part of an MCRA action). Plaintiffs' MCRA claim therefore would not be subject to dismissal on grounds that it fails to name any "persons."[4]

Defendants' second point similarly fails to convince the Court that the addition of an MCRA claim would be futile. While Defendants contend the Amended Complaint omits any allegations of actual or threatened physical force—conduct they say is required to sustain an MCRA claim—Plaintiffs correctly observe that the MCRA was amended in 2023 to permit a cause of action against persons who intentionally interfere with constitutional rights by "[e]ngaging in any conduct that would cause a reasonable person to suffer emotional distress." *See* L.D. 858 (131st Legis. 2023), *codified at* 5 M.R.S. § 4682(1-A)(B)(5). The Amended Complaint, favorably viewed, alleges violations of the right to counsel that would cause a reasonable person to suffer emotional distress. *See, e.g.*, Am. Compl. ¶¶ 46-47 (noting the "downstream effects of going without counsel after an arrest or initial appearance," including the

[4] MCILS's Executive Director and eight Commissioners are among the state officials or "persons" named in Count II of the Amended Complaint.

inability to preserve employment, maintain family connections, and "avoid the significant . . . mental hazards associated with pretrial detention" (quotation marks omitted)); *Id.* ¶¶ 54-59 (describing the harms associated with nonrepresentation and/or delays in the appointment of counsel). The Court therefore will allow Plaintiffs to amend the Complaint to include a claim under the MCRA.

5. The State of Maine as a Party to Count III

Finally, Defendants argue that the State of Maine is not a proper party to the Habeas count because it is not a "custodian" of any Petitioner pursuant to 14 M.R.S. §§ 5501 et seq. This position appears to be at odds with that asserted in a parallel Habeas matter, *Peterson v. Johnson*, in which counsel for Defendants argued that the State was indeed the proper respondent. *See Peterson v. Johnson*, No. SJC-23-2, *State Respondents' Memorandum of Law*, at 4-5 (Oct. 27, 2023) (arguing that "[t]o the extent the Amended Petition [for Habeas Corpus] asserts a claim upon which relief may be granted, the State of Maine is the proper Respondent"). The Court furthermore notes that in the *Peterson* matter, Justice Douglas granted the State of Maine's request to remain in the case as an interested party. *See Peterson*, No. SJC-23-2, *Order on Request for Writ of Habeas Corpus*, at 6 (Nov. 6, 2023). Accordingly, the Court will allow Plaintiffs to add Count III as proposed in the Amended Complaint, and subject to further argument, it will permit the State to be named as a party to that count.

CONCLUSION

The entry is:

1. Plaintiffs' Motion for Leave to Amend and Supplement Complaint is DENIED to the extent it seeks to add Governor Janet Mills as a defendant in this action. The Law

Court has held that a Governor is "immune from judicial coercion" and this Court is obligated to adhere to that precedent.

2. MCILS and the State of Maine are not proper parties for Counts I and II as they are not "persons" as defined by applicable law.

3. The Attorney General may be added as a Defendant in Counts I and II as the Court finds that he is a proper Defendant for the reasons stated, and subject to further argument.

4. Plaintiffs may add a claim under the MCRA (Count II) as consistent with this Order and subject to the limitations identified regarding the proper party Defendants.

5. Count III of the proposed Amended Complaint will be permitted, and the State of Maine may be added as a proper Defendant under Count III for the reasons stated, and subject to further argument.

6. The Court in this Order has made certain legal conclusions recognizing a cause of action in Maine against MCILS and potentially the State of Maine for declaratory and injunctive relief that is independent from the causes of action specified in Counts I - III. If Plaintiffs wish to pursue such a claim, they may file no later than June 3, 2024 an Amended Complaint adding MCILS as a Defendant, and subject to further argument, adding the State of Maine as a Defendant.

7. The Amended Complaint must be broken down by Counts and provide fair notice to all Defendants as to which causes of action are being pursued in light of the legal conclusions made in this Order, along with the remedies Plainfiffs believe might be available if they prevail on a particular Count.

8. Plaintiffs shall serve the newly added Defendants with the Amended Complaint in accordance with the Maine Rules of Civil Procedure.

9. All defendants shall file their responses to the Amended Complaint 14 days after being served.

The clerk is directed to incorporate this order on the docket by reference pursuant to M.R. Civ. P. 79(a).

DATED: May 23, 2024

Michaela Murphy
Justice, Maine Superior Court