STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-22-054

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

JAMES BILLINGS, in his official capacity as Executive Director of the Maine Commission on Public Defense Services; JOSHUA TARDY, in his official capacity as Chair of the Maine Commission on Public Defense Services; DONALD ALEXANDER, RANDALL BATES, MICHAEL CAREY, ROGER KATZ, KIMBERLY MONAGHAN, and DAVID SOUCY, in their official capacities as Commissioners of the Maine Commission on Public Defense Services; and the STATE OF MAINE,

Defendants.

COMBINED ORDER ON PARTIALLY DISPOSITIVE MOTIONS

Pending before the Court are a number of motions filed by the parties, some of which require resolution before the Phase I trial now scheduled to begin in January of 2025. The Court separated claims originally made by Plaintiffs into two phases in the Court's Combined Order dated February 27, 2024. Plaintiffs are a Subclass of the original Class certified by the Court on July 13, 2022. The Court amended the definition of the Subclass on September 26, 2024 following briefing.

The Subclass of Plaintiffs in this Phase I trial of the class action brought by the ACLU of Maine in 2022 is now defined as follows:

> All individuals who currently are, or in the future will be, eligible for appointment of counsel by the Superior or District Court as required by the Sixth Amendment

> to the United States Constitution or Article 1, Section 6 of the Maine Constitution, but who remain unrepresented after arraignment or first appearance on any criminal charge punishable by incarceration or imprisonment.

Order Mot. Amend Class Def., at 10. For purposes of this Combined Order, the Court will use "Plaintiffs" to refer to the individuals who comprise the amended Subclass. The Defendants remaining in this litigation are the Executive Director and Commissioners of the Maine Commission on Public Defense Services (hereinafter MCPDS) and the State of Maine, who is a Party-in-Interest on Count III and a party in Count V.

The Court in this Combined Order addresses the following motions: Plaintiffs' Motion to Strike Jury Demand as to Count I; Plaintiffs' Motion for Partial Summary Judgment on liability issues in Counts I, II, III, and V[1]; MCPDS Defendants' Motion for Summary Judgment on Counts I and II; the State of Maine's Motion for Summary Judgment on Count V; and the State of Maine's Motion to Continue Trial.[2]

I. Plaintiffs' Motion to Strike Jury Demand

Before the Court considers the parties' motions for summary judgment, it will address the pending question of whether a jury trial is available to MCPDS Defendants on Count I. The Defendants filed a jury trial demand as to "all claims" on October 1, 2024 but clarified at an October 11, 2024 hearing they are demanding a jury only on Counts I and II. Because the parties agree that the MCPDS Defendants have a statutory right to a jury trial on Count II under the Maine Civil Rights Act, the Plaintiffs' Motion filed on October 15, 2024 focused solely on Count I. The MCPDS Defendants filed their opposition on November 5, 2024 and the Plaintiffs filed their reply on November 12, 2024.

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[1] The Court dismissed Count IV brought against the agency MCPDS on August 13, 2024.

[2] The Court defers ruling on two motions: Plaintiffs' Motion in Limine to Exclude Evidence of Prior Convictions, Prior Arrests, Bad Acts, or Pending Criminal Charges; and Motion to Limit the Testimony of Dr. Rachel Casey. These will be discussed at the next conference of counsel now set for January 6, 2025.

a. Injunctive Relief

The Plaintiffs argue that because Count I is an equitable claim the MCPDS Defendants are not entitled to a jury trial. The Court agrees.

Under the Maine Constitution, a party has a right to a jury trial in all civil actions "except in cases where it has heretofore been otherwise practiced . . . ." Me. Const. art. I, § 20. The Law Court in 1989 held that the right to jury trial exists unless it is "affirmatively shown" that a jury trial was unavailable in such a case when Maine's Constitution was adopted in 1820. *N. Sch. Congregate Hous. v. Merrithew*, 558 A.2d 1189, 1190 (Me. 1989) (citing *In re Shane T.*, 544 A.2d 1295, 1297 (Me. 1988) (finding no right to a jury trial because suits adjusting the relationship between parent and child were heard in equity without a jury prior to 1820) *and see also City of Portland v. DePaolo*, 531 A.2d 669, 670 (Me. 1987) (finding a right to a jury trial in a civil suit seeking monetary penalties for violations of the City's anti-pornography ordinance, even though that type of action was unknown in 1820)). The Law Court has also consistently held that the Maine Constitution provides a right to a jury trial for legal claims but not equitable claims. *See, e.g.*, *Town of Falmouth v. Long*, 578 A.2d 1168, 1171–72 (Me. 1990); *DesMarais v. Desjardins*, 664 A.2d 840, 844 (Me. 1995); *DiCentes v. Michaud*, 1998 ME 227, ¶ 7, 719 A.2d 509 ("Because matters in equity were never triable of right to a jury, the right to a jury trial does not exist for claims sounding in equity.").

The Defendants argue that a jury trial is presumed here because the Plaintiffs cannot prove that a jury trial was unavailable for this cause of action (or a suit of the same general nature) prior to 1820. Defs.' Opp'n to Pls.' Mt. to Strike 3–4. However, this argument ignores the core of the Article I, Section 20 analysis which has been consistently used by the Law Court whenever this issue arises— jury trials are provided for legal claims but not equitable claims.

See, e.g., *DaimlerChrysler Corp. v. Exec. Dir., Me. Revenue Servs.*, 2007 ME 62, ¶ 20, 922 A.2d 465

> The Maine Constitution provides that: 'In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced . . . .' Actions sounding in equity, 'cases where it has heretofore been otherwise practiced,' do not have a right to a jury trial.

(internal citations omitted); *DesMarais*, 664 A.2d at 844

> Our 'practice in analyzing the right to a jury trial is to find there is such a right unless it is affirmatively shown that a jury trial was unavailable in such a case in 1820.' The Maine Constitution thus provides a jury trial for legal claims, but not equitable ones.

(internal citations omitted); *DiCentes*, 1998 ME 227, ¶ 7, 719 A.2d 509

> The right to jury trial in civil matters is found in article 1, section 20 of the Maine Constitution, which provides in pertinent part that '[i]n all civil suits, . . . the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced.' Pursuant to M.R. Civ. P. 38, this right 'shall be preserved to the parties inviolate.' We have construed article 1, section 20 to provide 'a broad constitutional guarantee of a right to a jury in all civil cases except where by the common law and Massachusetts statutory law that existed prior to the adoption of the Maine Constitution in 1820 such cases were decided without a jury.' Because matters in equity were never triable of right to a jury, the right to a jury trial does not exist for claims sounding in equity.

(ellipses in original) (internal citations omitted)). Thus, the question this Court must first answer is whether a claim for injunctive relief is a legal or an equitable claim. If Count I is equitable, there is no need to delve further into pre-statehood common law or Massachusetts law because equitable claims are not tried before a jury.

To distinguish legal claims from equitable ones, the Law Court considers the "basic nature of the issue presented, including the relief sought." *DesMarais*, 664 A.2d at 844. In a 1993 case, the Law Court specifically held that "[e]ntitlement to a jury trial depends on the type of relief requested by the claim, whether it be in the form of a complaint, a counterclaim[,] or a

cross-claim." *Morris v. Resol. Tr. Corp.*, 622 A.2d 708, 716 (Me. 1993) (superseded by statute on unrelated grounds in *Wilmington Tr. Co. v. Sullivan-Thorne*, 2013 ME 94, ¶ 11, 81 A.3d 371).

The relief requested here—injunctive relief—is equitable. *See, e.g.*, *Bangor Historic Track, Inc. v. Dep't of Ag.*, 2003 ME 140, ¶ 11, 837 A.2d 129 ("[I]njunctive relief is an equitable remedy."). Federal courts conclude the same. *See, e.g.*, *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311 (1982) ("It goes without saying that an injunction is an equitable remedy."). The fact that Plaintiffs seek an equitable remedy is alone sufficient to render Count I equitable and to eliminate the parties' jury trial right. *See Morris*, 622 A.2d at 716; *DaimlerChrysler Corp.*, 2007 ME 62, ¶¶ 20, 23–24, 922 A.2d 465; *DesMarais*, 664 A.2d at 844–45. In fact, the Law Court concluded another case was equitable in nature when a plaintiff sought both injunctive relief and, "as a secondary measure," a civil penalty. *Town of Falmouth*, 578 A.2d at 1172. Even the inclusion of a claim for a civil penalty alongside the requested injunctive relief did not transform that case into one entitling the parties to a jury trial. In Count I, the Plaintiffs do not seek damages, civil penalties, or any kind of legal relief; they seek an injunction requiring the Defendants to comply with the Sixth Amendment.

The Defendants also contend they are entitled to a jury trial because a Section 1983 claim is a "legal claim sounding in tort." Defs.' Opp'n to Pls.' Mt. to Strike 5. The Defendants rely on a Supreme Court case, *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999), in which the Supreme Court concluded a Section 1983 claim was an action at law entitling parties to a jury trial when plaintiffs sought legal relief in the form of monetary damages. *Id.* at 709–10. It is difficult to see why Defendants find this case persuasive. The Supreme Court noted: "[a party] is *not* entitled to a jury trial on his entitlement to a remedy that sounds not in law but in equity." *Id.* at 713 (emphasis added). Again, in Count I, Plaintiffs are

not seeking monetary damages. Indeed, *City of Monterey* actually supports the Plaintiffs' argument that a jury trial is not available to the Defendants as a matter of right in Count I.

b. Declaratory Judgment

Plaintiffs also seek a declaratory judgment under Count I. The Court understands them to ask the Court to declare that they have a right to continuous representation under the Sixth Amendment, from the time of their initial appearance through the pretrial and plea-bargaining processes and trial. The fact that they seek such a declaration does not change the Court's conclusion that MCPDS Defendants are not entitled to a jury trial on Count I.

Requests for declaratory judgments "are neither legal nor equitable." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 284 (1988). The inclusion of a prayer for declaratory judgment "does not independently generate a right to a jury trial." *See Zani v. Zani*, 2023 ME 42, ¶ 15, 299 A.3d 9. In Maine, when a plaintiff seeks a declaratory judgment, the procedure followed by the court is governed by the "nature of the case." *Socec v. Me. Turnpike Auth.*, 129 A.2d 212, 213 (Me. 1957). That is, the right to a jury trial is "preserved" so long as the right is provided in the Maine Constitution ("under the circumstances and in the manner provided in Rules 38 and 39"). M.R. Civ. P. 57 (referencing Rule 38, providing the civil jury trial of right, and Rule 39, providing the procedure when a party demands a civil jury trial).

As described above, the right to a jury trial is provided for legal claims but not equitable claims. *See supra* pp. 3–5. Thus, if an action including a request for declaratory judgment "is legal in nature, the right to trial by jury is preserved." M.R. Civ. P. 57 reporter's notes; *see Me. Broad. Co. v. E. Tr. & Banking Co.*, 142 Me. 220, 226 (1946) ("The right of jury trial in what is essentially an action at law may not be denied a litigant merely because his adversary has asked that the controversy be determined under the declaratory procedure." (quoting *Aetna Cas. & Sur.*

Co. v. Quarles, 92 F.2d 321, 325 (4th Cir. 1937))); *see also Perkins v. Applebee*, No. CV-80-667, 1982 Me. Super. LEXIS 63, at *3 (Jan. 20, 1982) ("[A] request for a declaratory judgment does not transform a legal action into an equitable one."). Claims in equity, including equitable claims seeking declaratory judgment, do not carry the right to a jury trial. *See supra* pp. 3–5.

The Court will therefore grant the Plaintiffs' Motion to Strike Jury Demand on Count I. The Court would note that even if a jury trial were available to Defendants, the course of future proceedings would remain the same. For reasons more fully explained below, the Court will grant Plaintiffs' Motion for Partial Summary Judgment on the issue of liability on Count I and will grant the MCPDS Defendants' Motion for Summary Judgment as to Count II. And because there are no material factual issues that require resolution by a factfinder, the remaining legal issues in the case will not be resolved by a jury. The issue of remedy in Count I will be addressed after full briefing and argument on the well-established criteria which must be established before a Court may issue injunctive relief. *See Bangor Historic Track*, 2003 ME 140, 837 A.2d 129; *Ingraham v. Univ. of Me. at Orono*, 441 A.2d 691 (Me. 1982).

II. Motions for Summary Judgment

As stated above, the Plaintiffs have filed a Motion for Partial Summary Judgment as to liability on Counts I, II, III, and V. The MCPDS Defendants have filed a Motion for Summary Judgment on Counts I and II; and the Defendant State of Maine has filed a Motion for Summary Judgment as to Count V.

Under Maine law, "[c]ross motions for summary judgment neither alter the basic Rule 56 standard, nor warrant the grant of summary judgment *per se*." *Dorsey v. N. Light Health*, 2022 ME 62, ¶ 10, 288 A.3d 386 (quoting *F.R. Carroll, Inc. v. TD Bank, N.A.*, 2010 ME 115, ¶ 8, 8

A.3d 646) (emphasis in original). The summary judgment standard must be applied separately to each motion. *F.R. Carroll, Inc.*, 2010 ME 115, ¶ 8, 8 A.3d 646.

The summary judgment record consists only of the parties' properly supported statements of material fact and the portions of the record referenced therein. *See Dorsey*, 2022 ME 62, ¶ 10, 288 A.3d 386. Summary judgment is appropriate "if the summary judgment record, taken in the light most favorable to the nonmoving party, demonstrates that there is no genuine issue of material fact in dispute and the moving party would be entitled to a judgment as a matter of law at trial." *Chartier v. Farm Fam. Life Ins. Co.*, 2015 ME 29, ¶ 6, 113 A.3d 234; M.R. Civ. P. 56(c). A fact is "material" if it "can affect the outcome of the case," and there is a "genuine issue" when there is "sufficient evidence for a fact-finder to choose between competing versions of the fact." *Toto v. Knowles*, 2021 ME 51, ¶ 8, 261 A.3d 233 (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8, 13 A.3d 773).

Here, the Motion for Summary Judgment filed by the Plaintiffs is only partially dispositive because it addresses the question of liability. The Motion for Summary Judgment filed by Defendants addresses both liability and remedies. Under Rule 56, the Court may render a summary judgment on the issue of liability alone. M.R. Civ. P. 56(c).

A. COUNT I

The Plaintiffs have filed a Motion for Partial Summary Judgment as to liability on Count I. They allege the Defendants have violated the Subclass members' Sixth Amendment rights under the United States Constitution. The MCPDS Defendants have also filed a Motion for Summary Judgment as to Count I, as to both liability and relief. They argue the Plaintiffs have not been denied counsel at critical stages under federal law.

The legal questions presented in Count I are whether the Sixth Amendment requires continuous representation for the Plaintiffs as they argue, and whether the MCPDS Defendants are correct that the dispositional conference is the earliest and next criminal stage in Maine after a criminal defendant's Sixth Amendment rights attach at the first appearance. The question of whether a particular stage of a criminal proceeding is a critical stage under the Sixth Amendment is a question of law. *See Van v. Jones*, 475 F.3d 292, 314 (6th Cir. 2007) ("[T]he overarching legal question of whether a particular proceeding is a 'critical stage' of the trial should focus not only on the specific case before us, but the general question of whether such a stage is 'critical.'"). After addressing these two issues about the breadth of what the Sixth Amendment requires, the Court must then determine if there are any material issues of fact that require resolution by a factfinder as to whether the MCPDS Defendants are providing representation to the Plaintiffs consistent with these legal standards.

After considering the legal positions of all the parties and reviewing the Summary Judgment record, the Court concludes that Subclass members have been deprived of continuous representation after the right to counsel attaches as required in Maine by the Sixth Amendment; and because counsel is not being provided at critical stages as also required by the Sixth Amendment, the Court grants the Plaintiffs' Motion for Partial Summary Judgment on the liability issues in Count I, and denies the Defendants' Motions for Summary Judgment on Count I. The Court will not address as part of this Combined Order the arguments made by the parties to date regarding remedies, as they will have a full opportunity to be heard on those issues in later proceedings to be held in January of 2025.

The Plaintiffs brought Count I under 42 U.S.C. § 1983, the federal statute originally enacted as part of the Civil Rights Act of 1871. In 1961, the law was expanded by the United

States Supreme Court to become applicable to certain state actors in *Monroe v. Pape*. 365 U.S. 167 (1961). It now permits individuals to sue certain government entities and employees for violations of their civil rights. Section 1983 does not create new substantive rights; it is an avenue for relief from the violation of a federally protected right (i.e., the Sixth Amendment right to counsel). *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979). It reads in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. State courts have jurisdiction to hear claims brought under Section 1983. *Martinez v. California*, 444 U.S. 277, 283 n.7 (1980).

To prevail on a Section 1983 claim, a plaintiff must prove that: (1) they were deprived of a right secured by the United States Constitution or federal law; and (2) the person (or people) who deprived them of that right acted under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The parties do not dispute that the Defendants in this case were acting under color of state law.

The Maine Legislature enacted a law, still in effect, which explicitly and unambiguously requires the MCPDS Defendants to "provide high-quality, effective and efficient representation and promote due process for persons who receive indigent legal services in parity with the resources of the State *and consistent with federal and state constitutional and statutory obligations*." 4 M.R.S. § 1801 (emphasis added).

The Sixth Amendment to the United States Constitution reads in part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. This obligation is applied to the states through the Fourteenth

Amendment. *Gideon v. Wainwright*, 372 U.S. 335, 341–43 (1963). The right to the assistance of counsel "attaches" when formal judicial proceedings have begun against the accused—"whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." *Rothgery v. Gillespie Cnty., Tex.*, 554 U.S. 191, 198 (2008). After the right attaches, a criminal defendant is entitled to have counsel present at all "critical stages" of the process. *Id.* at 211–12. The complete absence of counsel at a critical stage of a criminal proceeding is a per se Sixth Amendment violation, and no analysis for prejudice or harmless error need be conducted. *Penson v. Ohio*, 488 U.S. 75, 88–89 (1988); *Van v. Jones*, 475 F.3d 292, 311–12 (6th Cir. 2007) ("It is settled that a complete absence of counsel at a critical stage of a criminal proceeding is a per se Sixth Amendment violation warranting reversal of a conviction, a sentence, or both, as applicable, without analysis for prejudice or harmless error.")

The Supreme Court has identified some specific events in a criminal proceeding as "critical stages." The list includes, but is not limited to, custodial interrogations, *see Massiah v. United States*, 377 U.S. 201 (1964) *and Brewer v. Williams*, 430 U.S. 387 (1977), corporeal identifications or "lineups," *see Moore v. Illinois*, 434 U.S. 220 (1977) *and United States v. Wade*, 388 U.S. 218 (1967), preindictment preliminary hearings at which the "sole purposes . . . are to determine whether there is sufficient evidence against the accused to warrant presenting his case to the grand jury, and, if so, to fix bail if the offense is bailable," *Coleman v. Alabama*, 399 U.S. 1 (1970), arraignments, *Hamilton v. Alabama*, 368 U.S. 52 (1961), trial, *Gideon*, 372 U.S. 335 (1963), sentencing, *Mempa v. Rhay*, 389 U.S. 128 (1967), appeals, *see Douglas v. California*, 372 U.S. 353 (1963) *and Halbert v. Michigan*, 545 U.S. 605 (2005), and during probation and parole revocation proceedings, *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

The list obviously includes events that occur in a courtroom. However, it is important to recognize it also includes events that occur outside the presence of the court which have nevertheless been found to be "critical" under the Sixth Amendment. *See, e.g.*, *Massiah*, 377 U.S. 201 (1964) (eliciting incriminating statements without the presence of counsel after a criminal proceeding has begun violates the Sixth Amendment); *Brewer*, 430 U.S. 387 (1977) (same); *Moore*, 434 U.S. 220 (1977) (a criminal defendant's Sixth Amendment right to counsel was violated by a corporeal identification conducted after the initiation of adversary judicial criminal proceedings and in the absence of counsel); *Wade*, 388 U.S. at 237 (the post-indictment lineup is a critical stage of prosecution at which a defendant is "as much" entitled to the assistance of counsel as at the trial itself).

The criminal process in Maine is comprised of consequential events which often occur before a criminal proceeding takes place in a courtroom. The legal requirements for these events in Maine, as in other States, are set out in Maine's Rules of Unified Criminal Procedure. In our system of federalism, it is the states, not the United States Supreme Court, who are empowered to establish their own criminal procedures. *See Smith v. Robbins*, 528 U.S. 259, 274 (2000) ("[T]he Constitution 'has never been thought [to] establish this Court as a rule-making organ for the promulgation of state rules of criminal procedure.'" (quoting *Spencer v. Texas*, 385 U.S. 554, 564 (1967))). Therefore, courts, including federal courts, look to promulgated state rules to understand a state's criminal justice process. And importantly, in Maine, these rules have the force of law. *Peterson v. Johnson*, SJC-23-02, at 14 (Jan. 12, 2024) (Douglas, J.).

The Court will therefore look to the Maine rules in considering the parties' legal arguments on Count I. It will also consider state and federal caselaw in deciding whether or not the representation required in Maine by the Sixth Amendment is "continuous representation."

And it will also apply the federal definitions of "critical stage" to events and proceedings established in the rules in deciding what the Sixth Amendment demands.[3]

Continuous representation under Maine law and the Sixth Amendment

Rule 44 of Maine's Rules of Unified Criminal Procedure states that a defendant has the right to have counsel "represent the defendant at *every stage of the proceeding.*" M.R.U. Crim. P. 44 (emphasis added). The Plaintiffs argue that this rule requires the State under the Maine Constitution to provide continuous representation. While the Court concludes in this Combined Order that indigent defendants in Maine are entitled to "continuous representation," it does not agree with Plaintiffs that Rule 44 embodies only the standard required by Article I, Section 6 of the Maine Constitution.

The Court concludes that Maine complies with the demands of the Sixth Amendment under the United States Constitution *through* Rule 44. *See State v. Smith*, 677 A.2d 1058, 1060 (Me. 1996) (holding that Rule 44 "implements the constitutional right to counsel in a criminal proceeding"). In *Smith,* the parties did not—and more importantly, the Law Court does not—ever mention the Maine Constitution. In that case, the defendant appealed a Superior Court's denial of his request to be declared indigent, asserting violations of his Fourth, Fifth, and Sixth Amendment rights. Defendant Smith simply made no claim under the Maine Constitution, and

[3] The parties also dispute what it means for the State to provide counsel within a reasonable time of the right to counsel attaching. *See Rothgery*, 554 U.S. at 212 ("[C]ounsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself."). Plaintiffs construe this obligation as an alternative theory of liability. The Defendants make a number of arguments on the issue. With respect to summary judgment issues, they argue that the length of time without counsel is not material; and they insist that no Plaintiff has been deprived of this right because—eventually—counsel is provided. The Court has concluded that the Plaintiffs' Sixth Amendment rights require continuous representation, and at critical stages identified in this Combined Order. Given these findings, it is not necessary for the Court at this stage of the proceedings to decide what amount of delay is constitutionally "reasonable" in appointing counsel for the Plaintiffs as part of the liability analysis. The Court has concluded that the issue of "unreasonable" delay should be addressed in later proceedings as part of the remedies analysis when the parties have an opportunity to argue the issue of injunctive relief in Count I, and perhaps as part of the Habeus proceedings in Count III.

the Law Court, in reviewing his Sixth Amendment claim, stated that Rule 44 "implements" the constitutional right to counsel in Maine criminal proceedings.

The Court finds that Justice Douglas of the Maine Supreme Judicial Court's recent decision in *Peterson v. Johnson*, SJC-23-02 (Jan. 12, 2024) (Douglas, J.), lends some support to this Court's interpretation of the relationship between Rule 44 and the United States Constitution. He wrote:

> Guaranteed by the Sixth Amendment to the United States Constitution and *provided for in Maine law* (emphasis added), the right to assistance by counsel to defend against a criminal charge is "among the fundamental principles of liberty and justice," *State v. Babb*, 2014 ME 129, ¶ 10, 104 A.3d 878; "safeguards the other rights deemed essential for the fair prosecution of a criminal proceeding," *Maine v. Moulton*, 474 U.S. 159, 169 (1985); and "embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty," *Johnson v. Zerbst*, 304 U.S. 458, 462–63 (1938).
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> If a defendant cannot afford to hire an attorney, the State has an affirmative obligation to assign counsel. *Gideon v. Wainwright*, 372 U.S. 335, 342–43 (1963); *State v. Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702; *see State v. Smith*, 677 A.2d 1058, 1060 (Me. 1996); M.R.U. Crim. P. 44(a)(1). And inherent in the right to counsel is a requirement that an accused is constitutionally entitled to an attorney who provides competent effective assistance. *See Kimmelman v. Morrison*, 477 U.S. 365, 377 (1986); *Strickland v. Washington*, 466 U.S. 668, 685 (1984); *Laferriere v. State*, 1997 ME 169, ¶ 5, 697 A.2d 1301. . . .
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> The Maine Rules of Unified Criminal Procedure require appointment of counsel for indigent defendants at initial appearance. Rule 44(a)(1) provides that when an individual charged with a criminal offense involving a risk of jail cannot afford an attorney, "the court shall advise the defendant of the defendant's right to counsel and *assign counsel to represent the defendant at every stage of the proceeding* unless the defendant elects to proceed without counsel." (Emphasis added by Douglas, J.). Rule 5(e) provides that "[w]hen a person is entitled to court-appointed counsel, the court *shall assign counsel* to represent the defendant *not later than the time of the initial appearance*, unless the person elects to proceed without counsel." (Emphasis added by Douglas, J.). The rules are unambiguous. They require the court to assign counsel to represent an indigent defendant "not later than" the initial appearance to "represent the defendant at every stage of the proceeding."
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> The rules of criminal procedure are "intended to provide for the just determination" of criminal proceedings and are to be "construed to secure simplicity and procedure,

> fairness in administration, and the elimination of unjustifiable expense and delay." M.R.U. Crim. P. 2. The rules are promulgated by the Maine Supreme Judicial Court; and once effective, "all laws in conflict therewith shall be of no further force or effect." 4 M.R.S. § 9 (2023). Court rules, thus, "have the force of law." *State v. Wells*, 443 A.2d 60, 63–64 (Me. 1982); *Cunningham v. Long*, 125 Me. 494, 496, 135 A. 198, 199 (1926) (holding that "rules have the force of law, and are binding upon the court, as well as upon parties to an action, and cannot be dispensed with to suit the circumstances of any particular case"); *accord State v. Heng*, 539 P.3d 13, 16 (Wash. 2023) ("Our court rules also guarantee the right to counsel."); *State v. Charlton*, 538 P.3d 1289, 1291–92 (Wash. 2023) (same).

Peterson, SJC-23-02, at 12–14 (Jan. 12, 2024) (Douglas, J.).

Given Justice Douglas's decision in *Peterson*, the Law Court's decision in *Smith*, 677 A.2d 1058 (Me. 1996), and the unambiguous language of Rule 44, the Court concludes that in Maine the Sixth Amendment entitles indigent defendants to continuous representation once the right to counsel attaches at their initial appearance or arraignment.

The MCPDS Defendants argue as a matter of law that unrepresented indigent defendants in Maine—even those who are being held in jails awaiting assignment of counsel—are simply not entitled under the Sixth Amendment to representation except at certain discrete court proceedings which they insist are the only "critical stages" that constitutionally matter. Defendants' list includes: the probable cause determination (but not the bail hearing) that occurs at the initial appearance or arraignment; the dispositional conference itself; and trial proceedings. Nothing that occurs in preparation for those events is, in the view of the MCPDS Defendants, constitutionally significant enough to require that they provide counsel to the Plaintiffs, even for those who are incarcerated.

The Court rejects the MCPDS Defendants' very limited view of what they owe indigent defendants in Maine under the Sixth Amendment—particularly those defendants who are held in jails across the State for days, weeks, and sometimes months without *any* Sixth Amendment

protections. The Sixth Amendment demands continuous representation in Maine from the time the right attaches, and at all stages of the criminal process.

Critical stages in the Maine criminal process

Even if Rule 44 requires continuous representation only pursuant to Article I, Section 6 of the Maine Constitution, the Court concludes that the MCPDS Defendants' obligations under the Sixth Amendment to provide counsel are not limited to the proceedings they argue are "critical." Their list of "critical stages" may be an accurate description of the status quo, but it is not correct as a matter of law.

MCPDS Defendants argue that Plaintiffs' failure to point to one instance in which a Subclass member has ever been unrepresented at a dispositional conference is fatal to the entirety of their Sixth Amendment claim. The Court disagrees. Their focus on the dispositional conference ignores what federal courts have come to recognize is at stake throughout the criminal process from the time the Sixth Amendment right attaches to the time an indigent defendant must decide if they are going to proceed to trial or instead knowingly and intelligently waive their right to trial. It also seems to be rooted in large part on a misstatement of what Justice Douglas stated in *Peterson* about dispositional conferences in Maine.

"Critical stage" does not have one agreed-upon meaning. *See Van*, 475 F.3d at 312–15 ("[T]he pithy definitions we have do not simply capture the sometimes permissive or inclusive conclusions by the Supreme Court . . . that this or that period, moment, or event in the course of a criminal proceeding is a critical stage."). The Supreme Court has never comprehensively laid out the breadth of the right to counsel at critical stages. *Rothgery*, 554 U.S. at 212 n.15 ("We do not here purport to set out the scope of an individual's postattachment right to the presence of

counsel."). However, the Supreme Court has articulated the purpose or essence of the "critical stage" in the following cases:

- When the accused's available defenses may be "irretrievably lost," *Hamilton*, 368 U.S. at 54, or where the accused's rights may be "preserved or lost." *White v. Maryland*, 373 U.S. 59, 60 (1963).
- "[T]he accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial." *Wade*, 388 U.S. at 226.
- "[A]ppointment of counsel for an indigent is required at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected." *Mempa*, 389 U.S. at 134.
- "[T]he test utilized by the Court has called for examination of the event in order to determine whether the accused required aid in coping with legal problems or assistance in meeting his adversary." *United States v. Ash*, 413 U.S. 300, 313 (1973).
- When there may be "significant consequences for the accused." *Bell v. Cone*, 535 U.S. 685, 696 (2002).
- "[W]hat makes a stage critical is what shows the need for counsel's presence." *Rothgery*, 554 U.S. at 212.
- When the accused "cannot be presumed to make critical decisions without counsel's advice." *Lafler v. Cooper*, 566 U.S. 156, 165 (2012).

The right to counsel is a "continuous right." *Betschart v. Oregon*, 103 F.4th 607, 620 (9th Cir. 2024). It "is not a haphazard jack-in-the-box that occasionally appears when cranked." *Id.* at 621. The Defendants' argument that the critical stages are only those stages at which a defendant's rights *at trial* may be prejudiced by denial of counsel ignores more recent Supreme Court precedent explicitly rejecting this view. *See, e.g.*, *Lafler*, 566 U.S. at 164–65

> [P]etitioner and the Solicitor General claim that the sole purpose of the Sixth Amendment is to protect the right to a fair trial. Errors before trial, they argue, are not cognizable under the Sixth Amendment unless they affect the fairness of the trial itself. The Sixth Amendment, however, is not so narrow in its reach. . . . Its protections are not designed simply to protect the trial, even though 'counsel's absence in these stages may derogate from the accused's right to a fair trial.'

Id. (citations omitted). The Sixth Amendment guarantees an "ongoing right that persists throughout trial court proceedings." *Betschart*, 103 F.4th at 621.

a. From the time when the Sixth Amendment rights attach to the time of the dispositional conference is a critical stage requiring representation in order to protect an indigent defendant's federal constitutional rights and to ensure access to judicial intervention when necessary.

The United States Supreme Court has declared that "the period from arraignment to trial [is] 'perhaps the most critical period of the proceedings,' during which the accused 'requires the guiding hand of counsel,' if the guarantee is not to prove an empty right." *Wade*, 388 U.S. at 225 (internal citations omitted); *see also Powell v. Alabama*, 287 U.S. 45, 57 (1932) (concluding that defendants did not have the assistance of counsel "during perhaps the most critical period of the proceedings . . . , that is to say, from the time of their arraignment until the beginning of their trial, when consultation, thorough-going investigation and preparation were vitally important"). Indeed, depriving a person of counsel during the period before trial "may be more damaging than denial of counsel during the trial itself." *Maine v. Moulton*, 474 U.S. 159, 170 (1985).

The "constitutional command" of the Sixth Amendment requires more than someone "who happens to be a lawyer [to be] present at trial alongside the accused." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Defendant's counsel must not just show up on the day of a court proceeding, "but prepare for it too." *Betschart*, 103 F.4th at 620. Only with preparation can counsel provide the "meaningful advocacy" the Sixth Amendment demands. *Id.* This is not a new or novel idea. The Supreme Court has long held that "the right to counsel is the right to the *effective assistance of counsel*." *McMann v. Richardson*, 397 U.S. 759, 771 n. 14 (1970); *see also United States v. Cronic*, 466 U.S. 648, 654–55 (1984) ("The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment.").

The Defendants insist that the pretrial investigation phase is not a critical stage but is instead "something that counsel must undertake in order to be adequately prepared to render constitutionally effective assistance at a critical stage." Defs.' Opp'n to Pls.' Mot. Summ. J. 17. The preparation they refer to is precisely the point. The pretrial period is a critical stage *because* it is when the defendant's counsel is preparing to try the case. *See Peterson*, SJC-23-02, at 18 (Jan. 12, 2024) (Douglas, J.) ("[p]retrial events and proceedings . . . have the potential to substantially impact a defendant's defenses to the charges or otherwise adversely affect the outcome at trial."). It is difficult to square the position of MCPDS Defendants that pretrial events and proceedings are not critical stages when the Supreme Court has actually described it as "the most critical period of the proceedings" and so "vitally important" that to be without counsel during that time is "more damaging than denial of counsel during the trial itself." *Wade*, 388 U.S. at 225; *Powell*, 287 U.S. at 57; *Moulton*, 474 U.S. at 170.

This position is also difficult to square with the exacting requirements embodied in Maine rules regarding the State's obligation to provide discovery of all kinds to a defendant before and in preparation for the dispositional conference. *See* M.R.U. Crim. P. 16. The rules categorize the types of discovery, some of which must be provided "automatic[ly]," meaning no request has to be made, while other types of discovery have to be requested. The discovery rules use terminology that an unrepresented person could not be reasonably expected to understand.

The rules lay out a process for how defense counsel may seek redress from the court on their client's behalf if the State is falling short in meeting its discovery obligations. The Court rejects the suggestion that defendants can do this themselves before the dispositional conference, or that they should simply wait patiently for as long as it takes MCPDS to provide counsel before access to the Court is possible. In addition, the arguments advanced by Defendants fail to note

the realities facing unrepresented criminal defendants, particularly those incarcerated in Maine jails. It is well accepted among Maine criminal practitioners—including those who work at the Office of the Attorney General—that discovery in criminal cases is not provided the way it used to be. It is provided electronically, through "the cloud," and often arrives piecemeal as it becomes available to prosecutors from law enforcement agencies, or as the State's investigation of a defendant continues, even after they have been charged and brought before the court.

Substantial federal constitutional rights are also implicated in the early stages of the criminal process. And those rights can be at serious risk if indigent defendants must confront the State alone, without the assistance of counsel. For example, MCPDS Defendants fail to consider the complex Sixth Amendment jurisprudence that requires the State to provide exculpatory evidence to criminal defendants as part of the discovery process. Presumably the Defendants are not suggesting that unrepresented defendants are expected to understand the rights they have to disclosure of exculpatory evidence, much less how to enforce those rights it if their access to Maine courts is hobbled by their lack of representation. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963) ("[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.") *and Giglio v. United States*, 405 U.S. 150, 154 (1972) (holding that "[w]hen the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility" violates due process).

MCPDS Defendants also fail to note that the Sixth and Fourteenth Amendments have long demanded that no person who is incompetent to stand trial can be compelled to withstand the rigors of any part of the criminal process. *Bishop v. United States,* 350 U.S. 961 (1956); *Pate v. Robinson,* 383 U.S. 375, 378 (1966); *Dusky v. United States,* 362 U.S. 402 (1960). If an

unrepresented indigent defendant's diminished capacities are not recognized by a Lawyer of the Day at the first appearance, waiting weeks or months until a lawyer is finally assigned in order to address the issue at a dispositional conference raises significant Sixth Amendment and due process concerns. Yet the MCPDS Defendants fail to even address the issue of unrepresented defendants awaiting this important advocacy during the pretrial process. Indigent defendants whose mental capacities are so diminished, developmentally or psychiatrically, simply cannot advocate for themselves while waiting indefinitely for MCPDS to provide counsel. *See* 15 M.R.S. § 101-D (setting deadlines for the evaluation of a criminal defendant's competency to stand trial); *see, e.g.*, *Drope v. Missouri*, 420 U.S. 162, 171–72 (1975) ("[T]he prohibition [on trying a mentally incompetent defendant] is fundamental to an adversary system of justice."); *United States v. Flores-Martinez*, 677 F.3d 699, 705–06 (5th Cir. 2012) ("[T]he criminal defendant has a procedural due process right that guarantees 'procedures adequate to guard an accused's right not to stand trial or suffer conviction while incompetent.'" (quoting *Holmes v. King*, 709 F.2d 965, 967 (5th Cir.1983) (citations omitted))); *United States v. DiMartino*, 949 F.3d 67, 71–72 (2d Cir. 2020) ("The court must remain alert to issues of competence *throughout* a criminal proceeding." (emphasis added)).

Maine rules also require that *at least 7 days before* the date of the dispositional conference (a critical stage, *see Peterson*, SJC-23-02, at 21 (Jan. 12, 2024) (Douglas, J.)), motions to dismiss, discovery-related motions, motions to suppress, and other motions related to the admissibility of evidence must be served upon the opposing party. M.R.U. Crim. P. 12(b)(3)(A). Such motions include potentially dispositive motions brought under the Fourth, Fifth, Sixth, and Fourteenth Amendments. Even if such a motion is successful only in part, preventing the admission of illegal or unconstitutional evidence at trial would seem to be a basic

requirement to ensure a fair trial under the Sixth Amendment. Obviously, the rule contemplates that discovery would have been obtained and reviewed, and that appropriate investigation would have occurred before the need for any such motions could be recognized or drafted. It would be next to impossible for an unrepresented defendant to protect their constitutional rights by filing potentially dispositive motions with the court.

Other rules address important events that are intended to occur before the dispositional conference. Within 14 days of charging a defendant, the prosecution can strengthen its position against a defendant by joining other defendants in the same case. M.R.U. Crim. P. 8(b). Severing a client from joinder must be done by motion, and meeting the legal standard or even understanding it would be difficult for an unrepresented defendant. *See* M.R.U. Crim. P. 8(d); *State v. Pierce*, 2001 ME 14, 770 A.2d 630. In addition, defense counsel can file motions to preserve and transcribe testimony taken before the Grand Jury under certain circumstances. M.R.U. Crim. P. 6(g). If that does not occur before the Grand Jury rises, the defendant may lose forever the potential to use such testimony advantageously at trial or otherwise. Other opportunities to preserve evidence at crime scenes, or in a forensic lab, can also be lost or compromised unless counsel is involved early and continuously. Again, this preservation can only be done by successful motion practice before the court. If evidence is destroyed while a defendant is unrepresented and without an attorney to monitor the discovery process, that defendant then bears the burden of demonstrating bad faith on the part of the police or proving that comparable evidence cannot now be obtained. *See State v. Cote*, 2015 ME 78, ¶ 15, 118 A.3d 805; *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988). An unrepresented defendant is at the mercy of police and prosecutors who may not prioritize or even understand the defendant's need to preserve such evidence.

By the time of the dispositional conference, defense counsel must be "prepared to engage in meaningful discussion regarding *all* aspects of the case with a view toward reaching an appropriate resolution." M.R.U. Crim. P. 18(b) (emphasis added). Maine law does not just suggest the involvement of defense counsel during the pretrial period—it demands thoughtful and substantive representation. *See Peterson*, SJC-23-02, at 20–21 (Jan. 12, 2024) (Douglas, J.).

All of the above-described events, along with the expectations and deadlines established by the rules, require representation for indigent defendants. Counsel must process discovery, conduct investigation as warranted, and file motions when necessary to protect a defendant's federal constitutional rights during the period between attachment of that right and the dispositional conference. It would be close to impossible for an unrepresented defendant to understand these processes, much less to productively access a court for redress of important federal constitutional rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments.

As the Supreme Court has said repeatedly: "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he might have." *Cronic,* 466 U.S. at 654.

b. The process of plea bargaining with the prosecution has long been recognized as a critical stage under the Sixth Amendment.

Plaintiffs argue that plea bargaining is a critical stage. The Court agrees. In Maine's current criminal justice system and throughout the United States, it is beyond dispute that almost all criminal cases are resolved short of trial. As the MCPDS Defendants surely understand, the decision made by a defendant whether to plead guilty is an individual right that cannot be compelled or coerced. And given the enormous pressures faced by trial courts in Maine to resolve cases, it is difficult to overstate the critical role played by counsel in ensuring that any guilty plea is made knowingly and intelligently.

The United States Supreme Court "[has] long recognized that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010); *see also Missouri v. Frye*, 566 U.S. 134, 144 (2012) ("[T]he negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant.") *and Lafler*, 566 U.S. 156 (2012) ("Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process."). This is "an obvious truth," *Gideon*, 372 U.S. at 343, because plea bargaining "is not some adjunct to the criminal justice system; it *is* the criminal justice system." *Frye*, 566 U.S. at 144 (emphasis in original).

The Defendants argue that plea bargaining is not a critical stage because "substantive plea negotiations" take place at the dispositional conference, which has already been established as a critical stage. Defs.' Opp'n to Pls.' Mot. Summ. J. 19. To the Plaintiffs' contention that plea bargaining begins well before the dispositional conference, the MCPDS Defendants state that Plaintiffs' position "would eliminate the well-established 'critical stage' analysis. *Id.*

If what the MCPDS Defendants are referring to as the "well-established critical stage analysis" includes their position that somehow *Peterson* eliminates the possibility that a critical stage could ever occur in Maine between first appearance and the actual dispositional conference, they misstate *Peterson.* As Plaintiffs argue, "*Peterson* said no such thing." Pls.' Opp'n to Defs.' Mot. Summ. J. 4. *Peterson* does not stand for the conclusion that the only other pretrial critical stage is the dispositional conference. Instead, *Peterson* says "[*a*]*t a minimum*, . . . the Sixth Amendment requires assignment of counsel *sufficiently in advance* of a dispositional conference to be able to provide effective representation in connection with the conference as

well as related matters." *Peterson*, SJC-23-02, at 21 (Jan. 12, 2024) (Douglas, J.) (emphasis added). Their arguments to the contrary ignore both *Peterson* and substantive federal case law.

In Maine, while plea bargaining may sometimes "culminate" at a dispositional conference, the work that must occur to reach a valid and enforceable plea agreement must begin when the State initiates criminal proceedings against a defendant. *Peterson*, SJC-23-02, at 20 (Jan. 12, 2024) (Douglas, J.). This work includes defendant's counsel conducting a pretrial investigation and protecting the defendant's Sixth Amendment rights during the pretrial process as discussed above. It also involves defendant's counsel communicating with their client regularly. And, importantly, it requires defendant's counsel to advocate on their client's behalf to a prosecutor. Plea bargaining cannot be understood as one discrete event. One round of negotiations often leads to others which might or might not "culminate" in resolution by guilty plea at any point before, during, or after the dispositional conference. But regardless of *when* the plea negotiation occurs, the Supreme Court has repeatedly held that criminal defendants require the assistance of counsel to help them negotiate with prosecutors. *See Padilla*, 559 U.S. 356 (2010); *Frye*, 566 U.S. 134 (2012); *Lafler*, 566 U.S. 156 (2012). The MCPDS Defendants' argument fails to acknowledge these federal precedents.

Criminal defendants must be afforded the assistance of counsel throughout the plea-bargaining processes. It is simply not credible for the MCPDS Defendants to suggest otherwise.

c. A bail hearing is a critical stage for Sixth Amendment purposes because of the rights at stake.

Finally, the Court considers Plaintiffs' argument that a bail hearing is a critical stage, and Defendants' argument that it is not. The Court concludes that a bail hearing is a critical stage requiring representation.

A defendant is entitled to the assistance of counsel "where [his] substantial rights . . . may be affected." *Mempa*, 389 U.S. at 134. A defendant's most basic right—his freedom from incarceration—hangs in the balance at a bail hearing. Even if a defendant is not in custody, arguments about conditions of release constitute a "significant infringement of liberty." *Lerman*, No. ANDCD-CR-2024-451 Unified Criminal Docket, at 12 (Androscoggin Cnty., June 1, 2024). One of the reasons the Supreme Court in *Coleman* concluded Alabama's preliminary hearing was a critical stage was because, at that proceeding, the Court decided bail.[4] *Coleman*, 399 U.S. at 8–9 ("[C]ounsel can also be influential at the preliminary hearing in making effective arguments for the accused on such matters as the necessity for an early psychiatric examination or bail."). Other courts have also concluded that a standalone bail hearing is a critical stage. *See Higazy v. Templeton*, 505 F.3d 161, 172 (2d Cir. 2007) (holding that a bail hearing is a critical stage of the criminal process); *Hurrell-Harring v. State*, 930 N.E.2d 217, 223 (N.Y. 2010) (citing *Higazy* with approval); *Caliste v. Cantrell*, 329 F. Supp. 3d 296, 314 (E.D. La. 2018) (holding that a bail hearing is a "critical stage" because "[t]here is no question that the issue of pretrial detention is an issue of significant consequence for the accused"); *Gonzales v. Comm'r of Corr.*, 68 A.3d 624, 631–37 (Conn. 2013). Given this, the Court concludes that a bail hearing is a critical stage.

The MCPDS Defendants' argument that the bail hearing is not a critical stage is difficult to understand, if for no other reason than that MCPDS, through the Lawyer of the Day (LOD) program, actually does provide counsel at bail proceedings. Supp.'g S.M.F. ¶ 157. And the Law Court has held that representation by an LOD fulfills a defendant's right to counsel. *State v. Galarneau*, 2011 ME 60, ¶¶ 7–9, 20 A.3d 99. The Court trusts that MCPDS Defendants are not

[4] The contours of Alabama's preliminary hearing are analogous to Maine's initial proceedings. *See* M.R.U. Crim. P. 5 (the court determines probable cause and sets bail, if applicable).

arguing that the LODs could simply make a probable cause argument at initial proceedings and then leave the defendant to their own devices to argue bail. But in this case, Defendants suggest that would be constitutionally permissible.

Finally, the Court is not persuaded by MCPDS Defendants' argument that the bail hearing is not a critical stage because it does not affect a defendant's opportunity for a fair trial. The proper inquiry, under *Coleman*, is "whether potential substantial prejudice to defendant's rights inheres in the confrontation and the ability of counsel to help avoid that prejudice." 399 U.S. at 9. The possibility of pretrial detention, and counsel's ability to advocate to protect the liberty of a defendant who is presumed innocent, makes a bail hearing a critical stage.

There are no genuine issues of material fact requiring resolution in Count I as to the MCPDS Defendants' obligations to provide continuous representation for Plaintiffs, and at critical stages as found above.

After reviewing the Summary Judgment record and filings, the Court concludes that, when viewing the record in the light most favorable to the MCPDS Defendants, there is no genuine issue of material fact as to whether Defendants are providing continuous representation and representation at critical stages as required by the Sixth Amendment. Therefore, Plaintiffs are entitled to Partial Summary Judgment as a matter of law. *See* M.R. Civ. P. 56(c). "A material fact is one that can affect the outcome of the case, and there is a 'genuine issue' when there is sufficient evidence for a fact-finder to choose between competing versions of the fact." *Stewart-Dore v. Webber Hosp. Ass'n.*, 2011 ME 26, ¶ 8, 13 A.3d 773; *see also Adeyanju v. Foot & Ankle Assocs. of Me., P.A.*, 2024 ME 64, ¶ 17, 322 A.3d 1201; *Cookson v. Brewer Sch. Dep't*, 2009 ME 57, ¶ 11, 974 A.2d 276.

It would be an understatement to describe the Summary Judgment record filed by the parties as "voluminous." Substantial parts of it, however, do not pertain to Count I. They instead

pertain to Count II's allegations regarding the emotional and psychological effects on Plaintiffs who remain unrepresented, particularly those in custody. Other sections which do pertain to Count I allege what is at stake for indigent defendants at various pretrial stages, but the Court addressed those issues as a matter of law in its discussion of critical stages. And significant portions of the record propose how to calculate how many eligible defendants have gone without representation after first appearance, and for how long.[5]

With respect to the parts of the record that pertain directly to the two legal issues presented in Count I, Plaintiffs have produced admissible evidence about criminal cases in which eligible criminal defendants have not been appointed counsel by the scheduled date of their dispositional conference. Supp.'g S.M.F. ¶ 124. In some cases, the dispositional conference was postponed, sometimes repeatedly, while the defendant remained unrepresented. *Id.* ¶ 126. In other cases, a criminal defendant's dispositional conference was held without the defendant having been assigned counsel. *Id.* ¶ 125. Thus, Plaintiffs have generated admissible evidence that criminal defendants are not being provided continuous representation or representation at critical stages of a criminal proceeding.

The MCPDS Defendants have responded to the Plaintiffs' Statements of Material Facts, but they have not properly controverted them. Defendants responded with "qualified" in response to Plaintiffs' Paragraphs 124, 125, and 126 and they "object" to the language about what "docket records *indicate*." Opp. S.M.F. ¶¶ 124–26, 128. They claim that the Court cannot rely upon the docket records and instead must have the underlying case files for each docket record included in the summary judgment record—despite the fact that in a different part of the

[5] The Court has decided that the length of time Plaintiffs have been unrepresented is material only as to the remedy that might be sought but not as to the legal issue of continuous representation and representation at critical stages of the Maine criminal process. *See supra* note 3, at 13.

MCPDS Defendants' argument they acknowledge that the Court *can* take judicial notice of the docket records and the underlying files. Opp. S.M.F. ¶ 124 n.9. The Court agrees with the Defendants that it can take judicial notice of the docket records and underlying filings, and it will do so.

Next, they argue that the Court cannot, as they say Plaintiffs request, draw inferences from competing, but undisputed facts, and they cite two cases which they claim support their position. However, the summary judgment records at issue in those cases are distinguishable from the record before this Court. The parties in those cases generated competing, uncontested facts that might be "capable of supporting conflicting yet plausible inferences." *Id.* ¶¶ 124–26, 128. Such inferences, which "are capable of leading a rational fact-finder to different outcomes . . . depending on which of them the fact-finder draws . . . is not [a choice] for the court on summary judgment." *Lewis v. Concord Gen. Mut. Ins. Co.*, 2014 ME 34, ¶ 10, 87 A.3d 732 (quoting *Lougee Conservancy v. CitiMortgage, Inc.*, 2012 ME 103, ¶ 11, 48 A.3d 774). In *Lougee*, the Law Court found that "competing inferences" existed, precluding summary judgment on an agency theory, when undisputed facts supported contrary views as to the extent of the party's control over the agent. 2012 ME 103, ¶¶ 13–15, 48 A.3d 774. So while the Defendants correctly cite the legal holdings of both *Lougee* and *Lewis,* they stand for a proposition not at work here, as the MCPDS Defendants have not actually presented to the Court any competing, undisputed facts that might lead a court to improperly choose between inferences. The MCPDS Defendants have not generated any facts that controvert the Statement of Material Facts generated by Plaintiffs referenced above.

The Court will also deem three statements, two by MCPDS Deputy Executive Director Eleanor Maciag and one by MCPDS Commission Chair Joshua Tardy, as not properly

controverted, and therefore admitted for purposes of summary judgment. First, in Paragraph 5 of Plaintiffs' Statement of Material Facts, Deputy Director of MCPDS Maciag, who has been designated an expert for the MCPDS Defendants, stated that MCPDS has not provided a sufficient number of attorneys to populate the rosters, thus making it impossible for Defendants to fulfill their mandate to provide sufficient attorneys. Supp.'g S.M.F. ¶ 5 (citing Maciag Dep. (Oct. 30, 2024), 9:17–21 ("Currently we are not providing -- there are not enough attorneys available to meet the demand for indigent legal services. So in terms of -- for those individuals, we are unable to meet that -- our statutory mandate.")). Defendants' response was to "qualify" and argue that her entire statement is a legal conclusion. Opp. S.M.F. ¶ 5. It is not necessary for the Court to address the assertion in the qualification that finding sufficient numbers of qualified is not a part of MCPDS's mandate. For purposes of summary judgment, the Court accepts her statement that "there are not enough attorneys available to meet the demand for legal services" as her view of the state of the rosters and finds her statement has not been effectively controverted.

Second, in Paragraph 10, Deputy Executive Director Maciag states under oath, again in her capacity as one of the MCPDS Defendants' experts, that because MCPDS does not have a sufficient pool of attorneys, there is a growing list of people who need, but who do not receive, counsel. Supp.'g S.M.F. ¶ 10 (citing Maciag Dep. (Oct. 30, 2024), 35:14–16 ("Because we don't have a sufficient pool of attorneys, neither employed or rostered, we have this growing list of people needing counsel.")). Defendants again responded to this by stating "qualified" and arguing that because this statement referenced the "inherently unreliable" Counsel Needed list, the statement is "misleading and unsupported by the cited authority." Opp. S.M.F. ¶ 10. In the deposition referenced, Deputy Executive Director Maciag was relying upon data generated by Maine courts and shared with her agency. She was testifying as a designated expert for the

MCPDS Defendants. Her understanding of that data has not been controverted. The MCPDS Defendants do not offer any opposing fact of any kind to counter her statements that the number of rostered attorneys is insufficient, and that the number of unrepresented indigent defendants is growing. The Court will accept these statements from Deputy Director Maciag statements as uncontroverted facts.

Third, in Plaintiffs' Paragraph 13, MCPDS Commission Chair Tardy's states under oath, that as of the beginning of 2024, there were around 300 defendants without counsel, and that the number has now "gone far beyond that." Supp.'g S.M.F. ¶ 13 (citing Tardy Dep. 21:9–13 ("I don't know what the number is right now so I just don't know. I just know that it's -- at the beginning of the year, the number was 300. It has gone far beyond that, and there is an ebb and flow, but it's an ebb and flow of unacceptability.")). Defendants again stated "qualified" and use the same argument regarding the unreliability of the Counsel Needed list without offering any opposing fact of any kind. Opp. S.M.F. ¶ 13. Chairman Tardy is a named Defendant. His statement that the number of unrepresented defendants has "gone far beyond" 300 is an uncontroverted admission of a party opponent, and the Court will accept it as such.

The MCPDS Defendants' "qualified" responses do not generate any material fact requiring factfinding at trial. Even when taken in the light most favorable to the Defendants, *see Chartier*, 2015 ME 29, ¶ 6, 113 A.3d 234, the undisputed facts established in the Plaintiffs' Statement of Material Facts establish that no representation is being provided by the MCPDS Defendants from the time of first appearance to the dispositional conference for a number of Plaintiffs. Many criminal defendants still do not have counsel at the time of their scheduled dispositional conference (Supp.'g S.M.F. ¶ 124); some proceeded through their dispositional conference without counsel (*Id.* ¶ 125); and others' cases were postponed indefinitely until

counsel could be appointed (*Id.* ¶ 126). This is certainly not continuous representation, and it is not representation at the critical stages identified by the Court as legally required such that representation must be provided between the first appearance and the dispositional conference.

Plaintiffs are therefore entitled to Partial Summary Judgment on the issue of liability under Count I.

B. COUNT II

The Court has reviewed the parties' motions for summary judgments, their opposition motions, and their replies, along with all supporting documents, including affidavits and statements of material facts. Based on the summary judgment record presented, the Court denies the Plaintiffs' Motion for Summary Judgment as to Count II and grants the Defendants' Motion for Summary Judgment as to Count II.[6]

The Plaintiffs have failed to present evidence to the Court for each essential element of Count II, namely, the element of intent, and the Defendants are thus entitled to summary judgment. *See Johnson v. Carleton*, 2001 ME 12, 765 A.2d 571 ("If the evidence presented by a plaintiff who has the burden of proof on an essential element at trial is insufficient, and the defendant would thus be entitled to judgment as a matter of law on that state of the evidence at a trial, the defendant is entitled to a summary judgment.").

In Count II, brought under the Maine Civil Rights Act, 5 M.R.S. § 4682, the Plaintiffs allege the Defendants have violated the Subclass members' right to counsel under Article I, Section 6 of the Maine Constitution. When an "aggrieved party" brings a suit under the Maine Civil Rights Act alleging their constitutional rights have been violated, they must prove that

[6] Rule 56(c) of the Maine Rules of Civil Procedure gives the Court the authority to render summary judgment *against* the moving party. The Court was inclined to do so, as no issue of material fact exists and the Plaintiffs have failed to prove each necessary element of Count II. However, the parties have filed cross-motions for summary judgment and so the Court declines to.

someone "[*i*]*ntentionally* interfere[d]or attempt[ed] to *intentionally* interfere with the exercise or enjoyment . . . of those secured rights." 5 M.R.S. § 4682(1-A)(B) (emphasis added). This interference can be proven in several ways, including, as Plaintiffs argue, "[e]ngaging in any conduct that would cause a reasonable person to suffer emotional distress or to fear death or bodily injury to that person or to a close relation." *Id.* § 4682(1-A)(B)(5).

The statute does not define "intentionally." However, in a 2020 case, the Law Court discussed the similarities in language found in 17 M.R.S. § 2931[7] and language found in the Maine Civil Rights Act, 5 M.R.S. § 4681 (2020),[8] noting: "'Intentionally,' as used in this section, means that it was the person's 'conscious object to cause' the result of his or her conduct." *Anctil v. Cassese*, 2020 ME 59, ¶ 12, 232 A.3d 245. The Court acknowledges that Section 4681 pertains to actions brought by the Attorney General, as opposed to Section 4682, which pertains to actions brought by private, aggrieved persons, but the language in each section as to intentionality is identical. Taking Section 4682's plain language and the Law Court's *Anctil*

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[7] Comparing this language:

> A person may not, by force or threat of force, intentionally injure, intimidate or interfere with, or intentionally attempt to injure, intimidate or interfere with or intentionally oppress or threaten any other person in the free exercise or enjoyment of any right or privilege, secured to that person by the Constitution of Maine or laws of the State or by the United States Constitution or laws of the United States.

17 M.R.S. § 2931.

[8] To this language:

> Whenever any person, whether or not acting under color of law, intentionally interferes or attempts to intentionally interfere by physical force or violence against a person, damage or destruction of property or trespass on property or by the threat of physical force or violence against a person, damage or destruction of property or trespass on property with the exercise or enjoyment by any other person of rights secured by the United States Constitution or the laws of the United States or of rights secured by the Constitution of Maine or laws of the State or violates section 4684-B, the Attorney General may bring a civil action for injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured.

5 M.R.S. § 4681 (2020).

decision together, the Court reads Section 4682 as requiring the Plaintiffs in this case to establish intentionality as defined in the Maine Criminal Code.[9]

Therefore, to succeed under the Maine Civil Rights Act, the Plaintiffs would need to prove that the Defendants' "conscious object" when engaging in conduct that would cause a reasonable person to suffer emotional distress was to interfere with the Subclass members' right to counsel. *See* 5 M.R.S. § 4682(1-A)(B); *Anctil*, 2020 ME 59, ¶ 12, 232 A.3d 245. It is not enough for the Plaintiffs to demonstrate that the Subclass members have suffered emotional harm. While the Plaintiffs have provided expert testimony regarding the emotional distress likely suffered by those who are incarcerated, and those waiting to be appointed counsel, *see* Casey Aff. ¶ 10–48, there is nothing in the Plaintiffs' Statement of Material Facts that suggests, let alone proves, that the Defendants *intentionally* interfered with the Subclass members' right to counsel. The Plaintiffs have failed to make a prima facie case for Count II. The Court denies the Plaintiffs' Motion for Summary Judgment as to Count II and grants the Defendants' Motion for Summary Judgment as to Count II.

It should be noted that the Court's decision on Count II does not address the meaning or breadth of Article I, Section 6 of the Maine Constitution. It is limited to a decision of what is

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[9] The Court considers the statutory language unambiguous. However, if the statute is in fact ambiguous, this Court's interpretation comports with the Maine Legislature's stated intent when the Maine Civil Rights Act was first introduced as a bill in 1989. Senator Gauvreau introduced an amendment to the bill, explicitly intended to "restrict the amounts or numbers of actions which could be brought" under the statute once enacted. 2 Legis. Rec. 1238 (1st Reg. Sess. 1989). The amendment added an "intentionalities standard," meaning that, in Senator Gauvreau's words, "unless a party could prove by the preponderous [sic] of the evidence that a municipal official or any other person working under state law, unless the plaintiff could establish that the conducting [sic] question was intentional, then no such private action could occur." *Id.* Furthermore, when the Maine Legislature amended the Act in 2023 to extend protection to actions that "cause emotional distress or fear of violence," the bill summary declared:

> Examples of behavior prohibited under the bill include repeatedly trespassing on another person's property to hang or burn a figure in effigy or to fumigate the other person's residential property with pesticides when such conduct is motivated by reason of race, color, religion, sex, ancestry, national origin, physical or mental disability, sexual orientation or gender identity.

L.D. 868, Summary (131st Leg. 2023). With this history in mind, in the event that the Act *is* ambiguous, the Court nonetheless concludes that the Plaintiffs have failed to demonstrate the kind of intentional conduct the Legislature intended the Act to require.

required for private citizens to bring claims under the Maine Civil Rights Act. The parties will be free to argue about claims and defenses under the Maine Constitution as they argue the merits of other Counts that are left unresolved in whole or in part by this Combined Order.

C. COUNT III

Plaintiffs in Count III have requested Habeus relief from the Court based upon their claims in Counts I and II that their rights under the United States and Maine Constitution have been violated by the MCPDS Defendants and the State of Maine. Although the claims in Count III have been brought against individual County Sheriffs, the Court permitted the State of Maine to remain a Defendant as a Party in Interest, something the State had actually agreed to in the Habeus case heard and decided by Justice Douglas. *See Peterson*, SJC-23-02 (Jan. 12, 2024) (Douglas, J.).

As the Court has found that the liability of the MCPDS Defendants under the Sixth Amendment has been established as a matter of law, the Court will apply the legal findings made on Count I in the bench trial on Count III now scheduled for January of 2025.[10] To that extent, the Plaintiffs' Motion for Summary Judgment is granted in part.

The Court will discuss the course of future proceedings on Count III at the conference now scheduled for January 6, 2025.

D. COUNT V

In its August 13, 2024 Order on Pending Motions to Dismiss, the Court denied the Motion filed by the State of Maine asserting that it was immune from suit under the doctrine of

[10] As noted, 16 Maine County Sheriffs have been named Defendants on Count III as they are the custodians of a number of Class Members. Counsel for these Defendants have participated in multiple court conferences in this case since Count III was added, but they have not filed any partial or fully dispositive motions on behalf of their clients. The Court has made it clear that the Sheriffs can fully participate in the Habeus trial if they choose to do so, and at the pretrial conference set for January 6, 2025, the Court expects an update on what role, if any, the Sheriffs or their counsel will play in the proceedings on Count III.

sovereign immunity. After full briefing and argument, the Court held that the State of Maine could remain a Defendant in this case for purposes of the declaratory judgment sought in Count V. The Court also deferred its decision as to whether the Court has authority to issue any injunctive relief against the State of Maine as a Defendant on Count V unless Plaintiffs "prevail in establishing liability." Order on Pending Mot. Dismiss, at 15. That Order rejecting the State's argument regarding sovereign immunity was appealed to the Law Court and no decision on the merits has been issued. However, after the appeal was docketed, a Single Law Court Justice remanded this case back to the Superior Court on October 24, 2024, stating: "[t]he trial court may take any action on, and may proceed with, its matter in the usual course as though no appeal had been taken." *Robbins v. Comm'n on Pub. Def. Servs.*, No. Ken-24-450 (Me. Oct. 24, 2024) (Horton, J.). Upon motion of the State, the Single Justice provided clarification on November 4, 2024 that the prior order "does not direct the Superior Court to take any particular action and does not prohibit the Superior Court from taking any particular action." *Robbins*, No. Ken-24-450 (Me. Nov. 4, 2024) (Horton, J.).

This Court now has pending before it the State of Maine's Motion to Continue Trial on Count V, along with its Motion for Summary Judgment on Count V. In the latter motion, the State makes a number of arguments, including ones made previously regarding sovereign immunity and as to whether a declaratory judgment is simply a remedy and not a cause of action. In the Motion to Continue, the State asserts the Court has been fundamentally unfair in depriving the State of an opportunity to conduct discovery. The Court addresses this argument first.

Motion to Continue

The State of Maine argues that it is fundamentally unfair for the Court to make any substantive rulings in Count V unless it has had an opportunity to conduct discovery.[11] It suggests that if the Court fails to give the State of Maine this opportunity, the validity of any judgment issued by the Court could be undermined.

The Court would first note that Rule 56(a) by plain language has for a very long time permitted a motion for summary judgment to be filed by a Claimant so long as more than 20 days have passed since the action was filed. M.R. Civ. P. 56(a). For a Defending Party, Rule 56(b) states that it can be brought "at any time, but within such time as not to delay the trial . . . ." M.R. Civ. P. 56(b).

It is also worth noting that what the Court believes Plaintiffs seek in Count V at this stage of the proceedings is a declaration by the Court that the State of Maine is constitutionally responsible for providing counsel for indigent defendants where a risk of jail exists, and that the State of Maine has failed to comply with this obligation.

In addition, when pressed by the Court as to what discovery the State of Maine felt it needed to conduct, it is the Court's recollection that counsel for the State indicated that it had not finally decided what it intended to do about discovery.

The Court also recognizes that given the failure of the Clerk's Office to duly docket the appeal filed by the State of Maine, it was not until shortly before the discovery deadline expired that the Law Court, acting through a Single Justice, indicated that the trial court had authority to

[11] The State has sent mixed messages to the Court regarding its role in this litigation, especially in regard to discovery. It has suggested that sovereign immunity shields the State not just from a judgment, but also from being compelled to participate in the litigation in any respect as that would inflict injury on the State's sovereignty.

continue trial proceedings "as though no appeal had been taken." *Robbins*, No. Ken-24-450 (Me. Oct. 24, 2024).

The Court is persuaded that, given this history, it would be fundamentally fair to grant the State's Motion to Continue Trial in part to permit *limited* discovery on an expedited schedule by way of depositions only. To be clear, however, the Court does not believe it would be fundamentally fair to delay resolution of any Count except Count V, which is the only Count in which the State of Maine is now a party. This is particularly the case as the Court trusts that counsel for the State has had full access to all discovery generated by all parties in this case. Counsel for the State is an Assistant Attorney General (AAG) in the same office as the AAG who has been involved in representing the MCPDS Defendants in this case since its inception.

Finally, the Court wishes to be clear that at no time did it prevent or impose any procedural obstacle on the State of Maine's ability to file an answer in this case. The Court will not otherwise address this assertion.

Motion for Summary Judgment

The Court will therefore defer ruling on the Cross Motions for Summary Judgment pending in Count V and will permit the State of Maine to conduct limited discovery on an expedited schedule. The Court would, however, request that the State of Maine once again reflect upon two things. First, the Plaintiffs in this Phase I proceeding are only seeking a declaration as to what the State of Maine legally and constitutionally is obligated to provide indigent defendants who have been charged with crimes punishable by incarceration but who remain unrepresented. Second, it is the Court's understanding from previous comments from counsel for the State of Maine that the objection to being included as a named defendant is different from the State of Maine's intention as to how it *might* proceed in this litigation should

the Court provide a remedy on behalf of the Plaintiffs against the MCPDS Defendants. In any event, the Court invites and awaits clarification on the State of Maine's position.

CONCLUSION

With respect to Count I, the Court grants partial Summary Judgment for the Plaintiffs on the issue of liability only. And while the Court has done so after striking the Defendants' jury demand on this Count, its analysis would be the same if a jury trial was available to the MCPDS Defendants as they have argued, as there are no disputed issues of material fact as to whether the Defendants have violated the Sixth Amendment rights of the Plaintiffs. The Court denies the MCPDS Defendants' Motion for Summary Judgment on Count I.

The Court declares and concludes that the Sixth Amendment requires the MCPDS Defendants to provide Plaintiffs continuous representation from the time the right attaches at a defendant's first appearance before the Court, throughout pretrial events and proceedings, and throughout the plea-bargaining process and trial process. The Court also declares and concludes that the MCPDS Defendants have deprived the Plaintiffs of their Sixth Amendment right to representation at critical stages between the time the right attaches and the time of the dispositional conference. In light of these findings, prejudice will be presumed.

At the conference with counsel set for January 6, 2025, the Court will establish a procedure for the parties to address the issue of remedy. Plaintiffs have consistently stated that they are seeking only injunctive relief. However, the parties have not been given an opportunity to address the criteria under Maine law for whether Plaintiffs are entitled to injunctive relief. *See, e.g.*, *Burr v. Dep't of Corr.*, 2020 ME 130, 240 A.3d 371; *Bangor Historic Track*, 2003 ME 140, 837 A.2d 129; *Ingraham v. Univ. of Maine at Orono*, 441 A.2d 691 (Me. 1982). Oral argument will be conducted on one of the days now set aside for the bench trial on the Habeus claim in

Count III, January 22–24, 2025. Counsel should attempt to agree on a briefing schedule with those dates in mind. If either party is seeking a testimonial hearing on the issue of remedy, that will be discussed at the January 6, 2025 conference, but parties should expect that the Court is likely to require any such testimony to be taken on January 22–24, 2025.

With respect to Count II, the Court grants Summary Judgment for the Defendants. While neither party addressed the critical element of intentionality in their arguments on summary judgment, the Court has concluded that Plaintiffs have failed to produce or point to any evidence in the summary judgment record that establishes the kind of intentional violation of constitutional rights which must be proven in order to establish liability under the Maine Civil Rights claim alleged in Count II.

As to Count III, the legal findings made in this Combined Order regarding the Sixth Amendment may be used in any determination made by the Court in future proceedings, including those set now set for January 22–24, 2025 on this Count. The Court reserves ruling on any argument the parties might make as to primacy or co-extensiveness between the Sixth Amendment and Article I, Section 6 of the Maine Constitution until later in these proceedings after further hearing and argument.

With respect to Count V, the claim brought against the State of Maine, counsel for the State must now decide whether, in light of its pending appeal of the previous findings of this Court, it intends to pursue *limited* discovery in the form of depositions pursuant to Rule 56(h) as it has suggested in some of the filings on the pending motions. If the State wishes to do so, it must file a discovery plan with opposing counsel and the Court by January 6, 2025. The Court urges the State to begin to schedule any such depositions as soon as possible, and at the January

6, 2025 conference, the Court will discuss with counsel for the parties the deadlines for this discovery and how the parties will finally argue the issues presented in Count V.

Finally, the Court is reminded that, as the Assistant Attorney General who has represented the MCPDS Defendants throughout this litigation stated early on, it is the State of Maine that is "the real party in interest in this matter." Mot. Dismiss. Tr. 16, 17 (May 26, 2022).

The entry will be:

On Count I, the Plaintiffs' Motion for Partial Summary Judgment is GRANTED on the issue of liability only. The Court will conduct further proceedings to consider the arguments of the parties on the issue of remedy. The MCPDS Defendants' Motion for Summary Judgment on Count I is DENIED.

On Count II, the MCPDS Defendants' Motion for Summary Judgment is GRANTED and the Plaintiffs' Motion on the issue of liability is DENIED.

On Count III, the Habeus proceeding will proceed before the Court on January 22–24, 2025. The legal findings made in this Order may be applied to any Order issued on Count III after hearing and argument.

On Count V, the Motion for Summary Judgment filed by the State of Maine on the issue of sovereign immunity is DEFERRED and the Motion to Continue Trial on Count V only is granted in part to give the State of Maine a brief period to conduct discovery for reasons stated above.

The Clerk shall note this Order on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

Dated: January 3, 2025

Justice, Maine Superior Court

Entered on the Docket: 1/3/2025