MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. Ken-24-480

MAINE HUMAN RIGHTS COMMISSION,

(*Plaintiff/Appellee*)

v.

D&L APARTMENTS, ET AL.,

(*Defendants/Appellants*)

On Appeal from the Kennebec County Superior Court

BRIEF OF APPELLANTS D&L APARTMENTS, ET AL.

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This appeal arises from the Superior Court's interpretation and application of the Maine Human Rights Act, and specifically two disability-related provisions of the Act that have not yet been analyzed by this Court. The first provision prohibits landlords from "refus[ing] to allow the use of a service animals or otherwise discriminat[ing] against individuals with a physical or mental disability who use an assistance animal at the housing accommodation," under 5 M.R.S. § 4582-A(3); the second makes it unlawful for landlords to make a statement that "indicates any preference, limitation or discrimination based upon . . . physical or mental disability . . . or an intention to make any such preference, limitation or discrimination." 5 M.R.S. § 4581-A(1)(C). The reason for this appeal is that the trial court misinterpreted and misapplied the law, and in so doing, reached erroneous results based upon its findings of fact.

The facts, generally tracking the Superior Court's written findings, are as follows: Justin Engstrom is a United States Marine Corps veteran. APP012. He testified that, after some military service, he suffered from chronic depression, suicidal ideation, mood swings, hypervigilance, paranoia, and other symptoms that ultimately led to his medical discharge from the Marines in 2014. APP012. He has received treatment from the U.S. Department of Veterans Affairs for Post-Traumatic Stress Disorder. APP012. In 2013, Mr. Engstrom's primary care physician suggested

that a dog might help him. APP012. Mr. Engstrom has never received a formal prescription for an assistance animal. APP012. No doctor ever determined that it was necessary for Mr. Engstrom to get a service animal based on his medical conditions. Trans. at 36. In August 2015, Mr. Engstrom began communicating with an organization that matches veterans with assistance animals. APP012. Mr. Engstrom testified that he was placed on a waitlist for a service dog. APP012.

In 2016, Mr. Engstrom moved to Maine. APP012. Mr. Engstrom lived with his parents while he searched for his own housing. APP012. Mr. Engstrom looked for potential residences that might be suitable for an animal. APP012. He contacted "six to eight" landlords about available housing and asked them about their policies on assistance animals. Trans. at 42. He did not apply for any of those apartments. APP012-13.

In June 2016, Mr. Engstrom called Darrell Sproul, who is the owner and operator of D&L Apartments, to inquire about a listing for an apartment in Hermon, Maine. APP013. Mr. Sproul is also a military veteran. Trans. at 50. Mr. Sproul is hard of hearing. Trans. at 55. Neither D&L Apartments nor Mr. Sproul has ever been subject to an adverse Commission finding of housing discrimination. APP13. D&L Apartments has a policy to allow pets with written consent. APP13. Mr. Sproul has developed such a policy to ensure that tenants do not bring pets that might disturb their neighbors or cause damage to his rental properties. APP13. Mr. Sproul and

D&L Apartments do permit assistance animals. APP013. As for dogs, in particular, Mr. Sproul has personally owned dogs for "most of [his] life." Trans. at 52.

Mr. Engstrom and Mr. Sproul spoke briefly on the telephone. APP013. They discussed the rent and the security deposit. APP013. Mr. Engstrom inquired about whether dogs were allowed in the apartments, and Mr. Sproul told him no. APP013. Mr. Engstrom then asked about either "federally protected" or "service" dogs, APP013, or "something to the effect that this is federally protected."[1] Trans. 44. According to Mr. Engstrom, Mr. Sproul repeated "no dogs." APP013. If Mr. Sproul did make a blanket assertion that no service dogs were allowed, such a statement would have been inconsistent with his own policies, which is to allow service animals (and other non-service animals and dogs) with written permission. See APP013; see also trans. at 57.

Mr. Engstrom said that could not recall "the specifics of the remainder of the conversation" after that point. Trans. 44. Despite that, Mr. Engstrom did testify that Mr. Sproul told him not to bother applying for the apartment after he asked about "federally protected" dogs. APP013. Mr. Engstrom's own disability status was not discussed on the call. APP013. Mr. Sproul did not ask if Mr. Engstrom was disabled.[2]

[1] At his deposition, Mr. Engstrom recalled asking about "therapy dogs" and "federally-protected service animals," see APP031-32. At trial, he conceded that he could not really remember what he said on the phone. Trans. at 44.

[2] It is unlawful housing discrimination for any landlord to "make or cause to be made any written or oral inquiry concerning the…physical or mental disability…of any prospective purchaser, occupant or tenant of the housing accommodation." 5 M.R.S. § 4581-A(1)(A).

APP013. It is uncontroverted that Mr. Engstrom did not indicate that he was disabled and planned acquire a service dog to help him manage certain health issues; that the dog in question would be specially trained for a disability-related purpose; that a physician had recommended he acquire such a service dog; or that Mr. Engstrom raised any other contextual clues about what kind of dog he was affirmatively asking about or why he might need such a dog to enjoy and use a rental unit. See APP013-14. Mr. Sproul personally did not recall any questions about "federally protected" animals, nor did he subjectively understand Mr. Engstrom to be asking for any form of accommodation of the "no dogs" policy based on a disability. APP013-14.

After this brief exchange about dogs, Mr. Engstrom ended the conversation and hung up the phone. APP014. He never asked to see the apartment and never applied for a lease. APP014. Mr. Engstrom voluntarily stopped seeking a service animal on his own accord. APP014. Mr. Engstrom never obtained a service animal. APP014. Mr. Engstrom purchased a home in July 2016, where he could have possessed a service dog, but he never got one. APP014. At the time of the trial, Mr. Engstrom owned a dog that was not specially trained as an assistance animal; it is a pet dog. APP014.

Before trial, the Defendants filed a Motion for Summary Judgment, arguing that the MHRC failed to make out a prima facie case of discrimination. See APP036-74. The court viewed the evidence in the light most favorable to the non-movants,

and concluded that the MHRC sufficiently alleged that Mr. Sproul "refused to consider Mr. Engstrom for housing as soon as 'therapy dogs' and 'federally-protected service animals' were mentioned." APP031-32. The Superior Court also found, in denying the summary judgment motion, that Section 4582-A(3) "states that it is unlawful housing discrimination 'to refuse to permit the use of an assistance animal,' without any of the limiting language in the subsequent clause…," with "the subsequent clause" referring to the text immediately following the quoted language. APP033. The court went on to opine that "whether or not Mr. Sproul . . . engaged in unlawful housing discrimination can be answered only by fully understanding what Sproul and Engstrom said to one another during their phone conversation," and declined to order summary judgment based on the record at that time. APP035.

The case proceeded to trial. Following trial, the Superior Court found that Mr. Engstrom was discriminated against pursuant to Section 4582-A(3), based on its interpretation of the statute as applied to the limited conversation between Mr. Engstrom and Mr. Sproul. The Court found that this discrimination occurred regardless of Mr. Sproul's disability status or ownership of a service animal. APP016. The court reasoned:

> [B]y responding 'no dogs' to Engstrom's inquiry about 'federally protected' or 'service' dogs, Sproul violated the statute. The court interprets Sproul's statement, delivered without qualification, to mean a prohibition of all dogs, and a ban on all dogs is necessarily a ban on the subset of dogs that are trained as service animals.

APP016. Supporting that particular conclusion was the court's statutory interpretation, which reasoned that:

> Section 4582-A(3) defines "unlawful housing discrimination" in two ways: first, as a "refus[al] to permit the use of a service animal"; and second, as "discriminat[ion] against an individual with a physical or mental disability who *uses a service animal at the housing accommodation*." 5 M.R.S. § 4582-A(3) (emphasis added). The limiting language in the second clause, which seems to require present use of a service animal, is notably absent from the first clause.

APP017-18. This reading was informed by the court's deference to, and application of, the rule of the last antecedent. APP018.

Next, the court held that Mr. Sproul's "no dog" statement violated 5 M.R.S. § 4581-A(l)(C). The court's analysis relied upon federal case law applying 42 U.S.C. § 3604(c), and attempted to apply an "ordinary listener" standard to the question of whether Mr. Sproul's utterance was discriminatory against disabled people. The court concluded that "Sproul's statements to Engstrom that 'no dogs' would be permitted, not even those that are of a 'federally protected' or 'service' variety, indicates to an ordinary listener a limitation on individuals with a disability who require the use of assistance dogs." APP020. The court determined that a "no dogs" statement is a "discriminatory limitation" that "jump[s] out" from the plain language of the statement, and the court determined that additional context—such as Mr. Sproul's intentions—could "not weigh in the analysis." APP020.

Finally, the court declined to rule whether the facts supported a finding that Mr. Sproul violated 5 M.R.S. § 4581-A(1)(B) by refusing to rent to Mr. Engstrom. Because the court did not rule on that question of law, it is not ripe for this appeal.

Based upon its interpretation of the law and its application of the law to the facts, the court ordered that Mr. Sproul undertake three hours of fair housing training provided or approved by the MHRC, to develop an assistance animal policy subject to MHRC approval, and to pay a penalty of $10,000.

Mr. Sproul and D&L Apartments timely appealed.

ISSUES PRESENTED FOR REVIEW

I. The Superior Court misinterpreted 5 M.R.S. § 4582-A(3) by applying the last antecedent rule instead of the series-qualifier rule to the statutory prohibition against "refus[ing] to permit the use of an assistance animal or otherwise discriminat[ing] against an individual with a physical or mental disability who uses an assistance animal at the housing accommodation."

II. The Superior Court erred by failing to recognize that the claimant could not satisfy the prima facie burden for bringing an unfair housing discrimination claim for an alleged violation of 5 M.R.S. § 4582-A(3).

III. The Superior Court erroneously refused to consider the context and intent of Mr. Sproul's "no dogs" statement when evaluating the putative violation 5 M.R.S. § 4851-A(1)(C).

SUMMARY OF THE ARGUMENT

The Superior Court erred by misconstruing the statutory language of the Maine Human Rights Act ("MHRA") and in finding that the Maine Human Rights Commission ("MHRC") met its applicable burdens to show that Mr. Engstrom was unlawfully discriminated against due to a protected disability.

First, the Superior Court fundamentally erred in its interpretation of 5 M.R.S. § 4582-A(3). By analyzing the statute through the lens of the last antecedent rule, the court put forward an unnatural reading of the statutory language that fails to consider the overall context of the statute—namely, its function to protect disabled Mainers who use service animals, rather than a general population of Mainers that might acquire a service animal. The last antecedent rule, which artificially disconnects an inherently unified clause in Section 4582-A(3), produces an interpretation of the statute that is illogically ungrammatical, inconsistent with similar statutory interpretations, dismissive of internal context of the statute, and fundamentally at odds with the legislative goals of protecting disabled Mainers. In contrast, a natural reading of the statute through an application of the series-qualifier rule provides a logical legal standard that is harmonious with the legislative purpose of protecting from unlawful discrimination a class of disabled Mainers who use service animals.

Next, guided by an unnatural reading of the law, the Superior Court ignored prima facie analysis and failed to consider the fact that Mr. Engstrom does not satisfy prima facie criteria for bringing his putative discrimination claim under 5 M.R.S. § 4582-A(3). Using a series-qualifier interpretation of the statute, the deficiencies in the MHRC's claim become clear. Under either disparate treatment or failure to accommodate theories of liability (as the court does not specify what theory it applied), the MHRC fails to satisfy the statutory and prima facie criteria for prevailing on a disability discrimination claim. The court's findings, therefore, should be reversed.

Third, the Superior Court expressly refused to consider context and intent in determining that Mr. Sproul violated 5 M.R.S. § 4581-A(1)(C) but uttering "no dogs" to Mr. Engstrom over the phone. The Superior Court found that Mr. Sproul had no knowledge nor basis to believe that Mr. Engstrom was disabled, and that Mr. Sproul did not understand that Mr. Engstrom was asking about a disability-related policy accommodation. But the Superior Court limited itself from considering those factors due to the false understanding that a speaker's subjective intent "does not weigh in the analysis" of a Section 4581-A(1)(C) claim. However, courts that have considered the federal counterpart at 42 U.S.C. § 3406(c) often weigh the totality of the circumstances when considering the putatively discriminatory significance of a particular statement, including the speaker's subjective intent and understanding of

the situation. A refusal to consider full context and speaker intent was error, and had the court appropriately weighed such factors, it would have found that an objective listener would *not* consider a neutral policy statement such as "no dogs" to be facially discriminatory against disabled people. Indeed, multiple courts have found similarly limited statements to not be facially discriminatory.

As applied to both statutes, the Superior Court's interpretation of the Maine Human Rights Act broadens the protections of the Act far beyond any rational statutory intent. The lower court's ruling bizarrely recognizes that a person without a service animal, without concrete plans to get a service animal, and without any need for a service animal, may be unlawfully discriminated against based on protections ostensibly reserved for disabled Mainer who use a service animal. Instead of protecting vulnerable populations from actual discrimination, the Superior Court fundamentally reimagines the MHRA under its own idiosyncratic interpretation of what, and who, is protected from disability-based discrimination or innocuous statements that are neither facially or contextually discriminatory.

For those reasons, the Order should be reversed and the case remanded back to the Superior Court for further proceedings consistent with an appropriate reading of the applicable laws.

ARGUMENT

I. Standard of Review.

The Law Court reviews the Superior Court's interpretation and application of the MHRA de novo. *See Russell v. ExpressJet Airlines, Inc.,* 2011 ME 123, ¶ 16, 32 A.3d 1030. The Court reviews the trial court's factual findings for clear error. *Vargas v. Riverbend Mgmt. LLC*, 2024 ME 27, ¶ 15, 314 A.3d 241, 246 (*quoting Lyman v. Huber*, 2010 ME 139, ¶ 19 n.2, 10 A.3d 707).

II. The Superior Court incorrectly applied the last antecedent rule to interpret the straightforward language of Section 4582-A(3), producing an irrational application of the statute, whereas the series-qualifier rule provides a more natural and logical reading of the provision.

The Superior Court found that a general question about "federally protected" dogs being exempted from a pet policy, absent any other relevant facts, and a simple "no dogs" response, triggered a violation of Section 4582-A(3). In its approach to statutory analysis, the court deemed it irrelevant that Mr. Engstrom did not have a service animal, did not need a service animal, and did not disclose to Mr. Sproul that he had a disability-related interest in acquiring a service animal. Rather, the court found that Mr. Sproul's statement constituted a "refus[al] to permit the use of a service animal" (by way of answering Mr. Engstrom's question) and without further inquiry or evaluation, this "refusal" as per Mr. Engstrom's inquiry violated the statute. See APP017. To reach this conclusion—which necessarily omits

consideration of the rest of Section 4852-A(3) and the overarching statutory intent of protecting disabled Mainers—the court necessarily relied on the wrong analytical toolkit to allow an 'unrestricted' reading of the statute. Given the unnatural application of the last antecedent rule, the irrational result of that rule, and the preferential outcome yielded from applying an alternative mode of construction—the series-qualifier rule—the verdict reached by the Superior Court is clearly erroneous, and should, with respect, be reversed.

In construing the language of a statute, courts "look first to the plain meaning of the language to give effect to the legislative intent." *Stromberg–Carlson Corp. v. State Tax Assessor,* 2001 ME 11, ¶ 9, 765 A.2d 566. A statute's plain meaning must be considered through the lens of "the whole statutory scheme for which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved." *Id.* (quotation marks omitted). "A plain language interpretation should not be confused with a literal interpretation . . . . Rather, courts are guided by a host of principles intended to assist in determining the meaning and intent of a provision even within the confines of a plain language analysis." *Dickau v. Vt. Mut. Ins. Co.*, 2014 ME 158, ¶ 20, 107 A.3d 621. Courts are admonished to "avoid[ ] results that are absurd, inconsistent, unreasonable, or illogical." *State v. Mourino,* 2014 ME 131, ¶ 8, 104 A.3d 893 (quotation marks omitted). Only when the plain meaning of a statute is not clear may the court look beyond the plain

language of the statute to other indicia of legislative intent. *See id.; Fuhrmann v. Staples the Office Superstore E., Inc.,* 2012 ME 135, ¶ 23, 58 A.3d 1083.

Although the statutory language in Section 4582-A(3) appears plain enough, the lower court has invited a controversy by garbling its statutory language with a non-applicable canonical rule of interpretation. The statute, by its structure and language, clearly intends to protect people with disabilities in their use of a service animal. Yet from a statute that is bespoke to protect individuals with disabilities who use service animals, the lower court invented a shield for persons who merely ask about service animals regardless of their own disability status or ownership of a service animal. The reading is nonsensical, and the issue boils down to the stark difference between two canons of statutory interpretation: the last antecedent rule and the series-qualifier rule.

A. An application of the last antecedent rule is not suggested by the plain language or statutory text or by this Court's past interpretation of similar statutes.

The lower court's analysis invokes, and its conclusion relies upon, the last antecedent rule of statutory interpretation. See APP017-18. Specifically, the lower court read Section 4582-A(3) to proscribe discrimination in "two ways," based on a perceived segregation of "clauses" set out in the description of unlawful conduct in subsection (3). APP017. The first "clause," according to the Superior Court, makes it unlawful for owners or landlords "to refuse to permit the use of a service animal,"

full stop. The second clause, separate from the preceding, was viewed by the Superior Court as being subject to "limiting language" which "seems to require present use of a service animal," and prohibits landlords from "otherwise discriminat[ing] against an individual with a physical or mental disability who uses an assistance animal at the housing accommodation." APP017-18. The court misinterprets the statute by deciphering two distinct forms of unlawful housing discrimination from a single unified clause, producing an asymmetrical and absurd meaning inconsistent with the statutory purpose of protecting disabled people who rely on service animals from discriminatory animus in housing accommodations.

First, the last antecedent rule is not naturally inferred by the structure of the statute. Grammatical clues (or the absence thereof) disfavor the Superior Court's interpretation. The United States Supreme Court has offered guidance on applying competing canons of statutory interpretation, suggesting that when "interpret[ing] statutes that include a list of terms or phrases followed by a limiting clause," courts should "typically" apply the last antecedent rule. *Lockhart v. United States*, 577 U.S. 347, 351 (2016). The rule is "context dependent," *Facebook, Inc., v. Duguid*, 592 U.S. 395, 404 (2021), and "as with any canon of statutory interpretation," it "can assuredly be overcome by other indicia of meaning," *Lockhart*, 577 U.S. at 352 (quoting *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003)).

In Section 4582-A(3), there is no lengthy "list" of items, but rather the conceptually intertwined, prohibited action of 'refusing to permit the use of a service animal' or—as a broader catchall—'otherwise discriminat[ing] against' an identified and particularized group of disabled people. There is no punctuation signal separating the first so-called clause from the second so-called clause, and as this Court has observed in reviewing statutory conventions, "[a] comma is generally used to indicate the separation of words, phrases, or clauses from others not closely connected in the structure of the sentence." *Labbe v. Nissen Corp.*, 404 A.2d 564, 567 (Me. 1979). An affirmative grammatical signal may invite the inference of a limiting application of a subsequent clause to a particular phrase, but is not to be found in Section 4582-A(3). *See Franklin Sav. Bank v. Bordick*, 2024 ME 17, ¶ 25, 314 A.3d 181 (finding that a comma in statutory text separating "real property" and "personal property" indicated, "[a]s a grammatical principle . . . [that] the clause applies only to the noun phrase 'personal property.'"). By corollary logic, the absence of a comma—or any other grammatical signal—disfavors the Superior Court's schismatic reading of the law for one that is unified: the individual with a physical or mental disability who uses an assistance animal at the housing accommodation (the statute's only specified class of protected persons) is protected from *either* the refusal to permit the use of a service animal or other types of

discrimination. The last antecedent rule, applied mechanically by the lower court, abandons common sense by artificially separating a linked conceptual clause.

Second, the Superior Court's construction is inconsistent with this Court's interpretation of an anti-discrimination statute that uses similar syntax to protect a particular class of people. A predecessor version of 5 M.R.S. § 4581-A(4), pertaining to the rental of properties to individuals on public assistance, made it unlawful housing discrimination for any landlord "to refuse to rent or impose different terms of tenancy to any individual who is a recipient of federal, state or local public assistance. . ." 5 M.R.S. § 4582 (2007), *repealed* by P.L. 2011, c. 613, § 12. In construing that statute, the Court did not distinguish between a "refus[al] to rent," as one standalone clause, versus a separate prohibition on "impos[ing] different terms of tenancy" subject to the limiting subject modifier of "individual[s] who [are] recipient[s] of . . . public assistance." Instead, the Court viewed the statute as prohibiting a combined type of discrimination against one group of people. *See Dussault v. RRE Coach Lantern Holdings, LLC*, 2014 ME 8, ¶ 14, 86 A.3d 52 (holding that "[t]he *only* discrimination that the MHRA prohibits with respect to public assistance recipients is 'refus[al] to rent or impos[ition of] different terms of tenancy' based *primarily on a person's status as a recipient*" (emphasis added)). If a "refusal to rent" to anyone were cause for civil rights relief, the statute would nonsensically broad. The Court did not apply the last antecedent rule in *Dussault*

where it would produce absurd results beyond the intended protection of a class of individuals defined within the same clause. Nor should such an interpretation of Section 4582-A(3) apply where doing so substantively changes the class of persons intended to benefit from tailored civil rights protection.

B. The misapplication of the last antecedent rule to Section 4582-A(3) gives rise to an illogically broad protection for able-bodied Mainers who are not subject to discrimination based on disability.

Beyond the grammatical structure of Section 4582-A(3), the prior lessons in interpretating similar related statutes, the best evidence that the last antecedent rule betrays a faulty interpretation of the statute is the absurd precedent that it produces. Statutory language "cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012) (citation omitted). With the MCRA's provisions on disability rights and housing rights, the legislative purpose and policy enacted by the Legislature is to "prevent discrimination in . . . housing . . . on account of an individual's actual or perceived . . . physical or mental disability." 5 M.R.S. § 4552. The Superior Court's decision apparently finds this population too narrow, and through the last antecedent rule, reforms the scope of the protected class of people to include, well, everyone.

Under the Superior Court's "two clause" framework, there is no specified class of persons that benefits from that "first" clause. If there is no "limiting language," which the lower court appears wary of, there is no limit to who is protected under that "first clause." As such, the court made a deliberate interpretive choice, as it was concerned that "a landlord would [otherwise] be allowed to prevent a disabled tenant from ever adopting a service animal under the justification that that tenant does not yet 'use[] an assistance animal,'" and the trial court did not believe it should "read the statute to be so restrictive." APP018.

Yet the courts should not substitute their own judgment where the Legislature has purposely imposed a limitation. *See Dussault*, 2014 ME 8, ¶ 19, 86 A.3d 52, 60 ("We are limited by the language that the Legislature has enacted, and may not substitute our policy judgment for that of the Legislature." (Citation omitted.)). By the Superior Court's logic, all civil rights protections might be "restrictive" to the extent that they do not apply broadly to the entire population. APP018. But this is legislative design, not a drafting defect. Absent such limitations imposed in Section 4582-A(3), it becomes unnecessary for a factfinder to determine that a claimant had a qualifying animal under 5 M.R.S. § 4553(1-H)—just like Mr. Engstrom, who never owned a service or assistance animal, the putative contemplation of acquiring a potentially-qualifying animal is more than sufficient. Nor need a potential claimant be mentally or physically disabled in any way, since that "limiting language" applies

only to disabled people who face other forms of discrimination. On its face, though, these are problematic conclusions.

The Superior Court's interpretation of the statute under the last antecedent canon renders the statute so broad, so unrestricted, that it ultimately disadvantages disabled Mainers. If the "first" clause is disconnected from the qualified "second" clause, the Superior Court's ruling grants more robust protection to (for example) 'Adam,' an able-bodied person who has no service animal, than it does to 'Betty,' a disabled person who possesses a service dog. Omitted from the Superior Court's statutory analysis is the fact that a landlord *can* prohibit Betty's service dog without violating the law if "the assistance animal poses a direct threat to the health or safety of others or the use of the assistance animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others."[3] 5 M.R.S. § 4582-A(3). If Betty's service animal can be shown to be dangerous, destructive, or disruptive, it is not unlawfully discriminatory for a landlord to ban Betty's dog, even if it is trained to provide disability-related services.

The implications of the dangerous/destructive/disruptive exceptions to the statute are relevant to the question of whether the statute should be read to require

[3] The Superior Court dismisses all qualification language in the rest of Section 4582-A(3) as "exceptions not relevant here." APP015.

the present use of a service animal. The lower court found discriminatory conduct even though there was no service animal to be put into evidence, so to speak. By ignoring the statutory predicate that an individual must possess a service animal to be protected by either "clause" of Section 4582-A(3), the court invites curious liability traps for a landlord and puts service animal owners (like Betty) at a disadvantage relative to able-bodied non-owners (like Adam). Say that Adam, as a potential tenant, asked Mr. Sproul if he permitted a "federally protected polar bear" or an "assistance mountain gorilla." In a world that is not made up of lawyers who prudently answer every question with "It Depends," the commonsense answers to those inquiries are: "no polar bears" and "no mountain gorillas." But, by the Superior Court's logic, the legal inquiry is complete at this point: upon saying "no" to a "service animal," the landlord has violated the statute, even if a *particularized* refusal to accommodate Adam's polar bear or gorilla is likely lawful in a non-hypothetical setting.[4] By separating Section 4582-A(3) into two parts, the court makes it easier for an able-bodied person without an assistance animal to sue a

[4] It also may be the case that a trained gorilla is, in fact, an incredibly useful assistance animal for a certain disabled person. Maybe it can administer insulin and call 9-1-1 if a person shows symptoms of hyperglycemia. Nevertheless, one could understand a landlord's initial skepticism at this particular request if framed purely as a hypothetical question about "an assistance gorilla" without any other information offered by the potential tenant. This goes to the fundamental issue in the MHRC's claim: the putative "service animal" in this case was *not* appropriately suited for accommodation because it did not exist, yet a landlord can be found liable for "denying" its hypothetical use. Where a person seeking a reasonable policy accommodation does not have a service animal to accommodate, everything about that "animal" is invention and speculation. Indeed, that is why a reading of the statute that requires the current use of a service animal is essential to adjudicating the statute, as the law presumes there is an actual creature to *either* reasonably accommodate or lawfully refuse.

landlord who does not prospectively permit the use of their hypothetical (and unneeded) assistance animal. Betty's actual service dog can be refused under certain conditions, but Adam's hypothetical service bear cannot be refused under any condition without a landlord violating the statute.

If, under the Superior Court's interpretation of the statute, able-bodied persons are protected by Section 4582-A(3) should they consider getting a service animal, the courts will ironically undermine protections for disabled Mainers. A less exotic hypothetical highlights the problem with the trial court's statutory construction. From the sum of its broken parts, the court's decision imposes an incoherent civil rights scheme where a tenant in perfect health seeking a potential service animal *to circumvent pet restrictions* accrues a cause of action against any landlord who does not prospectively permit the yet-unidentified service animal in the rental units. The abuses of such public policy are hardly the stuff of a creative imagination. It would be quite the unintended consequence—the perversion of good intentions—if the Legislature incentivized healthy people to snatch up trained service animals to circumvent lawful restrictions on pets in rental units. And such a legislative "policy" would be directly detrimental to disabled people who require such specialized assistance and who will suffer if their ability to get necessary service animals is impaired by able-bodied opportunists flooding a limited marketplace. In that light, the trial court's awkward reading of Section 4582-A(3) may, in fact, lead to an

outcome that the Legislature, in its wisdom, specifically sought to avoid by requiring a person to be (a) disabled and (b) presently own a service animal in order to be protected by the statute.

For all those reasons, the Superior Court's interpretation of the statute is ungrammatical, inconsistent with this Court's interpretation of similar statutes, illogical with respect to the citizens it stands to protect, and fundamentally at odds with the overall scheme and intention of the Maine Civil Rights Act. The decision below, and its faulty reading of Section 4582-A(3), should be reversed.

C. The series qualifier rule produces a natural, rational reading of Section 4582-A(3).

The last antecedent rule is not granted deference when it leads to an illogical outcome or unnatural reading of the law. Fortunately, courts are not obligated to drive the last antecedent rule off logical cliffs. The foremost goal of ascertaining a statute's meaning is not to accept the outcome of any rote application of interpretive canon, but rather to consider the statute "through the lens of the whole statutory scheme for which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved." *Stromberg–Carlson Corp,* 2001 ME 11, ¶ 9, 765 A.2d 566 (quotation marks omitted). With that goal in mind, the natural reading of the statute (minding the legislative purpose of Section 4582-A) favors the application of the series-qualifier rule.

The series-qualifier canon is preferred "[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series, a modifier at the end of the list normally applies to the entire series." *Facebook, Inc. v. Duguid*, 592 U.S. 395, 402 (2021) (internal quotation marks and citation omitted). It reflects the unremarkable convention that "[w]hen several words are followed by a clause [that] is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all." *ECB USA, Inc. v. Chubb Ins. Co. of New Jersey*, 113 F.4th 1312, 1322 (11th Cir. 2024) (cleaned up) (*quoting Paroline v. United States*, 572 U.S. 434, 447 (2014)). Given the option between two modes of interpretation, Section 4582-A(3) strongly favors a reading whereby the class of "individual[s] with a physical or mental disability who use[] [a service] animal at the housing accommodation" is the sole subject to be protected equally from both the "refus[al] to permit the use of a service animal" and from being "otherwise discriminat[ed] against" based primarily on their protected characteristics.

When faced with similar interpretive choices, the United States Supreme Court has declined to apply the last antecedent rule where, like here, the limiting clause appears after an integrated list. An "integrated list," as described in *Facebook, Inc., v. Duguid*, 592 U.S. 395 (2021), was characterized as featuring a "modifier [that] immediately follows a concise, integrated clause." *Facebook, Inc.* 592 U.S.

395, 403 (citation omitted). The rule avoids an artificial divide between the integrated prohibitions on "refusing to permit" a service animal and "otherwise discriminating against" users of service animals, accepting the language as a single cohesive clause. To illustrate, the statute in question in the *Facebook* case was part of the Telephone Consumer Protection Act of 1991, which was passed by Congress to curb intrusive telemarketing calls. The statute defined an "autodialer" as "equipment which has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." *Id*. at 402. The party arguing for a last antecedent interpretation of the statute argued that "using a random or sequential number generator" selectively modified only the closer verb, "produce," but not the preceding verb, "store." *Id.* The Supreme Court rejected that unnatural and arbitrary-seeming reading of the statute, noting that the preceding clause "hangs together as a unified whole," and found that "the word 'or' . . . connect[s] two verbs that share a common direct object, 'telephone numbers to be called.'" *Id*.

To be sure, like the last antecedent rule, the series-qualifier rule is not a guaranteed interpretive key in all circumstances. Examples that undermine the rule's assumptions are readily generated, for example: "It is illegal to hunt rhinos and giraffes with necks longer than three feet." *See id*, 592 U.S. at 411 (Alito, J., concurring). There, the qualifier ("necks longer than three feet") cannot logically

apply to the former noun ("rhinos"). As such, contextual considerations remain necessary to guide the suitability of any particular canon of interpretation.

Yet the series-qualifier rule produces no such dissonance here. Where Section 4582-A is titled "Unlawful housing discrimination on the basis of disability," subpart (3) should be read to protect "an individual with a physical or mental disability who uses an assistance animal at the housing accommodation," rather than any person who is refused permission to use a service animal. The last antecedent canon produces a disjointed outcome benefiting able-bodied people who may not even own service animals (among other issues outlined in section (II)(B), supra) out of step with the corpus of Section 4582-A. The series-qualifier canon, however, offers an interpretation of the law that specifically protects disabled people who use service animals and may face related forms of discrimination because of that need. Put in the same terms prescribed by the Superior Court, the connection between the so-called "first clause" and the subsequent "limiting language" means simply that a landlord may not "refuse to permit the use of a service animal" to an "individual with a physical or mental disability who uses [a service] animal at the housing accommodation." That reading is not at all strained. Both prohibitions (refusal of use and the broader catchall) may occur to an individual who presently owns a service animal, and the plain language even invites the "clauses" to be read together, since the function of "…otherwise discriminate against…" clearly refers back to the

preceding, more specific prohibited conduct. The series-qualifier rule thus logically supports the legislative goal of protecting disabled Mainers from unfair treatment, which reinforces the overall form and function of the statutory scheme.

Returning, briefly, to the Superior Court's abstract concern that such a reading of the statute may somehow indefinitely prevent a person with disabilities from ever obtaining a service animal, see APP033-34,[5] this pessimistic fatalism is hard to imagine in reality. A landlord could not lawfully prevent a tenant from inquiring about an available service animal, from driving to pick up the service animal, or from bringing the service animal back to the rental unit. Perhaps the court meant to imply that the landlord might take adverse action against the tenant when the tenant returns to their rental unit, service animal in tow—yet at that point the tenant has a service animal, and is in fact "using a service animal at the housing accommodation," so the statute plainly creates liability if the landlord should "refuse to permit the use of a service animal or otherwise discriminate against" that tenant at that time (unless a valid exception applies). The presumed preventative powers of a landlord seem illusory, at best.

Perhaps, though, if the statute is silent on that particular problem, the courts must choose between a "logical but imperfect" version of the statute or an "illogical

[5] Again, the lower court worried that "[u]nder the Defendants' reading of the statute, a landlord would be allowed to prevent a disabled tenant from ever adopting a service animal under the justification that that tenant does not yet 'use[] an assistance animal.'" See also APP018 (quoting the same passage from court's Order on Motion for Summary Judgment).

and imperfect" version of the statute. The error in the Superior Court's assumption about the statute's supposed blind spot for disabled tenants who do not yet have a service animal is that, to avoid a "restrictive" reading of the statute, the lower court adopts an utterly untethered interpretation. It may be the case that the lower court's reading is "bad [case] law created in search of good results." *State v. Tomah*, 1999 ME 109, ¶ 22, 736 A.2d 1047, 1054. Nevertheless, it is nonviable. The law cannot rationally offer relief to anyone, regardless of disability status, regardless of whether there is a qualifying service animal, and regardless of whether the "refus[al] [of] permi[ssion]" had any causal effect on the person's ability of obtain a qualifying service animal. The last antecedent rule creates an absurd and illogical result, where the series-qualifier rule binds a cohesive and logical statutory protection for qualifying members of a discrete protected class. The lower court's imperfect, incorrect, and illogical reading of the statute should be reversed.

III. In appropriately applying the series-qualifier rule to Section 4582-A(3), it becomes clear, based on the Superior Court's factual findings, that Mr. Engstrom does not satisfy the statutory or prima facie criteria for being protected by the statute, which compels an outcome in favor of Defendants/Appellants.

The series-qualifier rule promotes a more logical, and more natural, reading of Section 4582-A(3) than does the last antecedent rule, as illustrated in section (II)(C) supra, but there is still work to be done to determine if the MHRC has a claim

for discrimination under the statute when appropriately interpreted. When tested, it does not.

To obtain relief in a claim of unlawful discrimination, a plaintiff must establish a prima facie case of statutory discrimination. *Dussault*, 2014 ME 8, ¶ 24, 86 A. 3d 52 (citation omitted). Because the MHRA generally tracks federal anti-discrimination statutes, the Law Court has held that it is appropriate to look to federal precedent for guidance in interpreting the MHRA. *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1261 (Me. 1979). There are three types of discrimination claims raised under the federal Fair Housing Act ("FHA"): "disparate treatment, disparate impact, and failure to make reasonable accommodations." *Astralis Condo. Ass'n v. Sec'y, U.S. Dep't of Hous. & Urb. Dev*., 620 F.3d 62, 66 (1st Cir. 2010) (citations omitted).

It is unclear exactly which type of claim the MHRC brought or which type of claim was assessed by the trial court. The Superior Court applied a rudimentary test: "by responding 'no dogs' to Engstrom's inquiry about 'federally protected' or 'service' dogs, Sproul violated the statute." APP016. The court's novel test asks only whether the claimant asserts that (1) a statement that can be understood to prohibit animals with an express disclaimer about service animals (2) was made (3) to a person. Aside from being inappropriately lax under a reasonable reading of the statute, this blunt rubric does not follow any category of FHA analysis and, thus,

represents an erroneous departure from the FHA framework that steers unfair housing discrimination claims against individuals with disabilities.

The putative liability here seems to flow from either a disparate treatment theory or a failure to reasonably accommodate theory of discrimination. The MHRC, in its post-trial brief, conceded that this case "does not involve direct evidence" of discrimination and, citing *United States v. Grishman,* 818 F. Supp. 21, 23 (D. Me. 1993) and *HUD v. Blackwell,* 908 F.2d 864, 870 (11th Cir. 1990), claimed that prima facie case of unlawful housing discrimination was satisfied through the following paraphrased synopsis: (1) Mr. Engstrom is a member of a protected class; (2) he was qualified to rent an apartment; (3) Mr. Sproul rejected Engstrom; and (4) the housing accommodation remained available thereafter. See Post-Trial Brief of Plaintiff Maine Human Rights Commission (Feb. 13, 2024), p. 8. Even if that is how the MHRC sees its case, the Superior Court did not explicitly find that Mr. Engstrom was subjected to disparate treatment due to his protected class. First, the court did not find as a matter of fact that Mr. Engstrom was a member of a protected class, since he neither owned, nor needed to own, a service animal. Nor did it find that Mr. Sproul treated Mr. Engstrom adversely because of any perceived disability. Under a disparate treatment theory of discrimination, the plaintiff is "required to show that a protected characteristic played a role in the defendant's decision to treat [him] differently." *Vanderburgh House, LLC v. City of Worcester*, 530 F. Supp. 3d 145,

154 (D. Mass. 2021) (citation omitted). The facts in this case show the opposite: to the extent that there was any type of treatment, Mr. Engstrom was basically informed about a blanket rule that applied to all tenants, not solely tenants from any identifiable protected class. The court concluded that Mr. Sproul did not know or have reason to know that Mr. Engstrom was a member of any protected class. APP013-14. Therefore, there is no basis for a legal conclusion that Mr. Engstrom was treated differently from other tenants due to his actual or perceived disability, as the facts plainly did not support such a finding.

It is more intuitive that the underlying claim pursuant to Section 4582-A(3) would arise out of Mr. Sproul's "failure to make reasonable [dog policy] accommodations": i.e., a blanket "no dogs" policy was not appropriately adapted for someone a disabled person who made a disability-related request for a service dog.[6] Yet again, the Superior Court decision does not analyze the case through the blow-by-blow prima facie framework of a "failure to accommodate" claim either. The First Circuit Court of Appeals set forth that a prima facie case for failure to provide reasonable accommodation had four parts:

> [1] That [the claimant] was a person with a disability, [2] that the [defendant] knew or should have known that he was a person with a disability, [3] that [claimant's] [service] dog was reasonable and necessary to afford him an equal opportunity to use and enjoy his

[6] Indeed, the Superior Court's ordered relief sets out that Mr. Sproul must "develop an assistance animal policy subject to MHRC approval." APP022. This strongly suggests that the court, if not the MHRC, viewed Mr. Sproul's violation to be a failure to adapt his "no dog" policy in the face of a supposed request for a disability-related accommodation.

> dwelling, and [4] that the [defendant] nonetheless refused to provide a reasonable accommodation.

Astralis Condo. Ass'n, 620 F.3d at 67 (quotations and citations omitted). Although the trial court did not work through these points, an application of the court's factual findings to those criteria demonstrates that Mr. Engstrom could not satisfy the statutory and/or prima facie criteria required for a failure to accommodate discrimination claim.

First, based purely on the statutory prerequisite, Mr. Engstrom cannot establish that he was "an individual with a physical or mental disability who uses an assistance animal at the housing accommodation." 5 M.R.S. § 4582-A(3). The trial court plainly found that Mr. Engstrom "never procured an assistance animal." APP014. He simply was not and is not a protected individual under the service animal statute. Further, Mr. Sproul had no reason to understand that an accommodation was being sought, nor any reason to believe that Mr. Engstrom was disabled. APP013-14 ("[T]he topic of Engstrom's disability was not discussed on the call. . . [and Sproul] did not understand Engstrom to be asking for a reasonable accommodation based on disability."). The law does not impose a duty on landlords to be clairvoyant about the needs of others. In an employment accommodation context, for example, the individual seeking accommodation needs to provide an actual request for an accommodation along with a modicum of relevant supporting information:

> Because an employee's disability and concomitant need for accommodation are often not known to the employer until the employee requests an accommodation, the ADA's reasonable accommodation requirement usually does not apply unless" the employee makes a request. . . .An employee does not have to use any special words, but the request "must be specific enough that two things are clear to the employer: (1) the individual has a disability that is causing a work-related limitation; and (2) the individual believes an accommodation is needed in order to do the job."

Cavanagh v. IDEXX Lab'ys, Inc., No. 2:23-CV-00273-NT, 2024 WL 2724195, at *7 (D. Me. May 28, 2024) (citations omitted). *See also Astralis Condo. Ass'n*, 620 F.3d at 67 ("[T]he ADA's reasonable accommodation requirement usually does not apply unless 'triggered by a request' from the employee." (Citation omitted.)). This applies in housing contexts as well. *See McClendon v. Bresler*, No. 23-55378, 2024 WL 2717406, at *1 (9th Cir. May 28, 2024) ("To prevail on a reasonable accommodation claim under the [FHA] and FEHA, a plaintiff must establish, among other things, that the defendant had actual or constructive knowledge of the claimed disability."). Here, the facts found at trial do not indicate that a specific request for any accommodation was made, nor was any meaningful information conveyed to Mr. Sproul that Mr. Engstrom had a disability and might need a service dog. See APP012-014. The Superior Court conspicuously did not find that Mr. Sproul had, or should have had, actual or constructive knowledge of Mr. Engstrom's claimed disability. That informational deficit precludes an adverse finding for the failure to make a reasonable accommodation for a person with a disability.

The issues do not stop there. Even if Mr. Engstrom had made a statement of the requisite specificity, the factual findings of the court do not support a finding that his "[service] dog was reasonable and necessary to afford him an equal opportunity to use and enjoy his dwelling." *Astralis Condo. Ass'n*, 620 F.3d at 67. The court unquestionably found that Mr. Engstrom was able to live in other dwellings without the use of an assistance animal, and "never procured an assistance animal, although he does now own a dog." APP014. It is clear from the record that Mr. Engstrom did not need an assistance animal to live in any particular housing accommodation, since he lived in other accommodations where he could have had a service animal but never got one. Therefore, the record plainly shows that the requested accommodation (if there was one) was not, in fact, reasonable and necessary.

In short, based on the factual findings of the trial court, a prima facie case for either disparate treatment or a failure to make a reasonable accommodation pursuant to Section 4582-A(3) a was not established by the MHRC at trial, and are not supported by the trial court's factual findings.[7] The Superior Court's decision should be, respectfully, reversed and remanded as to 5 M.R.S. § 4582-A(3).

[7] In its post-trial brief, the Maine Human Rights Commission conceded that Mr. Engstrom did not make a prima facie case of discrimination for failure to reasonably accommodate his ostensible disability. The MHRC wrote: "Rather than defend against any of these claims, Defendant argues that Plaintiff did not establish a prima facie case for the denial of a reasonable accommodation. . . . This is true, but irrelevant, since Plaintiff need not establish a prima facie case for the denial of a reasonable accommodation to prevail on any of the claims actually made in this litigation." Post-Trial Reply Brief of Plaintiff Maine Human Rights Commission (Mar. 19, 2024), p. 2.

IV. In assessing a violation of 5 M.R.S. § 4851-A(1)(C), the Superior Court erroneously refused to consider the context and intent of Mr. Sproul's "no dogs" statement.

In addition to mistakenly finding a violation of Section 4582-A(3) through a misapplication of legal standards, the trial court found that Mr. Sproul engaged in unlawful housing discrimination in violation of Section 4581-A(1)(C) by making a statement of discriminatory preference, based on the same, familiar telephonic exchange in which he twice stated: "no dogs." This finding, as a matter of law based upon the court's findings of fact, was in error because the court expressly (and wrongly) refused to consider speaker intent and context when applying the "ordinary listener" standard, thereby prejudicially distorting the law as applied to the court's findings of fact.

Section 4581-A(1)(C) states that it is unlawful housing discrimination to:

> [m]ake, print or publish or cause to be made, printed or published any notice, statement or advertisement relating to the sale, rental or lease of the housing accommodation that indicates any preference, limitation or discrimination based upon . . . physical or mental disability . . . or an intention to make any such preference, limitation or discrimination.

5 M.R.S. § 4581-A(1)(C). The Superior Court's analysis of this allegation turned to federal courts' consideration of 42 U.S.C. § 3604(c), which has "substantially similar language." APP019.[8] In finding a violation of the statute, the Superior Court

[8] 42 U.S.C. § 3604(c) makes it unlawful "[t]o make . . . any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . handicap. . . or an intention to make any such preference, limitation, or discrimination."

deemed that the "no dogs" comment would "indicate discrimination to an ordinary listener," and going even further to declare that those two words would "jump out" as discriminatory to that ordinary listener. APP019-20. In addition to that finding—i.e., the supposedly facially discriminatory nature of the statement "no dogs"—the court ruled that contextual considerations, such as Mr. Sproul's subjective intentions, are not part of the court's analysis. See APP020 (finding that "from the plain language of Sproul's statements. . . Sproul's protestations that he did not intend to make a discriminatory statement do not weigh in the analysis").

As noted above, the Superior Court referred to federal case law applying the federal code at 42 U.S.C. § 3604(c). A plaintiff may prove a 42 U.S.C. § 3604(c) violation by supplying proof that an "ordinary listener" would naturally interpret the defendant's statement—such as "no dogs"—to indicate a preference against a disabled person. A statement is prohibited under 42 U.S.C. § 3604(c) if it "suggests to an ordinary reader that a particular protected group is preferred or dispreferred for the housing in question." *Jancik v. Dep't of Hous. & Urb. Dev.*, 44 F.3d 553, 556 (7th Cir. 1995) (*quoting Ragin v. N.Y. Times Co.*, 923 F.2d 995, 999 (2d Cir. 1991)) (cleaned up). To establish a prima facie claim under § 3604(c), plaintiffs must prove that: (1) defendants made a statement; (2) the statement was made with respect to the rental of a dwelling; and (3) the statement indicated a preference, limitation, or

discrimination *on the basis of* [disability]." *Wentworth v. Hedson*, 493 F. Supp. 2d 559, 565 (E.D.N.Y. 2007) (emphasis added).

The "ordinary listener" is, in theory, "neither the most suspicious nor the most insensitive" citizen. *Ragin,* 923 F.2d at 1002. When applying the "ordinary listener" test, context is relevant to assist the factfinder in determining "the manner in which a statement was made and the way an ordinary listener would have interpreted it." *Soules v. HUD,* 967 F.2d 817, 825 (2d Cir.1992) (*citing Ragin,* 923 F.2d at 1000); *Jancik,* 44 F.3d at 556. One does not touch the proverbial third rail by merely being clumsy with words, and a person can even discuss protected characteristics identified in Section 3604(c) without necessarily conveying a "preference, limitation, or discrimination" forbidden by federal housing law, particularly if "there are situations in which it is legitimate" to do so. *Soules*, 967 F.2d at 824. The notice or statement at issue must be read "in light of *all* the circumstances" to determine whether an ordinary listener under those circumstances would understand the statement to indicate a forbidden preference or limitation. *Morris v. W. Hayden Ests. First Addition Homeowners Ass'n, Inc.*, 104 F.4th 1128, 1149 (9th Cir. 2024) (citation omitted) (emphasis added). In weighing such a totality of circumstances, a speaker's intent "may prove especially helpful where . . . a court is charged with ascertaining the message sent by isolated words rather than a series of ads or an extended pattern of conduct." *Soules*, 634 F.2d 817, 825 (2d Cir. 1992).

Under those standards, the trial court *should have* considered the full context of the "no dogs" statement, rather than explicitly and deliberately refusing to consider the context or subjective intent of the speaker in finding liability under Section 4581-A(1)(C). In contrast with the importance that the court placed on the isolated words "no dogs," the court also found that Mr. Sproul did not understand Mr. Engstrom to be asking for a policy accommodation based on disability during the conversation. APP014. And in fact, Mr. Sproul had reason not to pick up on that context, since the trial court found that Mr. Engstrom withheld his putative disability status and that disability-related concerns were never discussed over the brief phone call. APP013-14. There is yet more important context. Mr. Sproul is hard of hearing. Trans. at 55-56. Also, it is undisputed that Mr. Sproul's actual policy is to allow service animals, including service dogs. APP013; trans. at 56-57. It is undisputed that while Mr. Sproul's general policy is to not allow dogs, he does allow dogs with written permission. APP013; trans. at 61.

Setting aside all of that context, the trial court found that Mr. Sproul's brief statement is, without more, enough to violate the MHRA. This is an outlier conclusion based on comparable applications of federal law. Other courts have found that, contrary to the trial court here, statements made about a blanket "no pets policy" are not facially discriminatory. *Fair Hous. Res. Ctr., Inc. v. DJM's 4 Reasons Ltd.*, 499 F. App'x 414, 415–16 (6th Cir. 2012); *Hawn v. Shoreline Towers Phase I*

Condo. Ass'n, Inc., No. 3:07–cv–97/RV/EMT, 2009 WL 691378, at *3 (N.D. Fla. Mar. 12, 2009) ("[A] sign that says 'no animals' instead of 'no pets' simply does not, by itself, reflect an intentional preference, limitation, or discrimination based on handicap in violation of the FHA."), *aff'd,* 347 Fed.Appx. 464, 468 (11th Cir. 2009) (finding that the plaintiff failed to "present[] any evidence of discriminatory intent" behind the "No Animals Allowed" sign located at the rental property).

Finally, under the logic of the trial court's ruling, any rental property that advertises, prints, or communicates a general prohibition against tenants owning "dogs" or "pets"—or even commonly-prohibited, high-risk dog breeds such as pit bulls, rottweilers, or German shepherds—has unlawfully discriminated against *anyone* who *might* aspire to own a service dog, regardless of context and intent. This Court, in reviewing the trial court's legal reasoning, is poised to solidify that sweeping precedent and to calcify a legal conclusion that, unlike other jurisdictions, reflexively disregards context and speaker intent. The trial court's order compels reversal and remand for consideration of the applicable, relevant context that should inform judicial evaluation of a statement under 5 M.R.S. § 4581-A(C).

CONCLUSION

The Superior Court's interpretations of the Maine Human Rights Act sections at issue in this case broaden the protections of the Act far beyond their apparent purposes. As held by the lower court, any person without a service animal, without

concrete plans to get a service animal, without any need for a service animal, may be unlawfully discriminated against based on protections purposely reserved for disabled Mainers who use a service animal. Likewise, the lower court imposes sweeping liability on landlords who make facially neutral rental policy representations (e.g., "no pets" or "no dogs") based on the unrealistic assumption that an ordinary reader, regardless of context, would take those two words to harbor discriminatory preferences adverse to disabled Mainers. On both fronts, instead of protecting vulnerable populations from actual discrimination, the Superior Court fundamentally reimagines the Act under its own idiosyncratic interpretation of what the law should be. With respect, this 'legislating from the bench' compels correction, as set forth in this brief. This Court should reverse and remand.

Dated: January 16, 2025

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CERTIFICATE OF SERVICE

I, Carl E. Woock, Esq., hereby certify that a copy of this was mailed via electronic mail to the following people on this date.

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