MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. KEN-24-450

ANDREW ROBBINS, *et al.*

Plaintiffs-Appellees,

v.

STATE OF MAINE, *et al.*

Defendants-Appellants.

On Appeal from the
Superior Court, Kennebec County,
Superior Ct. No. KENSC-CV-22-54

BRIEF OF APPELLEES

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INTRODUCTION

The State argues in its Opening Brief that Plaintiffs' prayer for relief against it "smacks of an advisory opinion." Class members, many in jail, have languished without counsel for months because of the State's failure to provide them an attorney. There is nothing "speculative" about the harm they are suffering. And the current state of affairs not only harms class members, it erodes public faith and trust in the criminal justice system. The State should be required to face Plaintiffs' claim.

The governing law and the facts are clear. It is undisputed that the State of Maine, as a state, has an *affirmative* obligation under both the federal and Maine constitutions to provide lawyers to criminal defendants who cannot afford one. And it is undisputed that the State is failing to meet that fundamental constitutional obligation for hundreds of class members. As relevant to this appeal, Plaintiffs are asking for a declaratory judgment recognizing as much. Rather than defend this claim on the merits, the State has raised various justiciability challenges. The Court should reject the State's efforts to head off an adjudication of its affirmative constitutional obligations.

First, the State is wrong that Plaintiffs' claim for declaratory relief is barred by sovereign immunity. This Court has already recognized that sovereign immunity does not prohibit a request for a declaratory judgment regarding the State's constitutional obligations, and a contrary ruling in this case would eviscerate the

relevant constitutional provisions. This precedent applies with all the more force here, where the constitutional right at issue is of monumental public importance.

Second, the State is wrong that the Declaratory Judgments Act ("DJA") does not permit Plaintiffs' claim. The DJA makes clear that a plaintiff can pursue a standalone claim for relief under the statute. The DJA also expressly states that it is not limited to requests involving statutory rights and obligations. This Court has repeatedly adjudicated claims falling into both categories.

Finally, the State is wrong when it argues lack of standing. A declaration running against the State will provide meaningful relief by confirming the State's derogation of its constitutional responsibilities, thus setting a benchmark to govern the State's responsibilities to Plaintiffs moving forward. The State's implicit suggestion it would do nothing in response to a judicial declaration that it is violating the constitutional rights of hundreds of its citizens is both contrary to law and deeply troubling.

The State argues that Plaintiffs should be content to pursue their claims against individual state officers, whether MCPDS officials or some other unknown government officers. But the U.S. Supreme Court and the Maine constitution put the affirmative constitutional obligation to provide counsel on the *State* as an entity. Plaintiffs filed Count V against the State to ensure that an individual defendants could not all disclaim personal responsibility—the very tactic the MCPDS

defendants have pursued in the litigation. The State cannot avoid a ruling that it has failed to meet its affirmative constitutional obligations by failing to assign specific officers the necessary authority and resources to implement those obligations.

The Superior Court reached the right result below. This Court should affirm.

STATEMENT OF THE CASE

This appeal arises from Plaintiffs' ongoing challenge to Maine's indigent defense system. As this Court is aware, until recently Maine was the only state in the country without public defenders. Indigent defense instead fell entirely to private attorneys willing to take court-appointed cases. While the State now has hired a few public defenders, there is still an insufficient pool of attorneys available to meet the needs of indigent defendants charged with crimes in most of the State, as well as other people who have a constitutional right to counsel. As of January 2025, there were 991 pending criminal cases in Maine with unrepresented indigent defendants. Tr. Jan. 23, 2025 at 76:11-15. Those defendants—class members in this litigation—had been without counsel for a median of 66 days and counting. Tr. Jan. 23, 2025 at 66:24-67:4.

Plaintiffs filed a putative class action in March of 2022 challenging the constitutional adequacy of Maine's indigent-defense system. Plaintiffs' original complaint named as defendants the Commissioners and Executive Director of the Maine Commission on Public Defense Services ("MCPDS"), the independent

commission the State has tasked, as relevant here, with "ensur[ing] the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State." 4 M.R.S. § 1801. As Plaintiffs explained in their original complaint, MCPDS "has failed to develop and implement an effective system for the appointment of counsel for indigent defendants." Compl. ¶ 110. Thus, this case initially focused on whether MCPDS-rostered attorneys were providing constitutionally adequate representation due to, among other issues, high caseloads and inadequate training and supervision. The trial court denied the MPCDS Defendants' first motion to dismiss in relevant part and certified a class of individuals eligible for appointment of counsel. Order on Mot. for Class Cert. at 5 (July 13, 2022); Order on Mot. to Dismiss, No. CV-22-54, 2022 WL 17348139, *3 (Me. Super. Ct. June 2, 2022).

While the parties engaged in discovery and undertook settlement negotiations, the situation on the ground deteriorated: as of early 2024, hundreds of indigent defendants were not being provided counsel at all. *See* Combined Order at 4 (Feb. 27, 2024) ("Feb. 27 Order"). The problem thus shifted from a risk of deprivation of *effective* counsel to a lack of *any* counsel. Though the parties agreed on terms to address the issues initially raised in the case, the trial court denied preliminary approval, explaining that the agreement "fails to address or provide enforceable relief for the ever-increasing number of unrepresented indigent defendants." Feb.

27 Order at 14. The court then (1) "create[d] a Subclass consisting of Class Members who remain unrepresented after initial appearance or arraignment, unless the right to counsel has been waived by an individual Class Member"; and (2) subdivided the case into two phases:

> In Phase 1, the Court will adjudicate the federal and state claims and defenses regarding non-representation as they relate to the subclass above. In Phase 2, claims which allege that systemic conditions or practices exist which may pose an "unconstitutional risk" of deprivation of counsel will then be adjudicated.

Id. at 16.

Plaintiffs thereafter filed an amended complaint, expanding their allegations and claims to more directly address the non-representation crisis. Among other claims, the amended complaint sought declaratory and injunctive relief against the MCPDS Defendants for their failure to provide any counsel to hundreds of individuals in violation of the Sixth Amendment of the United States Constitution (Count I), habeas relief against the sheriffs for each of the Maine counties and party-in-interest State of Maine for Subclass members unlawfully detained without counsel (Count III), and, as relevant here, declaratory relief under the Maine Declaratory Judgments Act, 14 M.R.S. §§ 5951-5963, against the State for failure to provide counsel under both the Sixth Amendment to the United States Constitution and Article I, Section 6 of the Maine Constitution (Count V). For Count V specifically, Plaintiffs alleged that the "State of Maine is constitutionally vested with

an affirmative obligation to furnish counsel to Class members," but had failed to satisfy this obligation "when commencing prosecutions against those individuals." Appendix ("App.") 135 (¶¶ 177-78). Plaintiffs requested "a declaratory judgment that Defendant State of Maine has unlawfully failed to furnish counsel to Class members when commencing prosecutions against those individuals." App. 138.

On June 14, 2024, the State moved to dismiss Count V. App. 140. As relevant here, the State argued that this action "cannot be maintained against the State of Maine because, as sovereign in its own courts, the State of Maine is absolutely immune from suit and has not waived its immunity." *Id.* It further argued that the DJA does not "provide for a cause of action against the State of Maine." *Id.*

The Superior Court denied, in relevant part, the State's request to dismiss Count V. App. 75-81. With respect to sovereign immunity, the Superior Court concluded that "[t]he doctrine of sovereign immunity does not preclude the Court from declaring the rights and obligations of the State when the doctrine's invocation would permit the State to avoid accountability to its citizens for rights guaranteed by the State and Federal Constitution." App. 78 (citing *Welch v. State*, 2004 ME 84, ¶¶ 6-10, 853 A.2d 214) (further citation omitted). As the court explained, "to allow the State to invoke sovereign immunity as a bar to the declaratory relief Plaintiffs seek 'would fly in the face of the constitutional protections' guaranteed by the Sixth Amendment and article I, section 6." App. 79 (quoting *Welch*, 2004 ME 84, ¶ 8,

853 A.2d 214) (explaining that this "constitutional obligation would 'lose considerable meaning' if the doctrine of sovereign immunity prohibited the Court from issuing a declaration as to whether the State was fulfilling a responsibility so integral to our constitutional framework"). The court also emphasized that it "is the duty as well as the function of this Court to safeguard" fundamental constitutional principles—"a function uniquely delegated to the Judicial Branch by Me. Const. art. VI, § 1 and protected by Maine's rigorous separation of powers principle." App. 80 (discussing *Morris v. Goss*, 147 Me. 89, 106, 83 A.2d 556, 565 (1951)).

The court separately rejected the State's argument that the DJA does not create an independent cause of action, explaining that this Court's recent decisions demonstrate "that parties may seek resolution of their disputes in actions for declaratory judgment under the DJA, thereby undercutting the State's contention that the DJA merely provides a remedy." App. 81 (citing, among others, *Parker v. Dep't of Inland Fisheries & Wildlife*, 2024 ME 22, ¶¶ 5, 12-15, 25, 314 A.3d 208). The court explained that, "[s]o long as a plaintiff pleads 'a sufficiently justiciable claim,' declaratory relief under the DJA may be available," including "in standalone actions for declaratory judgment in which the plaintiff asserts no other cause of action." App. 81 (quoting *Parker*, 2024 ME 22, ¶¶ 12-15, 314 A.3d 208). Finally, the court concluded that the DJA "does not prevent parties from seeking a judicial interpretation of their rights under the constitution." App. 82. Among other reasons,

the court noted that while one subsection of the DJA states that courts may declare rights arising under an "instrument, statute, ordinance, contract or franchise," the DJA separately clarifies that this "enumeration . . . does not limit or restrict the exercise of the general powers" conferred by the DJA. *Id.*[1]

The State's appeal challenges the Superior Court's denial of the State's Motion to Dismiss Count V.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether sovereign immunity bars a request for declaratory relief regarding the State's affirmative obligations under the Sixth Amendment to the United States Constitution and Article I, Section 6 of the Maine Constitution.

2. Whether the Declaratory Judgment Act authorizes Plaintiffs to (a) pursue a standalone claim for relief and (b) request a declaration of Plaintiffs' constitutional rights.

3. Whether Plaintiffs have standing to pursue Count V against the State.

ARGUMENT

Plaintiffs requested a declaration that the State is violating its affirmative constitutional obligations under federal and Maine law by failing to provide counsel

[1] The Superior Court specified that it was "not decid[ing] at this juncture whether it would be appropriate to issue an *injunction* against the State enforcing any declaration the Court may grant." App. 80 (noting that this "issue may be explored and argued after trial, should Plaintiffs prevail in establishing liability").

to hundreds of indigent criminal defendants. The Superior Court agreed. The State makes three arguments why the lower court supposedly got it wrong: (1) Plaintiffs' claim violates sovereign immunity, (2) the Declaratory Judgment Act does not allow either a standalone claim for relief or a claim seeking a declaration of constitutional rights, and (3) Plaintiffs lack standing to pursue Count V. None of those arguments have merit. This Court should affirm the Superior Court's denial of the State's motion to dismiss and allow Count V to proceed.[2]

I. Sovereign immunity does not bar Count V against the State.

A. The State is responsible for providing counsel to those who cannot afford it.

For more than six decades, the governing law has been clear: Maine has an affirmative constitutional obligation to provide counsel to indigent defendants. *See Gideon v. Wainwright*, 372 U.S. 335, 353-45 (1963); *State v. Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702. This obligation is a necessary corollary of the State's role in prosecuting crimes. "Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime." *Gideon*, 372 U.S. at 344. And our system has long paired that machinery with "procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law." *Id.* From "the very beginning,"

[2] Plaintiffs do not dispute that this appeal is properly before the Court for purposes of the final judgment rule.

the right to counsel has been "fundamental and essential to fair trials." *Id.*; *see also Watson*, 2006 ME 80, ¶14, 900 A.2d 702 (characterizing the "constitutionally-guaranteed right of representation by counsel as 'a right of the highest order'" (quoting *United States v. Proctor*, 166 F.3d 396, 402 (1st Cir. 1999))).

As this Court itself has recognized, the Fourteenth Amendment places the affirmative obligation to provide counsel on the State as an entity. "For those who cannot afford counsel, the constitutional right imposes an affirmative obligation *on the State* to provide court-appointed counsel if the defendant faces incarceration whether because of a plea of guilty or no contest, or after trial." *Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702 (emphasis added); *see also Scott v. Illinois*, 440 U.S. 367, 374 (1979) (recognizing that an indigent defendant cannot "be sentenced to a term of imprisonment unless *the State* has afforded him the right to assistance of appointed counsel in his defense" (emphasis added)).

Given the State's responsibility, it is properly understood as "the real party in interest in this case." *Cushing v. Cohen*, 420 A.2d 919, 923 (Me. 1980). "It is in its sovereign capacity that the State of Maine" is responsible for the provision of counsel, and "the essence of the case concerns" the interests and role of the State specifically. *Id.* (outlining when the State is properly understood as the real party-in-interest). Indeed, both the State and the MCPDS Defendants have repeatedly recognized as much. *See* State Opening Br., Law Court Docket No. Ken-25-137 at

12 (explaining that the State had "request[ed] to be redesignated as a 'Party-in-Interest'"); App. 82 (granting the State's request to be "designated as a party-in-interest" for purposes of habeas relief); Tr. May 26, 2022 at 17:11-23 (counsel for MCPDS Defendants explaining that "the ultimate party in interest, again, is the State of Maine"); Tr. Jan. 24, 2025 at 123:2-12 (agreeing with the Court that the State "has always been identified as the real party in interest in these Sixth Amendment and Article I, Section [6] cases").

B. Sovereign immunity does not bar a request for a declaration of the State's constitutional obligations.

The State cannot invoke sovereign immunity to avoid an adjudication of whether it has satisfied its obligation to provide counsel. This Court and state supreme courts across the country have repeatedly recognized an exception to sovereign immunity in the precise context of this case—a request for a judicial declaration regarding the State's affirmative constitutional obligations. This exception is particularly appropriate here given the State's affirmative obligation to provide counsel to indigent defendants.

1. Under this Court's precedents, sovereign immunity does not bar Plaintiffs' request for a declaration of constitutional rights.

Sovereign immunity is a "common law defense" that developed "to limit the tort liability of governmental entities." *Noel v. Town of Ogunquit*, 555 A.2d 1054, 1056 (Me. 1989). In general, the doctrine "protects the states from actions of state

courts." *Moody v. Comm'r, Dep't of Hum. Servs.*, 661 A.2d 156, 158 n.3 (Me. 1995). While sovereign immunity has been extended to other contexts, the core of the defense remains a claim for monetary damages against the State. *See Welch*, 2004 ME 84, ¶¶ 6-7, 853 A.2d 214.

Critically, however, "sovereign immunity . . . does not confer upon the State a concomitant right to disregard the Constitution." *Alden v. Maine*, 527 U.S. 706, 754-55 (1999). Applying this principle in *Welch*, this Court held that sovereign immunity did not preclude a request for declaratory relief filed directly against the State. 2004 ME 84, ¶ 1, 853 A.2d 214. In *Welch*, a pair of landowners filed a declaratory judgment action seeking to establish that their private property benefited from an easement across State-owned land. *Id.* ¶ 2. As the Court explained in permitting the suit, "the State is bound by the obligations and restraints imposed by the Constitution." *Id.* ¶ 8. "To allow the State to assert sovereign immunity as a bar to quiet title actions brought in its own courts by private citizens would fly in the face of the constitutional protections and property rights of the people." *Id.* And "[t]hese constitutional protections would lose considerable meaning if the doctrine of sovereign immunity prohibited the people from bringing quite title actions to settle ownership disputes with the State." *Id.* ¶ 9. Thus, this Court has already held that the availability of a declaratory judgment *against the State* is a necessary tool to safeguard constitutional rights. *See id.*; *see also Farley v. Dep't of Hum. Servs.*, 621

A.2d 404, 406 (Me. 1993) ("The defense of sovereign immunity will not insulate the State from liability if it is found to have committed an unconstitutional taking in violation of either the United States or Maine Constitutions.").

Notably, this Court recognized in *Welch* that sovereign immunity does not bar a lawsuit "from proceeding against the State" as an entity. 2004 ME 84, ¶ 4, 853 A.2d 214. Discussing its prior precedent, the Court explained that suit *can,* in appropriate circumstances, proceed "against the State," as opposed to against state officials. *Id.* The threshold question is whether the "State of Maine" is itself "needed for just adjudication." *Cushing*, 420 A.2d at 927-28. If so, then the State is "an 'indispensable' party," and must therefore be "made a party to the action . . . to be bound by any judgment entered." *Id.* at 928.

Applying these principles here, Count V is not just permissible, but critical to safeguarding the constitutional right to counsel. As in *Welch*, Plaintiffs are seeking a declaration interpreting the scope of their "constitutional protections"—protections that "would lose considerable meaning if the doctrine of sovereign immunity prohibit[s]" them from pursuing this claim. *Welch*, 2004 ME 84, ¶ 9, 853 A.2d 214. If anything, the justifications for suit are even stronger here than in *Welch*. In this context, it is not only the case that the "State is bound by the obligations and restraints imposed by the Constitution," *id.* ¶ 8, but further that the State has an *affirmative* obligation to provide counsel concomitant to its responsibility for the

criminal justice system writ large. *See supra* pp. 9-11. The State's position—that Plaintiffs have no mechanism to adjudicate whether the State is in fact fulfilling those obligations—would eviscerate the underlying right.

The State attempts to distinguish *Welch* by arguing that its holding was "inextricably linked to its status as a quiet-title action." Brief of Defendant-Appellant State of Maine ("Opening Br.") 27. That is incorrect. The Court noted that invoking sovereign immunity was particularly "illogical" in a quiet title action, but its holding rested on broader fundamental principles. *See supra* pp. 12-13. In particular, the Court emphasized that sovereign immunity is not a tool to allow the State to avoid an adjudication of its constitutional obligations. *See Welch*, 2004 ME 84, ¶ 8, 853 A.2d 214. And while the Court specifically discussed the takings and due process clauses—the constitutional provisions underlying the plaintiffs' claim in that case—it did so in service of explaining the broader role of declaratory actions in safeguarding constitutional protections. *Id.* ¶ 9. The Court's recognition of the need to protect these constitutional rights should apply with all the more force to a constitutional "right of the highest order," *Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702, like the right to counsel.

The State's cited caselaw does nothing to undercut the broader principle from *Welch*. *See* Opening Br. 28. In *Knowlton v. Attorney General*, 2009 ME 79, 976 A.2d 973, this Court merely recognized that sovereign immunity "can only be

waived by 'specific authority conferred by an enactment of the Legislature.'" *Id.* ¶ 12 (quoting *Drake v. Smith*, 390 A.2d 541, 543 (Me. 1978)). In other words, a waiver of sovereign immunity can occur only through specific legislative enactment, and not "through the imposition of procedural requirements" or inadvertently "by procedural defaults." *Drake*, 390 A.2d at 543. That is irrelevant here. To start, *Knowlton* involved "claims for monetary damages"—perhaps the textbook example of a claim barred by sovereign immunity. 2009 ME 79, ¶ 1, 976 A.2d 973. Moreover, the State is subject to suit here not because it waived sovereign immunity, but because sovereign immunity does not apply to a request for a declaration of constitutional rights where *the State itself* is responsible for the alleged violation. *See supra* p. 9-11. The State is simply not immune from suit in this context; waiver is beside the point.

Bell v. Town of Wells, 510 A.2d 509 (Me. 1986) likewise lends the State no support. The State cites *Bell* to argue that the DJA "does not override sovereign immunity." Opening Br. 28 (discussing *Bell*, 510 A.2d at 515). Plaintiffs' position has never been that sovereign immunity is categorically inapplicable to claims for declaratory relief. Rather, sovereign immunity does not bar this suit because Plaintiffs are seeking a declaration of the State's affirmative obligations under the constitution—and not, for example, a declaration that the State has violated Plaintiffs' rights under a contract. *See supra*, pp. 9-11. Moreover, the fact that

sovereign immunity *might* apply to a claim under the DJA says nothing about whether sovereign immunity applies here. Indeed, immediately after "[r]ecognizing . . . that the Declaratory Judgments Act alone does not override sovereign immunity," the Court in *Bell* "turn[ed] then to examine the determinative question in the instant appeal: does the doctrine of sovereign immunity bar this suit?" 510 A.2d at 515.

And even if not dispositive, the nature of the requested relief is still highly relevant to the sovereign immunity analysis. In general, while a declaratory judgment "may be persuasive, it is not ultimately coercive." *Steffel v. Thompson*, 415 U.S. 452, 471 (1974) (explaining that "[t]he express purpose of the Federal Declaratory Judgment Act was to provide a milder alternative to the injunction remedy"). Because a request for declaratory relief "is not a claim seeking monetary damages to be paid out from the State's treasury" and further "does not ask the courts to compel the Legislature or the Governor to do anything," Plaintiffs' claim does not implicate many of the concerns that typically "justify the State's invocation of sovereign immunity." *Welch*, 2004 ME 84, ¶¶ 6-7, 853 A.2d 214.

The State also misses the mark in suggesting that the Superior Court's decision turned on some form of estoppel analysis. Opening Br. 24-26. Regardless of whether the State raised a sovereign immunity defense in prior cases, the point here is that the State *cannot* use sovereign immunity to block a claim for a

declaration regarding the State's constitutional obligations. That is precisely what the Superior Court explained: The availability of sovereign immunity does not rest in the sole control of the Legislature or the Attorney General's Office. Rather, in certain contexts the integrity of the constitutional structure requires recognizing a cause of action against the State. *See* App. 80. And it "is the duty as well as the function of this Court to safeguard . . . the fundamental principles of government vouchsafed . . . by the State and Federal Constitutions." *Morris*, 147 Me. at 106, 83 A.2d at 565 (noting that a critical "purpose of a constitution is to insure the orderly conduct of government, and a proper discharge of the essential functions thereof").

Finally, while the Court need not reach these issues, the State's position creates a host of doctrinal difficulties even beyond hollowing out the right to counsel. Chief among them, the State's position creates significant federalism concerns. "The proposition that relief from a . . . violation of the Federal Constitution can be barred by a state doctrine of sovereign immunity is difficult to reconcile with the supremacy of the Federal Constitution." *Moody*, 661 A.2d at 159 (Lipez, J., concurring). Relatedly, the State's position would elevate what this Court has recognized as a "common law defense" above the Plaintiffs' state and federal constitutional rights. *See Noel*, 555 A.2d at 1056; *see also Corum v. Univ. N.C. Through Bd. of Governors*, 413 S.E.2d 276, 292 (N.C. 1992) (recognizing that "when there is a class between these constitutional rights and sovereign immunity,"

"a common law theory or defense," "the constitutional rights must prevail"). Recognizing an exception to sovereign immunity avoids these significant concerns.

2. Plaintiffs' position accords with the overwhelming weight of authority.

This Court's approach in case such as *Welch* is consistent with the positions taken by state supreme courts across the country. These decisions recognize that, "[i]f sovereign immunity can be used to prevent the state, through its agencies, from being required to act in accordance with the law, then lawlessness results." *Kentucky v. Ky. Ret. Sys.*, 396 S.W.3d 833, 839 (Ky. 2013).

In *Claremont School District v. Governor*, 635 A.2d 1375 (N.H. 1993), for example, a set of school districts, students, and taxpayers requested a declaratory judgment that "the system by which the State finances education violates the New Hampshire Constitution." *Id.* at 1377. The New Hampshire Supreme Court held that, although the State had not waived its sovereign immunity, the "plaintiffs were entitled to maintain their suit in this case even without legislative consent . . . because their theory was that the official actions taken by the defendants were unconstitutional." *Claremont Sch. Dist. v. Governor*, 761 A.2d 389, 391 (N.H. 1999) (recognizing that the state's declaratory judgment statute "has long been construed to permit challenges to the constitutionality of actions by our government or its branches" (citation omitted)). As the court explained, because the plaintiffs sought "a declaratory judgment that the system by which the State funded public

education was unconstitutional and thus void, the court had jurisdiction to grant equitable relief." *Id.*

The Supreme Court of Kentucky similarly held that sovereign immunity did not bar an action against the Commonwealth seeking a declaration that a particular statute was unconstitutional. As the court explained, a request "that the plaintiffs' rights under the law be declared" is categorically different from "requiring the state to pay out the people's resources as damages for state injury to a plaintiff." *Ky. Ret. Sys.*, 396 S.W.3d at 838-39. "Thus to say that the state is entirely immune is an overbroad statement." *Id.* at 839. Rather, "[o]n the question of the constitutional appropriateness of governmental actions, there can be no immunity." *Id.* at 840. "To hold that the state has immunity from judicial review of the constitutionality of its actions would be tantamount to a grant of arbitrary authority superseding the constitution, which no law or public official may have." *Id.*

These cases reflect the judicial consensus: court after court has recognized that sovereign immunity does not apply to actions seeking a declaratory judgment regarding a state's obligations to preserve fundamental constitutional rights. *See, e.g.*, *Patel v. Tex Dep't of Licensing & Regul.*, 469 S.W.3d 69, 75-76 (Tex. 2015) ("[S]overeign immunity is inapplicable when a suit challenges the constitutionality of a statute and seeks only equitable relief."); *Corum*, 413 S.E.2d at 291 ("The doctrine of sovereign immunity cannot stand as a barrier to North Carolina citizens

who seek to remedy violations of their rights guaranteed by the Declaration of Rights."); *Textron, Inc. v. Wood*, 355 A.2d 307, 312 (Conn. 1974) (State does not "require[] the protection afforded by the defense of sovereign immunity" in an action seeking "a declaration of the plaintiff's rights pursuant to" the Connecticut constitution). In short, "[i]t would indeed be a fanciful gesture to say on the one hand that citizens have constitutional individual civil rights that are protected from encroachment actions by the State, while on the other hand saying that individuals whose constitutional rights have been violated by the State cannot sue because of the doctrine of sovereign immunity." *Corum*, 413 S.E.2d at 291; *see also NECEC Transmission LLC v. Bureau of Parks & Lands*, No. BCD-CIV-2021-00058, 2021 WL 6125325, at *8 n.15 (Me. B.C.D. Dec. 16, 2021) (noting that the court was "inclined to agree with this line of cases" that sovereign immunity is not available where "the availability of judicial review" is "integral to the constitutional framework").

The State provides no meaningful basis for disregarding these decisions. It first suggests (at 29-30) that these decisions are specific to the particular state laws at issue. The State reads *Kentucky Retirement Systems*, for example, as holding that "sovereign immunity was not a legitimate defense if it 'would leave citizens of [Kentucky] with no redress for the unconstitutional exercise of legislative power.'" Opening Br. 29 (quoting *Ky. Ret. Sys.*, 396 S.W.3d at 840). But that is exactly the

point: Absent recognition of a cause of action against the State, there is no mechanism for holding the State accountable with respect to its constitutional obligations. *See supra* pp. 9-11. Moreover, nothing in the Kentucky Supreme Court's decision turned on a particular aspect of Kentucky's declaratory judgment scheme. Rather, the Kentucky Supreme Court broadly recognized that there "simply can be no sovereign immunity when it is the propriety of the governmental act that is being reviewed and the constitution is impacted." *Ky. Ret. Sys.*, 396 S.W.3d at 840.

The State similarly asserts that *Patel* rested on a unique feature of Texas law, Opening Br. 29-30, but the provision the Texas Supreme Court highlighted in Texas's declaratory judgment statute exists nearly verbatim in the DJA. The Texas statute provides that, "[i]n any proceeding that involves the validity of a municipal ordinance . . . the municipality must be made a party and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and is entitled to be heard." Tex. Civ. Prac. & Rem. Code § 37.006(b); *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372-73 n.6 (Tex. 2009). The Texas courts have interpreted this provision as allowing challenges to the constitutionality of a statute to proceed against the relevant governmental entity. *See Patel*, 469 S.W.3d at 76. Notably, the

Maine DJA is materially identical. *See* 14 M.R.S. § 5953. Thus, the reasoning of the Texas Supreme Court is equally applicable here.

Finally, the State is wrong that the remaining decisions were "*Ex parte* Young-type action[s]" brought against state officers under 42 U.S.C. § 1983 or a state analog. Opening Br. 30-31. In *Ex parte Young*, 209 U.S. 123 (1908), the Supreme Court held that a federal court may hear an action requesting prospective relief against state *officials* for violations of federal law. *Id.* at 159-60. The decision rests on a "fiction . . . that when a federal court commands a state official to do nothing more than refrain from violating [the] law, he is *not* the State for sovereign-immunity purposes." *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 255 (2011) (emphasis added) (citations omitted). As the Supreme Court has elaborated, "[t]he doctrine is limited to that precise situation, and does not apply 'when the state is the real, substantial party in interest." *Id.*; *see supra* pp. 9-10.

The cited decisions do not involve "that precise situation." *Textron,* for example, presented a request for declaratory relief that was nominally filed against the commissioner of Connecticut's department of transportation. 355 A.2d at 311. The defendant challenged jurisdiction on the basis that "the suit, although nominally brought against the commissioner . . . is in truth one against the state" and so "barred by the doctrine of sovereign immunity." *Id.* In rejecting this argument, the Connecticut Supreme Court agreed that "an action against the state highway

commissioner is in effect one against the state as sovereign." *Id.* It nevertheless concluded that "[t]he fundamental reasons underlying the doctrine of sovereign immunity . . . [had] no application" in the "unique, special circumstances of this case"—a "declaration of the plaintiff's rights pursuant to . . . the Connecticut constitution." *Id.* at 312 (further explaining that the case was not "the kind of action from which the state requires the protection afforded by the defense of sovereign immunity").

Corum falls in the same category. The case involved both claims under 42 U.S.C. § 1983 and, separately, what the North Carolina Supreme Court deemed "a direct claim against the State under the Declaration of Rights for the protection of plaintiff's free speech rights." 413 S.E. 2d at 291. The relevant sovereign immunity challenge involved the "direct claim against the State," not the § 1983 claim. *See id.* While the First Amendment claim was nominally filed against a university official, the court treated it as a "direct cause[] of action by plaintiffs whose constitutional rights have been violated" against a state official acting in his "official capacity." *Id.* at 290. Against that backdrop, the court recognized that the "doctrine of sovereign immunity cannot stand as a barrier to North Carolina citizens who seek to remedy violations of their rights guaranteed by the Declaration of Rights." *Id.* at 291; *see also Claremont*, 761 A.2d at 391 (treating the case as proceeding against the State and explaining that, while the "state generally is

immune from suit in its courts without its consent," that rule did not apply where the plaintiffs' "theory was that the official actions taken by the defendant were unconstitutional").

In short, these decisions all recognize the State cannot invoke the doctrine of sovereign immunity to avoid an adjudication of its constitutional obligations. The same principle applies with full strength here.

3. The State is a proper defendant in this suit.

Much of the State's substantive response to this lawsuit has been pointing fingers at MCPDS officials and arguing that they can give Plaintiffs their needed relief. As a threshold matter, "[w]hatever alternative remedies may have been available to the plaintiff at the time of the commencement of this action," Plaintiffs can still maintain their request for declaratory relief on "a question far-reaching in its implications and of fundamental importance to the people of this state." *Textron*, 355 A.2d at 313. The possibility of relief against another defendant does not foreclose suit against the State. *See id.*

In any event, the State is a proper defendant on Count V because it is the State's responsibility to provide counsel. *See supra* pp. 9-11. An adjudication of whether that obligation has been fulfilled necessarily runs against the State. While the State has delegated the day-to-day implementation of the provision of counsel to MCPDS, that in no way relieves the State of its "affirmative obligation . . . to provide

court-appointed counsel." *Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702. As this Court recognized in *Welch*, where a constitutional obligation runs against the State as an entity, "[t]o allow the State to assert sovereign immunity . . . would fly in the face of" that constitutional protection. 2004 ME 84, ¶ 8, 853 A.2d 214.

The State's participation is all the more important here because the MPCDS Defendants have argued they cannot provide complete relief on Plaintiffs' claims. They frequently informed the Superior Court that "the ultimate party in interest, again, is the State of Maine." Tr. May 26, 2022 at 17:11-23. And they repeatedly asserted that they "do[] not have the power to provide the relief demanded in Plaintiffs' proposed Amended Complaint." Defendants' Opposition to Plaintiffs' Motion for Leave to Amend and Supplement Complaint (Mar. 14, 2024) at 8; *see also id.* at 9 (objecting that they "cannot provide the relief demanded"). The State therefore cannot be heard to suggest that Count V is unnecessary because Plaintiffs can pursue relief against the MCPDS Defendants.

The various defendants' efforts to play hot potato with the right to counsel underscore why it is necessary for the State to remain a defendant. At the end of the day, it is the State that is constitutionally obligated to provide counsel, and the solution to this crisis must therefore lie with the State. The Court should not allow the State to pass the buck.

* * *

Sovereign immunity is well-established, but so, too, is the availability of requests for declaratory relief regarding a state's constitutional obligations. This case falls squarely into the category of actions that may be brought against the State notwithstanding sovereign immunity. The Court should reject the State's argument.

II. Plaintiffs can pursue their claim under the Declaratory Judgments Act.

The DJA expressly grants courts the "power to declare rights, status and other legal relations whether or not further relief is or could be claimed." 14 M.R.S. § 5953 (noting further that "[n]o action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for"). Plaintiffs' claim for a declaration regarding the State's constitutional obligations falls squarely within that provision.

The State raises two challenges to Plaintiffs' reliance on the DJA: (1) the DJA does not create a standalone cause of action, and (2) the DJA cannot be used to adjudicate a claimed constitutional violation. Both arguments fail. First, Plaintiffs' claim arises from the federal and state constitutions; Plaintiffs are not relying on the DJA to "create an independent cause of action." Opening Br. 35. Second, the State's attempt to exclude constitutional violations from the scope of the DJA entirely ignores the statute.

A. The Declaratory Judgments Act allows a standalone cause of action.

1. The Declaratory Judgment Act provides for adjudication of justiciable controversies.

As with any other cause of action, a claim for relief under the DJA requires a "genuine controversy," where a "genuine controversy exists if a case is ripe for judicial consideration and action." *See Blanchard v. Town of Bar Harbor*, 2019 ME 168, ¶¶ 9, 19-20, 221 A.3d 554 (citation omitted). Ripeness, in turn, "is a two-prong analysis: (1) the issues must be fit for judicial review, and (2) hardship to the parties will result if the court withholds review." *Id.* ¶ 20. The fitness prong turns on whether a controversy poses a "concrete, certain, or immediate legal problem." *Id.* ¶ 21 (citation omitted). "[L]ike the fitness prong, the hardship prong 'requires adverse effects on the plaintiff,'" where "speculative hardships" are insufficient. *Id.* ¶ 22 (quoting *Johnson v. City of Augusta*, 2006 ME 92, ¶ 8, 902 A.2d 855). In short, "[t]he DJA gives plaintiffs whose rights *are affected* the right to bring a declaratory action." *Blanchard*, 2019 ME 168, ¶ 19, 221 A.3d 554.

This focus makes particular sense in the context of the DJA because the statute is frequently used as the vehicle for "anticipatory declaratory judgments" challenging a statute or municipal ordinance "before the claimants have suffered harm." *Id.* ¶¶ 8, 11; *see also Sold, Inc. v. Town of Gorham*, 2005 ME 24, ¶ 15, 868 A.2d 172 ("[T]he declaratory judgment law may be used for certain anticipatory challenges to applications of state or local ordinances or administrative regulations

so long as the other prerequisites of a justiciable controversy exist."). Given the prevalence of pre-enforcement challenges brought under the DJA, this Court has emphasized that plaintiffs pursuing a claim under the DJA must face some "tangible and inevitable harm." *Blanchard*, 2019 ME 168, ¶ 11, 221 A.3d 554. Thus, while the DJA is "worded in general terms," it is "operative only in cases where a genuine controversy exists . . . for otherwise the Court would merely be giving an advisory opinion without authority of law." *Nat'l Hearing Aid Ctrs., Inc. v. Smith*, 376 A.2d 456, 458 (Me. 1977) (noting that "[t]he existence of a controversy is essential in any case").

The State argues that Plaintiffs' claim is impermissible under the DJA because Plaintiffs lack an "independent cause of action." Opening Br. 35. That argument misunderstands both the DJA and Plaintiffs' claim for relief.

Starting first with the DJA, the State confuses the justiciability principles addressed above with a rule that a plaintiff can solely pursue a claim under the DJA as an add-on to another cognizable cause of action. But this Court's recognition that a DJA plaintiff must have standing and a ripe claim for relief in no way suggests the DJA is solely a tag-along to other causes of action. Any rule to that effect would be flatly inconsistent with the text of the DJA, which states that a declaratory judgment may be issued "whether or not further relief is or could be claimed." 14 M.R.S. § 5953. In other words, regardless of whether a plaintiff has another cause of action,

declaratory relief is still available. *See id.* The statute further explains that "[n]o action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for," *id.*, further reinforcing that a defendant cannot object to a claim on the basis that it arises in the form of a request for declaratory relief.

To the extent the State is objecting that Plaintiffs' DJA claim creates a remedy where none would otherwise exist, that is wrong. Plaintiffs' claim does not arise from the DJA; it arises from the state and federal constitutions. Plaintiffs' DJA claim is not "creating" a cause of action any more than, say, a claim for a declaratory judgment that a statute violates the First Amendment. Rather, the DJA claim provides "a more adequate and flexible remedy" for the State's ongoing violation of Plaintiffs' constitutional rights—precisely the role the DJA is intended to serve. *See Colquhoun v. Webber*, 684 A.2d 405, 411 (Me. 1996). It is critical that Plaintiffs are able to pursue this claim to make clear the State's ongoing violations of Plaintiffs' constitutional rights, particularly given the constantly shifting membership in the Plaintiff class.

2. The State's position cannot be squared with this Court's precedents.

This Court has repeatedly adjudicated standalone claims for declaratory relief of just the type Plaintiffs are pursuing here. The plaintiffs in *Parker*, a case decided just last year, argued that a statutory ban on Sunday hunting violated their

constitutional rights under the right-to-food amendment to the Maine Constitution. *Parker*, 2024 ME 22, ¶ 1 314 A.3d 208; *see also* Me. Const. art. I, § 25; 12 M.R.S. § 11205 (2023). To pursue this claim, they "filed a one-count complaint in the Superior Court seeking a declaratory judgment pursuant to 14 M.R.S. § 5954," meaning their only claim for relief arose under the DJA. *Parker*, 2024 ME 22, ¶ 5.

This Court reversed the trial court's dismissal for failure to state a claim under the DJA. *Id.* ¶¶ 7, 15. Applying the "genuine controversy" standard outlined above, the Court concluded that plaintiffs had "established a justiciable controversy sufficient to seek a declaratory judgment." *Id.* ¶ 14. The plaintiffs had a claim "fit for judicial review, namely [their] right to hunt as necessary to obtain food"—a right "they allege[d] to have been created by the amendment." *Id.* And they had "a sufficiently substantial interest that would result in hardship if review were withheld," as they claimed to have been "harmed by the denial of their right to hunt on Sunday." *Id.* "Because the [plaintiffs] pleaded a sufficiently justiciable claim to warrant a declaratory judgment," this Court concluded "that the trial court erred in dismissing the action for failure to state a claim upon which relief could be granted." *Id.* ¶ 15.

Parker is only the most recent in a long line of cases from this Court adjudicating standalone claims for a declaration of constitutional rights. In *Annable v. Board of Environmental Protection*, 507 A.2d 592 (Me. 1986), for example, the

plaintiff challenged a state agency's refusal to determine whether his property was subject to a particular environmental regulation. *Id.* at 592-93. The plaintiff originally brought two claims for relief, one under the Maine Administrative Procedure Act and one under the DJA. *Id.* at 593. The Court affirmed dismissal of the claim under the Maine Administrative Procedure Act, explaining that the relevant statute did not obligate the agency to consider the plaintiff's request. *Id.* at 594. With respect to the DJA, however, the Court "conclude[d] that a justiciable controversy indeed exists," and therefore "vacate[d] the judgment so that the Superior Court may act upon th[e] claim for declaratory relief." *Id.* at 595-96. In other words, this Court specifically directed the Superior Court to adjudicate a standalone claim for declaratory relief. *See id.* at 596.

Other cases have reached a similar result. *See*, *e.g.*, *Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, ¶¶ 2, 7, 38, 237 A.3d 882 (remanding case solely on a claim for declaratory relief "for the Superior Court to enter a declaratory judgment" that an election initiative "fail[ed] to meet the constitutional requirements for inclusion on the ballot"); *Nat'l Hearing Aid Ctrs.*, 376 A.2d at 458 (plaintiff had presented a "genuine controversy" under the DJA arising from claim that a licensing statute violated the "constitutional guarantee" "to conduct business freely without undue legislative interference"); *Passamaquoddy Water Dist. v. City of Eastport*, 1998 ME 94, ¶ 3, 710 A.2d 897 (reviewing an action brought "pursuant to the

Uniform Declaratory Judgments Act . . . seeking a judgment declaring" that a particular tax was unconstitutional). There is nothing unusual about Count V here.

3. The State's cited authorities are not to the contrary.

Despite both the language of the statute and this wall of precedent, the State maintains that the DJA precludes standalone claims for relief. Opening Br. 35-36. That is incorrect, and rests on a misperception of the "genuine controversy" standard as requiring any DJA claim to be paired with another cause of action. *See id.* A plaintiff pursuing a claim under the DJA is not "excused from properly establishing a justiciable controversy," *National Hearing Aid Centers*, 376 A.2d at 458, but that in no way suggests that a DJA claim may be pursued only as an add-on to another cause of action. Any rule to that effect would be irreconcilable with the precedents discussed above. *See supra* pp. 30-32.

None of the State's cited cases holds, as the State argues, that the DJA "provides only a remedy—declaratory relief—ancillary to some other valid cause of action." Opening Br. at 36. The cited cases fall into one of two buckets. Most merely reiterate that the DJA does not allow a litigant to skirt standing and ripeness requirements. *See, e.g.*, *Colquhoun*, 684 A.2d at 411 ("[T]he purpose of the Declaratory Judgment Act is to provide a more adequate and flexible remedy in cases where jurisdiction already exists."); *Hodgdon v. Campbell*, 411 A.2d 667, 669 (Me. 1980) (the DJA "should be liberally construed to provide a simple and effective

means by which parties may secure a binding judicial determination of their legal rights . . . where a justiciable controversy has arisen"); *Casco Bank & Tr. Co. v. Johnson*, 265 A.2d 306, 307 (Me. 1970) (explaining that the DJA "provide[s] a more adequate and flexible remedy" but does not "enlarge the jurisdiction of the Court").

The remaining cases address whether a plaintiff can resuscitate an untimely or otherwise improper claim by refashioning a claim under another a statute as a request for declaratory relief. The plaintiffs in *Sold, Inc. v. Town of Gorham*, 2005 ME 24, 868 A.2d 172, for example, paid an administrative fee required as a condition of approval for a building development. *Id.* ¶ 1. After they failed to timely challenge the fee under the Maine Administrative Procedure Act, they sought a declaration under the DJA that the fee was unconstitutional. *Id.* ¶¶ 9, 10. In rejecting their claim, this court recognized only that "a declaratory judgment action cannot be used to revive a cause of action that is otherwise barred by the passage of time." *Id.* ¶ 10. *School Committee of York v. York*, 626 A.2d 935 (Me. 1993), provides even less help to the State. The Court there held that a party in fact *could* pursue a claim under the DJA notwithstanding its failure to comply with the statutory requirements for seeking review of a Town's home rule charter authority. *Id.* at 942. Nothing in either case suggests that an otherwise proper claim under the DJA is justiciable only if paired with another cause of action.

The State ultimately acknowledges, as it must, that "not . . . all lawsuits asserting a single declaratory count seeking declaratory relief against governmental actors are automatically barred for lacking a cause of action." Opening Br. 36. In an attempt to cabin these cases—which fatally undermine its position—the State asserts that "some pre-enforcement challenges to state statutes ultimately rely upon 42 U.S.C. § 1983 to supply a cause of action." *Id.* (citing *Doe I v. Williams*, 2013 ME 24, ¶ 72, 61 A.3d 718). But that proves too much. That certain constitutional challenges *can* be pursued under § 1983 and the DJA does not mean *only* such challenges can be, and many of the cases cited above adjudicating standalone claims under the DJA—*e.g.*, *Parker*, *Annable*, *Avangrid*, and *National Hearing Aid Centers*, *see supra* pp. 30-32—involved no claim under either § 1983 or its state parallel, the MCRA. Nor would that have been an option for many of the cases: As the State elsewhere recognizes in its brief, "[a] state, including a state official in his or her official capacity, is not a person within the meaning of § 1983 or the MCRA." *Doe I*, 2013 ME 24, ¶ 74, 61 A.3d 718; *see also* Opening Br. 36 n.5. The plaintiffs in *Parker*, for example, could not have pursued a § 1983 claim against the Department of Inland Fisheries and Wildlife, but that was no obstacle to the Court's adjudication of their standalone claim under the DJA. *See supra* pp. 7-8.

B. The Declaratory Judgments Act allows for review of constitutional violations.

In conjunction with its standing argument, *see infra* pp. 38-40, the State argues that the DJA does not allow a litigant to pursue a declaration of the State's *constitutional* obligations. Opening Br. 38-39. Specifically, the State relies on 14 M.R.S. § 5954 to argue that the DJA allows adjudication only of legal rights arising from an "instrument, statute, ordinance, contract or franchise." *Id.*[3] This cramped interpretation is directly contradicted by both the text of the DJA and this Court's precedent.

As a threshold matter, it is well-settled that a declaratory judgment is an "appropriate remedy to determine a constitutional question" or "to determine whether there is a violation of a statute constitutional right." 26 C.J.S. Declaratory Judgments, § 52 (May 2025 Update) (citing cases). That is particularly true where, as here, the issue is "one of great public interest" and "an opinion of the court would be beneficial to the public and to the other branches of government." *Id.* In line with this principle, this Court for decades has held that a declaratory remedy "is one to be employed in the interests of preventative justice and its scope should be kept

[3] Section 5954 provides: "Any person … whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder."

wide and liberal." *Randlett v. Randlett*, 401 A.2d 1008, 1011 (Me. 1979) (citing *Maine Turnpike Auth. v. Brennan*, 342 A.2d 719, 723 (1975)) (further citations omitted); *see also Hodgdon*, 411 A.2d at 699 (recognizing that the DJA "is remedial in nature" and must be "liberally construed"); *see supra* p. 33.

Consistent with this doctrinal framework, the DJA makes abundantly clear that it is not limited to a declaration regarding the State's statutory or regulatory obligations. The provision of the DJA titled "Scope" provides courts the power "to declare rights, status and other legal relations whether or not further relief is or could be claimed," without any limitation on the sources of law for which parties can seek a judicial determination. 14 M.R.S. § 5953. The State fails to address this provision.

The State instead relies entirely on the following subsection, specifically titled "Construction and validity of statutes." *Id.* § 5954. While that provision states—in line with its title—that plaintiffs can seek a declaration if their rights are affected "a statute, municipal ordinance, contract, or franchise," nothing in the provision suggests that the list limits the scope of available remedies under other sections of the DJA, so as to prevent parties from seeking a declaration of their constitutional rights. *See id.* To the contrary, the DJA expressly clarifies that the "enumeration in sections 5954 to 5956 does not limit or restrict the exercise of the general powers conferred in section 5953 in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove any

uncertainty." 14 M.R.S. § 5957. In light of this provision, there is no serious argument that the DJA is limited to the subject of § 5954—namely, the construction and validity of statutes and written instruments. Rather, the full scope of the DJA is set by § 5953, which makes clear that courts have authority broadly "to declare rights, status and other legal relations."

This Court's precedent further confirms that Plaintiffs' claims fall comfortably within the scope of the DJA. As discussed above, this court has repeatedly adjudicated claims "that a statute conflict[s] with the Maine Constitution." *Parker*, 2024 ME 22, ¶ 10, 314 A.3d 208; *see also Nat'l Hearing Aid Ctrs.*, 376 A.2d at 457-59; *see supra* pp. 30-32. These cases required the Court to provide a declaration regarding the scope of certain constitutional provisions. *See Parker*, 2024 ME 22, ¶¶ 20-25, 314 A.3d 208 (addressing at length the scope of rights created by the right-to-food amendment in the Maine Constitution). This case is no different: Plaintiffs seek a declaration that the State's provision of indigent defense fails to comply with the state and federal constitutions. Nothing in the DJA suggests that this Court cannot provide relief on the basis that Plaintiffs are challenging the constitutionality of the State apparatus for indigent defense, rather than application of a statute.

III. Plaintiffs have standing to pursue Count V against the State.

Plaintiffs have "suffered an injury that is fairly traceable to the challenged action and that is likely to be redressed by the judicial relief sought." *Collins v. Maine*, 2000 ME 85, ¶ 6, 750 A.2d 1257. As discussed at length in Plaintiffs' response brief in the appeal regarding the claims against the MCPDS Defendants, Law Court Docket No. 25-137, the State's ongoing failure to provide counsel has resulted in extensive harm to Plaintiffs. Broadly speaking, there is no real dispute that this case satisfies the "basic purpose and requirements" of the standing doctrine: Plaintiffs—indigent defendants who are being deprived of state-appointed counsel—have a "personal stake in the outcome of the litigation," and the case presents "a real and substantial controversy touching on the legal relations of parties with adverse legal interests." *Franklin Prop. Tr. v. Foresite, Inc.*, 438 A.2d 218, 220 (Me. 1981).

The State argues that Plaintiffs have failed to show redressability with respect to Count V because their requested declaration could not redress Plaintiffs' harm. Opening Br. 39-40. Rather, in the State's view, Plaintiffs' request raises merely "a symbolic grievance," and the proposed declaration "smacks of an advisory opinion." *Id.* at 40. That is both legally wrong and a glaring derogation of responsibility.

To start, this case is anything but "symbolic"—as any of the individual class members could attest. Class members have been sitting in jail without attorneys for

weeks or months while evidence becomes stale, witnesses' memories fade, and they are left to fend for themselves in bail hearings, plea negotiations, and even dispositional conferences. Plaintiffs are hardly seeking an advisory opinion by asking the Court to adjudicate whether the State is presently violating their constitutional rights.

As this Court has recognized, a declaration running against the State provides meaningful relief where it will "serve to govern" the relationship between Plaintiffs and the State moving forward. *Drake*, 390 A.2d at 544 (distinguishing a request for permissible declaratory relief against the State from "a declaration of the state's duty to refund or pay money"). That is particularly true where, as here, the case raises issues of significant "public importance" that weigh in favor of a declaratory adjudication. *Id.* The State fails to explain why an assertion that the State is violating the constitution would not result in any meaningful relief. Presumably the State is not suggesting that it would refuse to take action in response to a declaration that it is systematically violating Plaintiffs' constitutional rights. *See Alden*, 527 U.S. at 755 ("We are unwilling to assume the States will refuse to honor the Constitution or obey the binding laws of the United States."). Because the "States and their officers are bound by obligations imposed by the Constitution," *id.*, it should be assumed that any declaration that the State is violating the state and federal Constitutions will in fact lead to action to redress that violation.

Finally, the State cannot avoid standing by attempting to shift responsibility to Plaintiffs to identify individual "state official(s) whose behavior Robbins wishes to change." Opening Br. 40. The purpose of Count V is to hold *the State* responsible for its *own* affirmative constitutional obligation to provide counsel. The State should not be permitted to shirk that obligation by suggesting that Plaintiffs need to identify a specific officer to whom the State has delegated responsibility for fulfilling that obligation. If the State flatly refused to take any steps to provide counsel, it would be no answer to standing for the State to shrug its shoulders that no one was tasked with the provision of counsel—which is effectively defendants' argument in this case.

CONCLUSION

For the foregoing reasons, the decision of the trial court should be affirmed.

November 12, 2025

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that on November 12, 2025, I served the foregoing document, Brief of Appellees, upon counsel for Defendants by electronically transmitting a copy of the document to:

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