STATE OF MAINE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-24-479

LARRY ANDERSON,

Petitioner-Appellant

v.

DEPARTMENT OF MARINE RESOURCES,

Respondent-Appellee

ON APPEAL FROM THE SUPERIOR COURT, CUMBERLAND COUNTY

BRIEF OF RESPONDENT-APPELLEE DEPARTMENT OF MARINE RESOURCES

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INTRODUCTION

Petitioner-Appellant Larry Anderson ("Mr. Anderson") appeals the decision of the Maine Superior Court (*Cashman, J.*) denying Mr. Anderson's petition for judicial review of final agency action pursuant to M.R. Civ. P. 80C. Mr. Anderson's Rule 80C petition appealed the decision by the Commissioner of the Maine Department of Marine Resources ("Commissioner") to suspend Mr. Anderson's lobster fishing license. The Commissioner suspended Mr. Anderson's license pursuant to the Department of Marine Resources' ("Department" or "DMR") express statutory authority and procedures for administrative suspension of a license for violations of marine resources laws or rules. *See* 12 M.R.S. §§ 6371(3), 6374 (2024). Mr. Anderson sought judicial review of the Commissioner's decision pursuant to the Maine Administrative Procedure Act ("MAPA"), 5 M.R.S. §§ 11001-11008 (2024), and Rule 80C.

On appeal to the Superior Court, Mr. Anderson did not contest any of the Department's factual findings or the sufficiency of those findings to support the suspension of Mr. Anderson's license. Mr. Anderson also did not claim that DMR denied him due process by failing to follow any of the administrative suspension procedures required by statute, or that DMR misapplied the substantive law or abused its discretion in suspending Mr. Anderson's license. Mr. Anderson's only argument on appeal before the Superior Court was that the

administrative hearing officer erred in denying Mr. Anderson's motion to have a jury decide whether his lobster license should be suspended. On appeal to this Court, Mr. Anderson argues that the Superior Court erred in ruling that Mr. Anderson was not entitled to a jury trial. His rationale is that because he allegedly has a property interest in his lobster license, the Maine Constitution entitled him to a jury trial on the facts underlying the license suspension.

The Superior Court correctly ruled that the administrative hearing officer committed no error in denying Mr. Anderson's motion for a jury trial because the administrative suspension statutes did not confer a jury trial right and Mr. Anderson was afforded all due process required by law. The court also correctly determined that the Commissioner properly followed the statutory process in suspending Mr. Anderson's license based on factual findings that were supported by substantial evidence in the record.

The Superior Court's decision should be affirmed because DMR adhered to an administrative suspension process set forth in statute, and the Maine Constitution did not entitle Mr. Anderson to a jury trial. The only relief the Department sought in its action against Mr. Anderson was the suspension of his lobster license; it sought no damages or civil penalties. Under Maine law, a threshold issue when considering whether the Maine Constitution provides a jury trial right in a civil action is whether the action seeks exclusively monetary

relief. If it does not, then the action is equitable in nature and there is no right to a jury trial. Maine's constitutional right to a civil jury trial is derived from the same right in Massachusetts's Constitution, and both states' highest courts have held that administrative licensing actions are equitable and remedial, not punitive, and do not require jury trials. Therefore, like many people who engage in professions and activities that require licensure by a State agency,[1] lobster fishermen licensed by DMR are not entitled to a jury trial to determine whether they have committed conduct that authorizes the suspension of their licenses.

In the face of the overwhelming precedent about equitable claims and administrative license suspensions, this Court should not entertain Mr. Anderson's attempt to shift the burden in this Rule 80C appeal to DMR to establish the historical treatment of civil fishing violations. DMR had no authority to disregard its administrative suspension statute or declare the Legislature's grant of authority unconstitutional, and even if it were not well established that no jury trial right exists under these circumstances, DMR does

[1] *See, e.g.,* 4 M.R.S. § 152(9) (2024) (providing jurisdiction to District Court to grant equitable relief in actions relating to licenses issued by agencies); 8 M.R.S. § 279-B (2024) (authorizing administrative suspension of harness racing licenses); 10 M.R.S. §§ 8003(5), (5-A) (2024) (providing authority to nearly all boards, commissions, bureaus and offices affiliated with the Department of Professional and Financial Regulation to administratively suspend, revoke, or take other action against license holders).

not bear the burden of proof in this purely record-based MAPA proceeding for judicial review of the Commissioner's decision.

The Superior Court's denial of Mr. Anderson's petition for review of the Commissioner's suspension of his lobster license is correct and should be affirmed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

DMR has the exclusive authority to issue lobster fishing licenses for the State of Maine. 12 M.R.S. § 6421 (2024). DMR may suspend a license based on certain criminal convictions or civil adjudications against a license holder. 12 M.R.S. § 6351 (2024). Alternatively, DMR is authorized by statute to administratively suspend a license for a "[v]iolation of any section of marine resources laws or rules adopted under this Part[.]" 12 M.R.S. § 6371(3). If the Commissioner administratively suspends a license, he may not also suspend the license because of a criminal conviction or civil adjudication for the same violation. 12 M.R.S. § 6374(4). The procedure for administratively suspending a license pursuant to Section 6371(3) is governed by Section 6374. If the Commissioner determines that suspension of a license is necessary based on a preponderance of evidence presented to him under oath by the Chief of Marine Patrol, the Commissioner notifies the license holder in writing of the proposed suspension and the opportunity for a hearing. 12 M.R.S. § 6374(1). If the

license holder requests a timely hearing, the proposed suspension does not go into effect, and a hearing must be held in accordance with 12 M.R.S. § 6374(2). A presiding officer authorized by the Commissioner holds the hearing and reports their findings to the Commissioner. 12 M.R.S. § 6374(2); 5 M.R.S. § 9062 (2024). "[T]he issues of the hearing are limited to whether the person requesting the hearing committed a violation of marine resources law or conduct described in section 6371, subsection 3…." 12 M.R.S. § 6374(2)(A). If the hearing officer so finds, then the Commissioner may suspend the license for a period of time, up to a maximum amount set by statute. 12 M.R.S. § 6374(3). The Commissioner's decision is appealable to the Superior Court. 5 M.R.S. § 11001(1); 12 M.R.S. § 6374(5).

In 2023, Mr. Anderson held an active Class III license to fish for lobster pursuant to 12 M.R.S. § 6421(1)(C) (2024). (Administrative Record ("A.R.)" 48.) On October 11, 2023, pursuant to 12 M.R.S. § 6374, the Commissioner provided Mr. Anderson with written notice that the Commissioner had determined a suspension of Mr. Anderson's lobster license was necessary, based on a preponderance of the evidence that Mr. Anderson had committed two violations of marine resources laws on August 20, 2023.[2] (A.R. 30-31.) The

[2] The two violations were (1) 12 M.R.S. § 6431-A (2024): Exceeding trap limit: Fishing more than 800 traps, and (2) 12 M.R.S. § 6431-B (2024): Fishing 30 untagged traps. (A. 35-37.)

notice informed Mr. Anderson of his right to request a hearing, which he did. (A.R. 208.) On December 20, 2023, Mr. Anderson submitted a motion to the administrative hearing officer asking that the matter be tried to a jury or, in the alternative, that the administrative suspension proceeding be dismissed, asserting that he had a right to a civil jury trial. (Appendix "A." 38-40, 41.) On January 3, 2024, the hearing officer denied the motion, stating:

> I deny the petitioner's request for a jury trial and to dismiss the administrative suspension. The statute explicitly states that if the commissioner suspends a marine license, the person may request a hearing and that hearing "must" be held in accordance with the Maine Administrative Procedure Act. 12 M.R.S.A. § 6374. The petitioner has not identified any language in the Maine Administrative Procedure Act that allows for a jury trial in an administrative hearing or that grants an administrative hearing officer to dismiss a suspension before the hearing occurs.

(A. 41.)

The hearing officer held the hearing on January 22, 2024. (A.R. 30-31, 310-483 (Hearing Transcript).) On February 7, 2024, the hearing officer issued his written findings that Mr. Anderson had committed the alleged marine resources violations. (A. 31-37.) On February 8, 2024, the Commissioner, citing the hearing officer's written findings, issued a written notice of suspension of Mr. Anderson's lobster license effective five days later. (A. 25.) The notice stated, "this notice shall be the final agency action of the Department with

respect to the suspension of your license" and provided information about further appeal rights.[3] *Id*.

On February 22, 2024, Mr. Anderson filed a petition for judicial review of final agency action pursuant to MAPA and Rule 80C. (A. 3.) Mr. Anderson's petition raised a single claim for judicial review of final agency action pursuant to MAPA and Rule 80C, claiming that DMR's "imposition of a license suspension without affording him a jury trial, which is the action here complained of, violated the Maine Constitution." (A. 21, ¶ 12.) Mr. Anderson sought relief in the form of an order that the suspension be stricken and his license restored. (A. 23.)

After briefing and oral argument, the Superior Court issued a decision and order, docketed October 3, 2024, denying Mr. Anderson's Rule 80C appeal and affirming the Commissioner's decision based on an analysis of the administrative suspension statute. (A. 7-19.) This appeal followed.

[3] Separate and apart from this administrative proceeding and appeal, Mr. Anderson is involved in other court proceedings related to the same marine resources violations that were the basis for his administrative license suspension. (Blue Br. 6.) DMR is not prosecuting those charges. Only district attorneys have the authority to prosecute criminal charges or civil actions to enforce marine resources laws in court. *See* 12 M.R.S. § 6201 (2024). All DMR does (through Maine Marine Patrol) is investigate the facts, issue a summons to the defendant, and present the evidence to the district attorney, who may or may not prosecute the action.

STATEMENT OF THE ISSUES

I. Whether the Superior Court was correct in denying Mr. Anderson's petition for review because Mr. Anderson was not entitled to a jury trial.

SUMMARY OF ARGUMENT

The Court should affirm the Superior Court's denial of Mr. Anderson's petition for review under Rule 80C because Mr. Anderson was not entitled to a jury trial under the Maine Constitution to decide the facts underlying the suspension of his lobster license. Mr. Anderson does not dispute that the Maine Legislature granted DMR the authority to administratively suspend his license pursuant to certain procedures, which include an administrative fact-finding hearing but not a jury trial; DMR followed the statutorily required procedures, including providing Mr. Anderson with a hearing; these procedures satisfied constitutional procedural due process requirements; there was substantial evidence in the record to support the factual findings; and the factual findings supported the administrative suspension of his license under statute. He argues only that his license could not be suspended without a jury trial. The Maine Constitution, article I, section 20, did not entitle Mr. Anderson to a jury trial instead of an administrative hearing because the suspension of his license was remedial, was not accompanied by civil penalties or any other monetary relief, and was equitable in nature.

In the face of black letter law that the Maine Constitution does not require a civil jury trial for equitable claims, and where DMR's suspension of Mr. Anderson's license was remedial and involved no monetary relief whatsoever, this Court should not entertain Mr. Anderson's attempt to shift the burden in this Rule 80C appeal to DMR to prove the historical treatment of civil fishing violations. Where DMR lacked the statutory authority to provide Mr. Anderson with a jury trial or to declare the Legislature's administrative suspension statute unconstitutional, DMR committed no legal error by proceeding with the administrative suspension consistent with its grant of statutory authority. It is Mr. Anderson, not DMR, who bears the burden to prove that DMR erred in this purely record-based MAPA proceeding for judicial review of the Commissioner's decision.

On this limited record on appeal, Mr. Anderson asks the Court to hold that no license "to engage in an enterprise" may be suspended without a civil jury trial. Such a holding would upend the administrative license suspension procedures used by dozens of State administrative authorities. The Court should reject Mr. Anderson's request.

If the Court ultimately remains unconvinced that existing precedent firmly establishes that Mr. Anderson did not have a right to a jury trial, and if the Court concludes that DMR has the burden to prove the historical treatment

of similar claims before 1820, then the remedy would be to remand this matter to the Superior Court to allow DMR to supplement the record with that evidence. But DMR urges the Court to affirm the Superior Court's decision because it has all the information it needs to conclude that Mr. Anderson had no right to a civil jury trial under the Maine Constitution.

ARGUMENT

I. THE DMR COMMISSIONER'S DECISION TO SUSPEND MR. ANDERSON'S LOBSTER LICENSE FOLLOWING AN ADMINISTRATIVE HEARING SHOULD BE AFFIRMED.

A. Mr. Anderson did not prove that his alleged property interest in his lobster license entitled him to a civil jury trial.

This Court directly reviews the administrative agency's decision, and the Court's review is "deferential and limited." *Passadumkeag Mountain Friends v. Bd. of Envtl. Prot.*, 2014 ME 116, ¶ 12, 102 A.3d 1181 (quoting *Friends of Lincoln Lakes v. Bd. of Envtl. Prot.*, 2010 ME 18, ¶ 12, 989 A.2d 1128). The Court reviews an administrative agency's decision for "an abuse of discretion, error of law, or findings unsupported by substantial evidence on the record." *Greely v. Comm'r, Dep't of Hum. Servs.*, 2000 ME 56, ¶ 5, 748 A.2d 472 (quoting *Herrick v. Town of Mechanic Falls*, 673 A.2d 1348, 1349 (Me. 1996)). Mr. Anderson, as the party challenging the agency decision, bears the burden of persuasion on appeal. *Maquoit Bay, LLC v. Dep't of Marine Res.*, 2022 ME 19, ¶ 5, 271 A.3d 1183. Mr.

Anderson does not claim that DMR's findings were unsupported by substantial evidence on the record. He appears to argue that DMR either committed legal error or abused its discretion when it denied Mr. Anderson's request for a jury trial. It did neither.

The sole legal issue presented by Mr. Anderson is whether article I, section 20 of the Maine Constitution entitled him to a jury trial instead of an administrative hearing to decide the facts underlying his license suspension. Mr. Anderson hinges his argument on his claim that he has a property interest in his lobster license, citing *Munjoy Sporting & Athletic Club v. Dow*, 2000 ME 141, 755 A.2d 531. Unlike in this case, the petitioner in *Munjoy Sporting* had no statutory right to an administrative hearing after the State agency denied his application for a gaming license, and he did not receive an administrative hearing. *Munjoy Sporting & Ath. Club*, 2000 ME 141, ¶ 10, 755 A.2d 531. The Court concluded that the petitioner in *Munjoy Sporting* had a property interest in the gaming license and, therefore, the Due Process Clause of the United States Constitution required the agency to provide the petitioner with a hearing before denying him the license. *Id.* ¶¶ 10, 13.

As the hearing officer and the Superior Court correctly noted, nothing in *Munjoy Sporting* supports Mr. Anderson's contention that he was entitled to a jury trial. (A. 18, 41.) Unlike the petitioner in *Munjoy Sporting*, it is undisputed

that Mr. Anderson had a statutory right to an administrative hearing before his lobster license was suspended pursuant to 12 M.R.S. § 6374(2) and that he was provided that hearing. Also unlike the petitioner in *Munjoy Sporting*, Mr. Anderson does not assert any violation of his constitutional procedural due process rights. His only apparent reason for referring to a property interest in his lobster license is to try to bolster his argument based on article I, section 20 of the Maine Constitution, which provides in pertinent part, "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…." Me. Const. art. I, § 20.

Even assuming that Mr. Anderson had a property interest that entitled him to receive due process—which he did receive—that does not mean that he was also entitled to a jury trial under the Maine Constitution. Mr. Anderson's claim that he was entitled to a jury trial fails because, as shown below, Maine law is clear that the Maine Constitution does not provide a right to a jury trial for equitable claims. The only action that DMR took against Mr. Anderson was to suspend the lobster fishing license that it had issued him, all pursuant to express legislative grants of authority. The agency was not authorized by statute to seek, and did not seek or impose, any form of monetary relief such as civil penalties. The administrative license suspension was purely equitable in

nature, and the Maine Constitution did not require Mr. Anderson to be given a jury trial instead of the administrative hearing that he received.

B. Mr. Anderson did not prove that the Maine Constitution guaranteed him a jury trial instead of a statutorily authorized administrative hearing in his license suspension proceeding where DMR sought only equitable relief.

1. There is no constitutional right to a civil jury trial under Maine law for claims that are equitable in nature.

Mr. Anderson's argument relies entirely on his mistaken assertion that Maine law provides a right to jury trial in any civil action involving an alleged property right, unless the agency can prove that no right to a jury trial exists by examining historic rights at common law. Mr. Anderson fails to recognize a fundamental legal principle that is well established under Maine law: the Maine Constitution does not provide a right to jury trial in a civil case where, as here, the relief sought is equitable in nature. "The Maine Constitution [] provides a jury trial for legal claims, but not equitable ones." *DesMarais v. Desjardins*, 664 A.2d 840, 844 (Me. 1995) (citing *Town of Falmouth v. Long*, 578 A.2d 1168, 1171 (Me. 1990); *King v. King*, 507 A.2d 1057, 1059 (Me. 1986)). "In analyzing the right to a jury trial we must determine whether a claim is legal or equitable…. This determination depends upon the basic nature of the issue presented, including the relief sought." *DaimlerChrysler Corp. v. Exec. Dir., Maine Revenue Servs.*, 2007 ME 62, ¶ 20, 922 A.2d 465 (citing *DesMarais*, 664 A.2d at 844; *Cyr*

v. Cote, 396 A.2d 1013, 1016 (Me. 1979)). "Suits at equity are proceedings for injunctions or certain other special remedies beyond the award of monetary compensation available in 'legal actions.'" Marshall J. Tinkle, *The Maine State Constitution* 60 (2d ed. 2013).

This fundamental principle was expressly set out in a case relied on heavily by Mr. Anderson, *City of Portland v. DePaolo*, 531 A.2d 669, 671 (Me. 1987). In *DePaolo*, the plaintiffs appealed a municipality's assessment of civil penalties for selling obscene magazines. Mr. Anderson argues that *DePaolo* acknowledged a right to a jury trial in any civil case involving property, but this Court expressly ruled otherwise. The Court explained its narrow holding in *DePaolo* as follows:

> If an action is civil in nature, **exclusively seeking a money recovery,** the parties are entitled to a jury trial even if that type of action was unknown at the time the Maine Constitution was adopted, unless at the time the Maine Constitution was adopted that action or its pre–1820 analogue was not tried to a jury either in the first instance or on an appeal.

DePaolo, 531 A.2d at 671 (emphasis added). Because the City of Portland exclusively sought civil penalties, the threshold issue of whether "exclusively … money recovery" was sought was satisfied, and only then did the Court proceed to analyze the state of the law before 1820 with respect to obscenity cases.

Less than a year after *DePaolo* was decided, the Court firmly rejected the idea that *DePaolo's* holding applies to cases seeking primarily equitable relief. In *In re Shane T.*, 544 A.2d 1295, 1296 (Me. 1988), the Court considered an appeal by a father arguing that the Superior Court had wrongfully denied his request for a jury trial in terminating his parental rights. The Court rejected the plaintiff's claim to a right to a jury trial and distinguished *DePaolo*, explaining:

> Article I, section 20 guarantees parties in a civil suit the right to a jury trial unless at the time the Maine Constitution was adopted, the same or similar action was not tried to a jury. *See City of Portland v. DePaolo*, 531 A.2d 669, 671 (Me. 1987). The case at bar is sharply distinguished from *DePaolo*, in which the City of Portland sought exclusively a money judgment as a civil penalty for violation of its anti-pornography ordinance. *Id*. In contrast, the objective of the present suit is not a money judgment, either exclusively or in any part, but rather is a coercive, injunctive-type order against the father governing his future relationship with his son.

In re Shane T., 544 A.2d at 1296-97.

Even a claim including a civil penalty (which is not the case here) may be considered equitable in nature. In 1990, the Court considered arguments brought by a dentist whose dental practice was the subject of a municipal zoning enforcement action seeking injunctive relief and civil penalties. *See Town of Falmouth v. Long*, 578 A.2d 1168, 1169 (Me. 1990). Citing *DePaolo*, the dentist argued that he was entitled to a jury trial on the civil penalty portion of the case. This Court rejected this argument, noting that "the gravamen of the

Town's complaint was a request for injunctive relief and that the inclusion of a request for the imposition of a civil penalty was merely ancillary. The Maine Constitution provides a right to a jury trial for legal but not equitable claims." *Id.* at 1171 (citing *King,* 507 A.2d at 1059 (quoting *Cyr,* 396 A.2d at 1016)). The Court further explained why the dentist's reliance on *DePaolo* was unavailing:

> Moreover, contrary to Long's assertion, our decision in *City of Portland v. DePaolo* does not recognize a uniform right to a jury trial whenever a civil penalty may be imposed. In *DePaolo,* the *only* issue before the court was whether to impose a civil penalty for violations of the city's antipornography ordinance. Determining that Maine's Constitution afforded the defendants the right to a jury trial in that case, **we nevertheless narrowed our holding to civil actions "exclusively seeking a money recovery."** *DePaolo,* 531 A.2d at 671. The Town in the instant case does not "exclusively seek a money recovery." Instead, it primarily pursues injunctive relief and requests the imposition of a civil penalty only as a secondary measure. **This distinguishes the case at bar from *DePaolo* and leads us to conclude that the court properly considered this enforcement action as equitable in nature** and therefore committed no error in denying Long a jury trial on the civil penalty issue.

Id. at 1172 (emphasis added). *Town of Falmouth v. Long* makes clear that a civil action must "exclusively seek a money recovery" in order for there to be any possibility of a right to a jury trial under Maine's Constitution.

Similarly, in an enforcement action brought by the Maine Department of Environmental Protection against a violator of environmental laws, this Court again held the Maine Constitution does not provide a right to jury trial where

the action is "equitable in nature and involves only ancillary coercive civil penalties…." *Dep't of Envtl. Prot. v. Emerson*, 616 A.2d 1268, 1271 (Me. 1992) ("Courts of equity have traditionally proceeded "to dispose of the entire controversy and render complete relief…. Recently we recognized the vitality of that tradition in *Town of Falmouth v. Long*, 578 A.2d 1168 (Me. 1990).").

The Court reiterated this principle in *Kennebec Federal Savings & Loan Association v. Kueter*, stating once again that there is no right to a jury trial for claims that are equitable in nature:

> We have held that jury trials are not available for claims that are equitable in nature. *See, e.g., Cyr v. Cote*, 396 A.2d 1013, 1016 (Me. 1979) (as to equitable issues, no jury trial right exists pursuant to article I, section 20). The determination whether a claim is legal or equitable depends on "the 'basic nature of the issue presented, including the relief sought.'" *DesMarais v. Desjardins*, 664 A.2d 840, 844 (Me. 1995) (quoting *Cyr v. Cote*, 396 A.2d at 1016). "'Where a plaintiff seeks damages as full compensation for an injury, the claim is legal and the plaintiff is entitled to a jury trial' ... [but] when the primary recovery pursued is equitable, the inclusion of a request for money damages does not convert the proceeding into an action at law." *Id*. (quoting *King v. King*, 507 A.2d 1057, 1059 (Me. 1986)).

Kennebec Fed. Sav. & Loan Ass'n v. Kueter, 1997 ME 123, ¶ 4, 695 A.2d 1201.

Recent Superior Court decisions have followed this Court's precedent and concluded that the Maine Constitution does not provide a right to jury trial in civil land use enforcement actions brought under Rule 80K, except where the primary relief sought was monetary. *See Town of Lebanon v. McDonough*, No.

CV-18-0099, 2018 WL 4439566, at *2-3 (Me. Super. Ct. Aug. 20, 2018) (*O'Neil, J.*) (citing *Town of Vinalhaven v. Stevens*, No. CV-2013-49, 2015 WL 13647262, at *1 (Me. Super. Ct. Oct. 13, 2015) (*Billings, J.*) and *State of Maine, Dep't of Envtl. Prot. v. Winterwood Acres, Inc.*, CV-06-339, slip op. at 1 (ME Super. Ct., York Cnty., March 27, 2007) (*Brennan, J.*)).

This body of Maine law explains why there is no right to a jury trial under article I, section 20 of the Maine Constitution in cases seeking only or primarily equitable relief, regardless of the nature of any alleged property rights that may be at issue. *See DaimlerChrysler Corp.*, 2007 ME 62, ¶ 23, 922 A.2d 465 (holding refund portion of Maine Lemon Law is an action seeking rescission of a contract, which is an equitable remedy and therefore not entitled to a jury trial). To the contrary, an action must "exclusively seek a money recovery" to trigger any further analysis of whether the type of action in question has historically been afforded a jury trial. *Town of Falmouth*, 578 A.2d at 1169.

2. Because the administrative suspension of Mr. Anderson's lobster license was non-monetary and equitable in nature, the Maine Constitution did not entitle him to a jury trial before his license was suspended.

In this case, there is no claim regarding any monetary damages or civil penalties. DMR's administrative license suspension process is purely non-monetary and equitable in nature. After a hearing provided pursuant to 12

M.R.S. § 6374, if the hearing officer finds that a violation of marine resources law or certain other misconduct occurred, the Commissioner may suspend the violator's license for a period of time, the maximum amount of which is set by statute. 12 M.R.S. § 6374(3). That is exactly what DMR did in this case.

DMR's authority to administratively suspend licenses pursuant to Sections 6371(3) and 6374 does not include the ability to seek civil damages or penalties.[4] In suspending a license after a violation has been proven, the Department is acting as the regulator of the State's lobster fishery by suspending a person's privilege to engage in the activity of lobster fishing. In this respect, DMR is no different from many other State agencies, boards, commissions, and other entities that exercise statutorily authorized administrative authority to take action against their licensees without a jury trial. *See supra* note 1.

As the Court has repeatedly held, "[a]dministrative license suspensions are remedial, not punitive, in character," and do not require jury trials. *DiPietro v. Sec'y of State*, 2002 ME 114, ¶ 11, 802 A.2d 399 (citing *State v. Savard,* 659 A.2d 1265, 1268 (Me. 1995)); *see Mayhew v. Sec'y of State*, Civ. No. AP-99-085,

[4] Monetary penalties are separately available for civil violations of marine resources laws. *See* 12 M.R.S. § 6174(3) (2024). But as noted in footnote 3 above, the enforcement mechanism for such penalties is within the district attorney's authority, not DMR's, and is entirely separate from DMR's administrative suspension process.

2000 WL 33675679, at *4 (Me. Super. Ct. Aug. 22, 2000) ("administrative license suspension is not a criminal proceeding" and petitioner's "claim that he was entitled to a jury trial and other constitutional protections afforded criminal defendants is without merit"); *State v. Nugent,* 2002 ME 111, ¶ 3, 801 A.2d 1001 (reaffirming that there is no civil right to jury trial in civil traffic infraction cases).

Mr. Anderson argues that the temporary loss of his lobster license is punitive because it deprives him of his livelihood, but Maine precedent in analogous contexts refutes this argument.[5] For example, "[t]here exists no absolute right to obtain and hold a driver's license…. The driver's license is a privilege to which certain rights and responsibilities attach and for valid reasons involving public safety may be granted or withheld." *Savard*, 659 A.2d at 1267. The Court has indicated that the same is true for professional and occupational licenses: "**Like a professional licensee,** a driver's right to use his or her license is conditioned on the individual's observance of proper operating standards." *DiPietro*, 2002 ME 114, ¶ 11, 802 A.2d 399 (emphasis added). "We analogize the driver's license to professional licensing and certification, which,

[5] Mr. Anderson acknowledges that DMR took no action against him other than suspending his privilege to engage in commercial lobster fishing, and his counsel conceded that his claim of entitlement to a jury trial would be stronger if DMR had assessed a monetary penalty. (Oral Arg. Tr. 28-30.)

if abused, may be revoked in the name of public safety." *Savard*, 659 A.2d at 1268. "A licensee's right to use the license is specifically conditioned on observing specified operating standards. The suspension of that privilege merely signifies the failure of the holder to comply with the agreed conditions." *Id*. The same holds true for Mr. Anderson's DMR license and suspension.

The legislative history of the law that created DMR's administrative license suspension process expressly states the Legislature's intent that this process is remedial, not punitive. "[This bill] creates a new administrative hearing process for all other violations of marine resources laws when a license suspension is being considered, **clarifies that such suspensions are remedial** and creates a provision to prohibit multiple suspensions for the same violation." L.D. 1462, Summary (125th Legis. 2011) (emphasis added). This express statement of intent by the Legislature firmly establishes that DMR's administrative license suspension process is remedial, not punitive. *See Savard*, 659 A.2d at 1268 (citing statement of fact accompanying bill as evidence of Legislature's intent for driver's license suspension to be remedial). The Commissioner's authority to remedy marine resources violations by suspending licenses is consistent with his general responsibility for the administration and enforcement of all marine resources laws. *See* 12 M.R.S. § 6022(2) (2024).

The Massachusetts Supreme Judicial Court aligns with Maine caselaw in holding that there is no right to jury trial for claims that are equitable in nature. This is important because article I, section 20 of Maine's Constitution is derived from article 15 of the Massachusetts Constitution,[6] which provides: "In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to a trial by jury…." Mass. Const. Pt. 1, art. XV. Interpreting this language, the Supreme Judicial Court of Massachusetts has held that "the right to a jury trial does not apply to cases which traditionally would have fallen within the jurisdiction of a court of equity." *Doherty v. Ret. Bd. of Medford*, 425 Mass. 130, 137, 680 N.E.2d 45, 50 (Mass. 1997). The *Doherty* court held that the plaintiff, who was required by a municipal board to forfeit his retirement benefits after an administrative finding that he had misappropriated government property, was not entitled to a jury trial, explaining, "[w]hile an agency that exercises adjudicatory powers is constrained by the demands of due process, … the board granted Doherty the right to a hearing under [Massachusetts statute], at which he was permitted to present evidence, cross-examine, and seek judicial review, thus satisfying the

[6] Tinkle, *The Maine State Constitution* 59 (2d ed. 2013).

demands of due process. No more was required." *Id.*, 425 Mass. at 138, 680 N.E.2d at 50.

With respect to professional and occupational licenses specifically, the Massachusetts Supreme Judicial Court has expressly held that while "a license to practice law is a property right of which [an attorney] cannot be deprived without due process," an attorney is not entitled to a jury trial before their law license could be suspended indefinitely. *In re Gargano*, 460 Mass. 1022, 1025, 957 N.E.2d 235, 240 (Mass. 2011) (citing *Matter of Carver*, 224 Mass. 169, 172, 112 N.E. 877 (Mass. 1916)). The Massachusetts Supreme Judicial Court reached the same conclusion regarding a license to practice medicine. *See Schwartz v. Bd. of Registration in Med*., 490 Mass. 1025, 1029, 196 N.E.3d 325, 330 (Mass. 2022).

Therefore, the highest courts in both Massachusetts and Maine have consistently held that a civil jury trial is not required for equitable claims, and specifically not required for an agency's suspension of an agency-issued license. DMR is not aware of a single Maine court that has held that a statutorily authorized suspension of a license by an administrative agency entitles the license holder to a jury trial instead of an administrative hearing. As one Law Court justice observed in a case that ultimately did not reach the question of

whether jury trials are required for "new statutory remedies before non-judicial tribunals,"

> Even the most zealous advocates of jury trial rights have stopped short of such an interpretation; for instance, one article written largely in anticipation of the *DePaolo* case specifically suggested that jury trial rights are inapplicable to "newly established rights and remedies or inherently administrative matters [such as license revocation] properly assigned to administrative bodies."[7] Petrucelli & McKay, *The Right to Jury Trial Under the Maine Constitution,* 1 Maine B.J. 240, 245–46 (1986).

Sirois v. Winslow, 585 A.2d 183, 189 (Me. 1991) (*Collins, J*., dissenting).

Mr. Anderson ignores all of this history and precedent and instead points to a Massachusetts case from 1807, *Melvin v. Bridge*, where the defendant was given a jury trial for taking fish in violation of a statute. That case fails to support his position for at least two reasons: first, it was a criminal prosecution. *See Melvin v. Bridge*, 3 Mass. 305, 306 (Mass. 1807) (A. 44) ("This suit is a criminal prosecution for an offence created by a statute."). Second, the statute under which Melvin was prosecuted, which Mr. Anderson likens to current fishery regulations, provided for fines, forfeitures, and money penalties:

> …each and every person so offending [by improperly taking fish from the Merrimack River] shall forfeit and pay for each offence, a fine not less than *thirty shillings* nor more than *four pounds*, at the discretion of the Court before which trial shall be had, according to

[7] The text "such as license revocation" was omitted from Justice Collins's quotation of the Petrucelli & McKay article, but it appears in the text of the article. Gerald F. Petrucelli & John D. McKay, *The Right to Jury Trial Under the Maine Constitution*, 1 Maine B.J. 240, 246 (1986).

the aggravation of the offence…

1789 Mass. Acts, Ch. 51 (A. 47). Melvin was criminally prosecuted under this statute for illegally taking fish from the Merrimack River, and his sentence included a "pecuniary fine" as well as a "judgment of forfeiture of the engine used in taking the fish." *Melvin*, 3 Mass. at 305-06 (A. 43-44.) On appeal, "he was acquitted by verdict of a jury." *Id.* In any event, even if a jury trial was provided in 1807 for a criminal fishing violation where the sentence included monetary penalties, that has no bearing on whether the Maine Constitution requires a civil jury trial instead of an administrative hearing before DMR may suspend a license without imposing monetary penalties, forfeitures, or punitive measures of any kind.[8]

In sum, because no monetary relief was at issue in DMR's administrative suspension of Mr. Anderson's lobster license, it was entirely equitable in nature. Therefore, article I, section 20 of the Maine Constitution did not provide Mr. Anderson with a right to a jury trial before DMR administratively suspended his lobster license pursuant to express statutory authority. DMR neither erred

[8] Mr. Anderson's citations to a case where a person was "prosecuted" for operating without a drayage license, *In re Vandine*, 23 Mass. (6 Pick.) 187 (1828), and a case where the defendant was convicted and imprisoned for "for keeping a house of ill-fame," *In re Johnson*, 1 Me. 230, 230 (Me. 1821), are also not relevant because they demonstrate nothing about the provision of civil jury trials in a matter such as this one.

nor abused its discretion when it followed the procedures required by the Maine Legislature in suspending Mr. Anderson's license.

3. The Supreme Court's decision in *SEC v. Jarkesy* does not apply to this case, but its reasoning supports DMR's position.

Mr. Anderson argues that the decision of the Supreme Court of the United States in *Securities and Exchange Commission v. Jarkesy*, 603 U.S. 109 (2024), supports his position. (Blue Br. 14 n.1.) *Jarkesy* involves the Seventh Amendment to the United States Constitution, which is not applicable to the States. In any event, to the extent it is relevant, *Jarkesy* supports DMR's position. The *Jarkesy* majority held that defendants in securities fraud enforcement actions brought by the Securities and Exchange Commission (SEC) are entitled by the Seventh Amendment to have the SEC's claims for civil money penalties decided by a jury in an Article III federal court and not in an administrative proceeding. *See Jarkesy*, 603 U.S. at 140-41.

First, *Jarkesy* does not apply to Mr. Anderson's appeal because the Seventh Amendment does not apply to the states. *See Ford Motor Co. v. Darling's*, 2014 ME 7, ¶ 34 n.10, 86 A.3d 35 ("The United States Constitution is not implicated here because the Seventh Amendment … does not apply to the states."); *Minneapolis & St. L.R. Co. v. Bombolis*, 241 U.S. 211, 217 (1916) ("…[T]he 7th Amendment applies only to proceedings in courts of the United

States, and does not in any manner whatever govern or regulate trials by jury in state courts, or the standards which must be applied concerning the same."). Accordingly, *Jarkesy's* analysis of the scope of the federal right does not apply to Mr. Anderson's argument that he was entitled to a jury trial under article I, Section 20 of Maine's Constitution. *See In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209*, 2024 VT 58, ¶ 31, 327 A.3d 789, *cert. denied sub nom. Allco Renewable Ltd. v. Agency of Nat. Res.*, No. 24-589, 2025 WL 299521 (U.S. Jan. 27, 2025) (noting *Jarkesy* not binding on analysis of right to civil jury trial under state constitution).

Second, even if *Jarkesy's* analysis of the federal jury trial right were relevant to this case, it supports DMR's position. *Jarkesy* reaffirms the principle that, under the Seventh Amendment, (1) whether a defendant in a civil matter is entitled to a jury trial depends on whether the suit is legal or equitable in nature because only suits of a legal nature implicate the right, and (2) the remedy sought is the "more important consideration." *Jarkesy*, 603 U.S. at 123. *Jarkesy's* holding rests on the fact that the SEC seeks punitive civil penalties in its administrative proceedings, "a form of monetary relief" that is designed to "punish culpable individuals." *Id.* The *Jarkesy* Court determined that this "remedy is all but dispositive" of the jury trial question under the Seventh

Amendment because punitive monetary penalties are legal rather than equitable in nature. *Id*.

Unlike in *Jarkesy*, however, DMR's administrative proceeding is remedial, not punitive, and equitable in nature because it involved only the State regulatory agency's suspension of Mr. Anderson's lobster license. DMR was not statutorily authorized to seek, nor did it impose, any monetary penalty. As noted above, Maine law is clear that "administrative suspensions are remedial, not punitive, in character." *DiPietro*, 2002 ME 114, ¶ 11, 802 A.2d 399; *see also Savard*, 659 A.2d at 1267-68 (suspensions or revocations of driver's licenses, like professional licenses and certificates, are remedial in nature, not punitive). *Jarkesy's* rationale thus reinforces DMR's determination that under Maine law, the remedial relief imposed against Mr. Anderson is equitable in nature and does not implicate the civil jury trial right under Maine's Constitution.

C. DMR is not required to prove that a jury trial would not have been available in a similar case before 1820.

Mr. Anderson relies on *North School Congregate Housing v. Merrithew*, 558 A.2d 1189 (Me. 1989), to argue that a presumption of a right to civil jury trial exists, and to avoid this presumption, DMR must present evidence that similar civil actions existed in Massachusetts before 1820 in which a jury trial would not have been available. (Blue Br. 10, 15-16.) But the extensive caselaw

discussed above in Part I.B shows that where only equitable relief is sought, not only is there no presumption that a jury trial right exists, but it is black letter law that the Maine Constitution does not provide a right to a jury trial. As the Superior Court (Kennebec County, *Murphy, J.*) succinctly explained recently:

> [T]he 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.

Robbins v. Billings, No. CV-22-054, 2025 WL 574972, at *2 (Me. Super. Ct. Jan. 03, 2025).

North School involved evictions under forcible entry and detainer proceedings (FED)—an entirely different subject matter than suspension of licenses, and one covered by a long history of jury trials in cases involving forcible evictions. *See N. Sch. Congregate Hous.*, 558 A.2d at 1190-91. One critical difference is that, unlike the administrative suspension statute at issue here, relief in FED cases "could include both punishment and restitution." *Id.* at 1191.

Administrative license suspensions, in contrast, have long been recognized as being remedial, not punitive, and equitable in nature, as discussed in Part I.B above. DMR's administrative suspension of lobster licenses is an administrative license suspension. Therefore, the question of

whether Mr. Anderson was entitled to a jury trial is already settled, and no further historical examination was or is necessary.

Moreover, under MAPA and this Court's longstanding caselaw, Mr. Anderson has the burden of persuasion in this matter. *See Maquoit Bay*, 2022 ME 19, ¶ 5, 271 A.3d 1183; *Palian v. Dep't of Health & Hum. Servs.*, 2020 ME 131, ¶ 10, 242 A.3d 164; *Doe v. Dep't of Health & Hum. Servs.*, 2018 ME 164, ¶ 11, 198 A.3d 782; *Somerset Cnty. v. Dep't of Corr.*, 2016 ME 33, ¶ 14, 133 A.3d 1006. Thus, contrary to Mr. Anderson's contention, Blue Br. 10, 15-16, DMR did not have the burden to produce record evidence – either during the agency proceeding or at the Superior Court – that similar common law actions existed before 1820 for which a jury trial would not have been available.

Furthermore, DMR was obligated to follow Maine law instead of accepting Mr. Anderson's invitation to disregard it. "Administrative agencies are creatures of statute, and can only have such powers as those expressly conferred upon them by the Legislature, or such as arise therefrom by necessary implication to allow carrying out the powers accorded to them." *Berry v. Bd. of Trustees, Me. State Ret. Sys.*, 663 A.2d 14, 19 (Me. 1995) (quoting *Valente v. Bd. of Envtl. Prot.*, 461 A.2d 716, 718 (Me. 1983)). Mr. Anderson asked DMR to give him a jury trial or dismiss the administrative proceeding. (A. 38.) DMR had no authority to provide a jury trial, and as the agency tasked with

conducting administrative lobster license suspensions, DMR also had no authority to reject the administrative suspension statute by declaring it unconstitutional because it does not afford a jury trial. *See Bd. of Educ. of Peoria Sch. Dist. No. 150 v. Peoria Fed'n of Support Staff, Sec./Policeman's Benev. & Protective Ass'n Unit*, 2013 IL 114853, ¶ 38, 998 N.E.2d 36 ("[A]dministrative agencies have no authority to declare statutes unconstitutional or even to question their validity."); *Beaufort Cnty. Bd. of Educ. v. Lighthouse Charter Sch. Comm.*, 335 S.C. 230, 241, 516 S.E.2d 655, 660–61 (S.C. 1999) ("An administrative agency must follow the law as written until its constitutionality is judicially determined; an agency has no authority to pass on the constitutionality of a statute."); *Branch v. F.C.C.*, 824 F.2d 37, 47 (D.C. Cir. 1987) ("although an administrative agency may be influenced by constitutional considerations in the way it interprets or applies statutes, it does not have jurisdiction to declare statutes unconstitutional."). Accordingly, DMR did not err by following the statute.

In addition, unless otherwise ordered, judicial review in a MAPA/Rule 80C appeal is confined to the record upon which the agency decision was based. *See* 5 M.R.S. § 11006(1); M.R. Civ. P. 80C(e), (f). Mr. Anderson did not ask the Superior Court to take additional evidence or order the taking of additional evidence before the agency. *See* M.R. Civ. P. 80C(e). Having failed to file such a

motion, Mr. Anderson has waived his right to the taking of additional evidence. *Id*. Mr. Anderson also did not ask the Court to modify the contents of the record. *See* M.R. Civ. P. 80C(f).

If the Court concludes that the legal question raised by Mr. Anderson is not answered by existing precedent, and that DMR has the burden to prove the historical treatment of similar claims before 1820, then the remedy would be to remand this matter to the Superior Court to allow DMR to supplement the record with that evidence. *See, e.g.*, *Berry,* 663 A.2d at 19-20 (remanding to Superior Court to take additional evidence). Mr. Anderson's suggestion that the Court, on this limited record in a Rule 80C appeal, should hold that no license "to engage in an enterprise" may be suspended without a civil jury trial—thereby upending an entire regulatory framework—should be rejected. The Department of Professional and Financial Regulation ("PFR") alone operates approximately 40 licensing programs for professions and occupations. *See* 10 M.R.S. §§ 8001, 8002(9) (2024). Its statutory authority includes the ability to administratively suspend or take other action against these licenses to protect the public. 10 M.R.S. §§ 8003(5), (5-A) (2024). The sweeping holding urged by Mr. Anderson would upend this regulatory system, add considerably to court caseloads, and make it far more difficult for the State to protect the public from

harm.[9] The Court should not entertain such a holding at all, but at a minimum, if the Court considers a review of pre-1820 precedent to be necessary, it should remand to the Superior Court.

CONCLUSION

For the reasons set forth above, DMR respectfully requests that the Court affirm the Superior Court's denial of Mr. Anderson's Rule 80C petition and affirm the Commissioner's suspension of Mr. Anderson's lobster fishing license.

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Respectfully submitted,

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[9] According to PFR's last Program Evaluation Report, PFR maintains license records for over 129,000 active and inactive licensees. In fiscal years 2016-2023, it opened 7,435 cases in response to complaints. Of those that were reported as having been resolved, 2,460 were resolved by consent agreement; 279 by decision and order; 2,553 by dismissal; and 552 by a Letter of Guidance. *See* Program Evaluation Report, Nov. 1, 2023, *available at* https://www.maine.gov/pfr/sites/maine.gov.pfr/files/inline-files/2023-Program-Evaluation-Report.pdf, at pp. 52-53 (last visited March 18, 2025).