STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. KEN 25-137

ANDREW ROBBINS, et al.

Plaintiffs - Appellees

v.

STATE OF MAINE, et al.

Defendants - Appellants.

ON APPEAL FROM THE KENNEBEC COUNTY SUPERIOR COURT

BRIEF OF APPELLANTS

Sean D. Magenis
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006
(207) 626-8800

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Federal Cases

State Cases

Statutes

Rules

Other Authorities

INTRODUCTION

Appellants in this matter are the Executive Director of the Maine Commission on Public Defense Service, in his official capacity, and each of the Commissioners of the Maine Commission on Public Defense Service in their official capacities (collectively "MCPDS"). Appellees are lead Plaintiff Andrew Robbins and seven (7) allegedly similarly situated indigent criminal defendants ("Plaintiffs").

The Superior Court (Murphy, J.) has, as of March 7, 2025, fully adjudicated Plaintiffs' May 2024 claim pursuant to 42 U.S.C.A. § 1983 alleging that the MCPDS Defendants' acts or failures to act caused the actual denial of Plaintiffs' Subclass's right counsel pursuant to the Sixth Amendment of the United States Constitution. That order followed the Superior Court's grant of summary judgment in favor of Plaintiffs, declaring that MCPDS had violated Plaintiffs' Sixth Amendment right to counsel. The Superior Court's grant of summary judgment in Plaintiffs' favor relied on its interpretation of the Sixth Amendment concluding that any delay in appointment of counsel to an indigent criminal defendant after their initial appearance presumptively violates their Sixth Amendment right to counsel. That conclusion of law, unsupported by federal precedent or decisions of this Court, is erroneous.

The Superior Court's erroneous interpretation of the Sixth Amendment right to counsel controlled other material procedural junctures in this litigation including

class certification and the Superior Court's order enjoining MCPDS to "provide continuous representation" to all indigent criminal defendants in Maine immediately following their initial appearance. The unique procedural path of this litigation has, until now, barred resolution of the controlling issues by: (i) the litigants who settled this case three times, Combined Order, 14 (Feb. 27, 2024) ("Feb. 2024 Combined Order") (denying preliminary approval of Parties' third joint settlement agreement); (ii) a jury, *see* Joint Appendix (hereinafter "JA") 147, 174 (denying MCPDS's jury demand on Count I and entering judgment in MCPDS's favor on Count II MCRA claim including statutory jury trial right)[1]; and (iii) this Court. *See* May 1, 2024 Order (granting Plaintiffs' Motion to Dismiss Appeal of Feb. 2024 Combined Order as interlocutory).

Consistent with that procedural history, Plaintiffs' claim alleging that MCPDS is not adequately managing and restricting the workloads of private attorneys representing indigent criminal defendants – asserted in their original March 1, 2022 Complaint and reasserted in their May 31, 2024 First Amended Complaint – remains pending and unaddressed by the Superior Court after being relegated to "Phase 2" of the litigation in a February 2024 Order. Before addressing the substance of this

[1] The Superior Court's judgment for the MCPDS Defendants on Plaintiffs' MCRA claim – on grounds identified *sua sponte* – avoided a requirement to have a jury determine facts common to Plaintiffs' federal constitutional and MCRA claims. 2025 Combined Order at 32-35; *see also id.* at 2 (noting that "the parties agree that the MCPDS Defendants have a statutory right to a jury trial on Count II under the Maine Civil Rights Act . . . ."); *see also* 5 M.R.S.A. §4681(3).

appeal, this Court must therefore decide whether, by indefinitely postponing litigation of "Phase 2," the Superior Court has rendered its ruling as to the scope of Sixth Amendment rights for every indigent criminal defendant in Maine unreviewable.[2] It does not. This Court can and should now review – and vacate – the Superior Court's erroneous conclusion of law, notwithstanding the pendency of Plaintiffs' discrete and separate claim that MCPDS's qualification, oversight, and caseload standards are unconstitutionally lax.

FACTS AND PROCEDURAL HISTORY

I. Plaintiffs file a complaint and request class certification.

Plaintiffs commenced this litigation on March 1, 2022 as a putative class action. Plaintiffs' Complaint asserted two claims against MCPDS pursuant to 42 U.S.C.A. §1983. Plaintiffs alleged, "the State's indigent defense system violates the Sixth Amendment in two ways," by failing: (1) to "promulgate standards governing the delivery of legal services – including standards for minimum qualifications of counsel, maximum caseloads, evaluation of counsel, and conflicts

[2] Based on data from MEJIS, which the Maine Judicial branch creates and retains in the ordinary course of its business and shares daily with MCPDS, as of April 29, 2025, sixty-seven percent (67%) of the 25,992 total cases (involving 16,262 individual defendants) pending in the Uniform Criminal Docket involved defendants deemed indigent or partially indigent: over 10,000 individual defendants. *In re Jonas*, 2017 ME 115, ¶38 n.10, 164 A.3d 120 ("[A] court may take notice of another court's order only for the limited purpose of recognizing the 'judicial act' that the order represents or the subject matter of the litigation." (quoting *United States v. Johnson*, 29 F.3d 1549, 1553 (11th Cir. 1994)).

of interest," and (2) to "adopt rules to ensure that the provision of [indigent] representation complies with constitutional standards." JA 279-280.[3]

Plaintiffs simultaneously sought certification of a class, asserting that the proposed class met the commonality requirement "because Plaintiffs, like other class members, receive representation through the State's deficient indigent-defense system," and that MCPDS's "lax approach creates an unconstitutional risk that indigent defendants will be assigned an attorney who is ill-prepared and incapable of providing effective representation." Plaintiffs' Motion for Class Certification, 10 (Mar. 1, 2022). Finding commonality and typicality satisfied, the court, without receiving evidence and over MCPDS's Opposition, granted Plaintiffs' Motion to certify a class to pursue a claim asserting that MCPDS's "deficient policies and practices . . . are systemic, statewide failures that expose every indigent defendant to a common harm: the unconstitutional risk that they will be deprived of effective assistance of counsel." Order on Motion for Class Certification, 4 n.2 (Jul. 13, 2022) (ellipses in original). The Superior Court certified a class of, "All individuals who are or will be eligible for the appointment of competent defense counsel by the Superior or District Court pursuant to 15 M.R.S. § 810 because they have been

[3] The Superior Court dismissed Count II of Plaintiffs' Complaint which alleged that MCPDS failed to adopt certain rules. Order on Motion to Dismiss, 5 (Jun. 2, 2022).

indicted for a crime punishable by imprisonment, and they lack sufficient means to retain counsel." *Id.* at 5.

II. The Superior Court repeatedly denies the Parties' joint settlements and creates a subclass *sua sponte*.

The Parties engaged in four in-person Judicial Settlement conferences in 2022 and 2023, obtaining a stay on March 9, 2023 to complete settlement negotiations. Joint Motion to Conduct Preliminary Review of Class Action Settlement, 5 (Aug. 21, 2023). The Parties subsequently reached a settlement and moved for approval on the same day. *Id.* The court denied the Parties' Joint Motion, speculating in late 2023 about a claim that Plaintiffs had not advanced, "If it can be proven that indigent defendants are in fact going without representation because courts no longer have a sufficient number of attorneys to represent these Class Members, and if the situation is not promptly remedied, this would constitute a violation of the Class Members' constitutional rights." Order Denying Joint Motion for Preliminary Settlement Approval, 16 (Sep. 13, 2023) ("2023 Order Denying Joint Settlement").

After another judicial settlement conference, the Parties entered into a second settlement agreement, again jointly moving for approval on November 28, 2023. Second Amended Joint Motion to Conduct Preliminary Review of Second Amended Class Action Settlement, 1 (Feb. 14, 2024). Following additional concerns raised by the Superior Court in two February 2024 conferences, *id.* at 1, the Parties entered

into a third settlement agreement, withdrawing their November 2023 Joint Motion and jointly seeking approval of their third class-action settlement. *Id.*

Less than two weeks later, the Superior Court denied the Parties' third Joint Motion for Preliminary Approval of Class Action Settlement, instead *sua sponte* creating a subclass for Plaintiffs to pursue as-yet unasserted claims for actual denial of counsel. Feb. 2024 Combined Order at 16 ("The Court will therefore create 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.").

III. The Superior Court severs the action into "Phase 1" and "Phase 2", and Plaintiffs file an Amended Complaint.

Prior to Plaintiffs' March 8, 2024 Motion to Amend and May 31, 2024 Amended Complaint, the Superior Court defined the new "Phase 1" claim that Plaintiffs subsequently included in their May 31, 2024 Amended Complaint:

> This class action will progress in 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. Plaintiffs then filed a Motion to Amend the complaint which the Superior Court granted in part and denied in part. Order on Plaintiffs' Motion for Leave to Amend and Supplement the Complaint, 14-16 (May 23, 2024). Plaintiffs' "Phase 1" claims alleged that "the State's indigent-defense system violates the Sixth Amendment in

three ways." JA 236 (alleging MCPDS liability pursuant to Section 1983 in Count I) (emphasis added); *see also* JA 277 (alleging "the State's indigent defense system violates the Sixth Amendment in *two* ways.") (emphasis added). Plaintiffs' newly added third allegation in their Count I Section 1983 claim, asserted, "Defendants have failed to provide attorneys to the Subclass of individuals within a reasonable time after the right to counsel attaches to allow for adequate representation at every critical stage, and have failed to provide attorneys to the Subclass at all critical stages of the proceedings." JA 236.[4]

IV. The Superior Court amends the subclass.

The Superior Court, disposing of Plaintiffs' Motion to Amend Class Definition (Aug. 15, 2024), established the current definition of the subclass that is pursuing the "Phase 1" claim: "All individuals who currently are, or in the future will be, eligible for appointment of counsel by the Superior or District Court as required by the Sixth Amendment to the United States Constitution or Article 1, Section 6 of the Maine Constitution, but who remain unrepresented after arraignment or first appearance on any criminal charge punishable by incarceration or imprisonment." JA 191.

V. The Superior Court proceeds with "Phase 1": liability and remedy.

[4] Plaintiffs also asserted that MCPDS's acts or failures to act violated the Maine Civil Rights Act. JA 239 ("[MCPDS] have failed to provide continuous representation of counsel to the Subclass of individuals at the initial appearance and at every stage of the proceedings."). The Superior Court entered summary judgment in favor of MCPDS on Count II, 2025 Combined Order at 34. That judgment is not before this Court on appeal.

MCPDS and Plaintiffs each sought summary judgment on the "Phase 1" claims asserted against MCPDS in Count I and Count II of the Amended Complaint. JA 283-300; 301-303. On January 3, 2025, the Superior Court granted Plaintiffs' Motion for Summary Judgment on Count I "on the issue of liability only." JA 179; *see also* Combined Order Resolving Motions of the MCPDS Defendants, 6 (Feb. 21, 2025) (amending January 3, 2025 entry of judgment to read, "On Count I, the Plaintiffs' Motion for Partial Summary Judgment asserting actual denial of counsel pursuant to the Sixth Amendment of the United States Constitution, is GRANTED on the issue of liability only.").

The Superior Court then scheduled an evidentiary hearing on Plaintiffs' request for injunctive and declaratory relief against MCPDS on Count I. Notice of Trial (Jan. 7, 2025). Following pre-hearing briefing, a three-day evidentiary hearing, and post-hearing briefing, the Superior Court entered a permanent injunction requiring MCPDS to "provide continuous representation for [Plaintiffs]," and to "provide a plan to the Court explaining how they will comply with the injunction." JA 136. As part of the injunctive relief on Count I, the Superior Court also ordered MCPDS to, "prioritize and make good faith efforts to actually provide counsel for the unrepresented, incarcerated defendants who, as of this same date, are listed on the so-called 'without counsel' spreadsheet, and to do so by April 3, 2025." JA 115.

The court simultaneously resolved Count III of Plaintiffs' Amended Complaint, a habeas corpus action to which MCPDS was not a party. As part of its ruling on Count III, the Superior Court ordered MCPDS to, "provide counsel for" all Subclass members "who are incarcerated awaiting appointment of counsel in any Maine jail or correctional facility," to represent those Subclass members at planned "court sessions at several locations in northern, central, and southern Maine during the month of April 2025," to determine relief available pursuant to Plaintiffs' habeas corpus claim. JA 131-132. MCPDS was also ordered to designate "an MCPDS employee" to appear in person at the habeas hearings for the court's determination whether "MCPDS has made a good faith effort to secure representation," for incarcerated Subclass members. JA 132. MCPDS subsequently commenced this appeal. Notice of Appeal (Mar. 27, 2025).

MCPDS has complied with the Superior Court's injunction relating to incarcerated Subclass members as of April 3, 2025 and provided a plan for further compliance with the Court's permanent injunction. MCPDS Response to Injunctive Order After Phase One Trial (Count I), 2 (noting 6 incarcerated indigent criminal defendants remained unrepresented from March 7, 2025 list of 85 incarcerated, unrepresented indigent criminal defendants).

On May 15, 2025, the court issued an order scheduling hearings on incarcerated Subclass members' habeas corpus claims, Order Scheduling Individual

Habeas Corpus Hearings (May 15, 2025), which it subsequently amended after MCPDS located counsel for individuals identified by Plaintiffs as eligible for habeas corpus relief. Order of Court (Jun. 13, 2025). Thereafter, responding to the State of Maine's emergency motion for a stay, this Court ordered that the Superior Court, "may not undertake any further habeas corpus proceedings in this action during the pendency of this appeal." Order Staying Trial Court Action on Count 3 Habeas Corpus Hearings, 1 (Jun. 20, 2025).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the continued pendency of Plaintiffs' 2022 claims alleging insufficient training, oversight, and caseload standards should prevent this Court from deciding this appeal.

II. Whether the Superior Court erred in determining that every moment following the conclusion of a criminal defendant's initial appearance is a "critical stage" whereby any delay in the appointment of counsel constitutes a presumptive violation of that defendant's Sixth Amendment right to counsel.

III. Whether the Superior Court erred in concluding that Plaintiffs' inability to identify any Class Representative now or previously without counsel at a stage of their criminal prosecution where the absence of counsel irremediably destroyed their right to a fair trial does not eliminate Plaintiffs' standing and entitlement to a permanent injunction.

SUMMARY OF ARGUMENT

An indigent criminal defendant asserting that their Sixth Amendment right to counsel was violated because of a delay in the appearance of appointed counsel to represent them may avoid the need to establish prejudice if that defendant proves

that they were without counsel at a "critical stage" of the prosecution. *United States v. Cronic*, 466 U.S. 648, 659 (1984). A stage in a criminal prosecution becomes "critical" if the nature of that court event or deadline (i.e. a testimonial hearing or point at which certain defenses must be asserted or irretrievably lost) means that a criminal defendant's right to ever having a fair trial is irremediably destroyed. *Van v. Jones*, 475 F.3d 292, 314-315 (6th Cir. 2007). Alternatively, an indigent criminal defendant asserting that their Sixth Amendment right to counsel was violated based on a delay in appointment of counsel can also meet their burden by presenting evidence that the delay in appointment of counsel actually prejudiced that defendant's right to a fair trial. *Strickland v. Washington*, 466 U.S. 668 (1984). If, as here, that claim is brought as a class action, then plaintiffs can meet their burden to show either denial of counsel at a "critical stage" or actual by presenting evidence establishing that the named plaintiffs (i.e. a class representative) was denied counsel at a "critical stage" or was actually prejudiced by a delay in appointing counsel. *Tucker v. State*, 484 P.3d 851, 865 (Idaho 2021).

Plaintiffs chose to pursue a claim without presenting evidence that even one class representative was actually prejudiced by a delay in appointment of counsel. As a result, to meet their burden of proof under *Cronic*, Plaintiffs were required to present evidence to prove that a class representative was without counsel at a "critical stage" of their underlying criminal prosecutions. *Id.* at 865. However, after

seven-months of discovery, Plaintiffs failed to present evidence that any member of the Plaintiffs' Subclass was without counsel at or reasonably prior to any stage of their criminal prosecution that this Court or a federal court has deemed "critical." Therefore, the only way for Plaintiffs to prevail was for the Superior Court to announce a sweeping legal conclusion that every moment between initial appearance and trial is an uninterrupted "critical stage." The Superior Court did just that on January 3, 2025, declaring that the absence of counsel at any point and for any duration following a criminal defendant's initial appearance presumptively and irrevocably destroys that criminal defendant's right to ever having a fair trial. JA 153 (concluding that M. R. Crim. P. 44 establishes the scope of the Sixth Amendment right to counsel based on Law Court holding that Rule 44 "*implements* the constitutional right to counsel in a criminal proceeding" (quoting *State v. Smith*, 677 A.2d 1058, 1060 (Me. 1996)) (emphasis added). That legal conclusion, and the injunctive relief that followed on March 7, 2025, were erroneous.

ARGUMENT

I. The prudential "final judgment rule" does not prevent review of the Superior Court's permanent injunction compelling executive branch action.

From February 2024 onward, the Superior Court effectively severed Plaintiffs' "Phase 1" and "Phase 2" claims. The Superior Court's March 7, 2025 Order finally disposes of the "Phase 1" litigation: Plaintiffs' mid-2024 claim that the

MCPDS Defendants have actually denied Plaintiffs' right to counsel. The March 7, 2025 Order imposes remedies following the Court's January 3, 2025 Order adjudicating Plaintiffs' liability. The March 7, 2025 Order is, therefore, a reviewable final judgment.

In the alternative, if the Superior Court's disposition of Plaintiffs' actual denial of counsel claim is an interlocutory order given the continued pendency of Plaintiffs' 2022 "Phase 2" claim alleging that MCPDS insufficiently trains, oversees , and imposes caseload standards upon private counsel appointed to represent class members, then the judicial economy and extraordinary circumstances exception to the final judgment rule support interlocutory review of the Superior Court's March 7, 2025 judgment on the "Phase 1" claims. Whether it is a final or an interlocutory judgment, the Superior Court's March 7, 2025 Order disposing of Plaintiffs' Section 1983 claim that the MCPDS Defendants caused the denial of Plaintiffs' Subclass's right to counsel pursuant to the Sixth Amendment merits review.

A. The Superior Court severed the resolved "Phase 1" and pending "Phase 2" claims: each of which is capable of resolution independent of the other claim.

The Maine Rules of Civil Procedure provide two ways to sequence litigation of issues or claims: severance, M. R. Civ. P. 21, and separate trials. M. R. Civ. P. 42(b). Addressing the identical provisions in the Federal Rules of Civil Procedure, the First Circuit Court of Appeals observed that the distinction between those two

procedural devices, "clear enough in theory, often is obscured in practice since at times the courts talk of 'separate trial' and 'severance' interchangeably." *Acevedo-Garcia v. Monroig*, 351 F.3d 547, 559 (1st Cir. 2003). The Superior Court's February 27, 2024 Order, indefinitely postponing adjudication of Plaintiffs' Phase 2 claim, effected a severance of Plaintiffs' "Phase 2" claim from the "Phase 1" claim: a claim finally adjudicated on March 7, 2025.

A judgment disposing of a severed claim is a final judgment. *See id.* ("The salient distinction between these two procedural devices concerns the appealability of an order terminating the proceedings in a partitioned piece of the litigation . . . ."). Construing portions of Fed. R. Civ. P. 21 and 42(b) identical to their Maine counterparts, the First Circuit observed, "[t]he judgment in a severed action is final, enforceable and appealable when it disposes of all parties and issues. Conversely, the order entered at the conclusion of a separate trial is often interlocutory because a final and appealable judgment cannot be rendered until all of the controlling issues have been tried and decided." *Id*. (quoting 88 C.J.S. *Trial* § 17; *see also White v. ABCO Eng'g Corp.,* 199 F.3d 140, 145 n. 6 (3d Cir.1999)); 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2387 (1971) ("Separate trials usually will result in one judgment, but severed claims become entirely independent actions to be tried, and judgment entered thereon, independently."). As other federal appellate courts, addressing the "jurisdictionally significant" distinction between

Rule 21 and 42(b), have explained, "[n]othing on the face of Rule 21 indicates that it must be explicitly invoked in order to have effect. There must be, however, a strong indication that the judge intended to effect a severance." *Id*. (quoting *White*, 199 F.3d at 145 n.6).

Severance pursuant to Rule 21 is appropriate where, "the two claims are 'discrete and separate.'" *Gaffney v. Riverboat Svcs. of Ind., Inc.*, 451 F.3d 424, 442 (7th Cir. 2006) (quoting *Rice v. Sunrise Express, Inc.*, 209 F.3d 1008, 1016 (7th Cir. 2000)). In this class action, the Superior Court based its severance of claims on M. R. Civ. P. 23(c)(1), relying on federal caselaw addressing so-called "case-management subclasses," to *sua sponte* create a subclass to pursue claims not asserted by Plaintiffs which alleged that delays in appointment of counsel violated that subclass's right to counsel. Feb. 2024 Combined Order at 16 ("In Phase 1, the Court will adjudicate the federal and state claims and defenses regarding non-representation *as they relate to the subclass above*."); *see also* 2023 Order Denying Joint Settlement at 16 (speculating that any delay in appointment of defense counsel "would constitute a violation of the Class Members' constitutional rights.").

The claims that the newly created subclass was created to pursue – claims asserting that class members had no lawyers at all, instead of lawyers they claimed were inadequately prepared – were not actually asserted by Plaintiffs until three months after the court imposed the "Phase 1" and "Phase 2" structure to resolve

those claims in response to the Parties' joint settlement. JA 193-247. The Court's May 23, 2024 Order granting Plaintiffs leave to amend their complaint to assert claims conforming to the Court's February 27, 2024 subclass, "Class Members who remain unrepresented after initial appearance or arraignment," expressly acknowledged the independence of those claims:

> The Court furthermore directed that the class action proceed in two phases: (1) in Phase I, the Court will adjudicate federal and state claims and defenses regarding non-representation as they relate to the Subclass above, and (2) in Phase 2, the Court will adjudicate claims regarding the alleged systemic conditions and practices that pose an "unconstitutional risk" of deprivation of counsel.

Order on Plaintiffs' Motion for Leave to Amend and Supplement the Complaint, 2 (May 23, 2024). The Superior Court severed the class action before it into what effectively became two actions, pursued by two plaintiffs' classes: resolving the "Phase 1" claims asserted by unrepresented indigent criminal defendants on March 7, 2025 and indefinitely postponing litigation of the "Phase 2" claims asserted by indigent defendants represented by allegedly deficient counsel. *See, e.g.* JA 184 ("It is not possible to know when or how the Phase 1 litigation will conclude and when resolution of the original claims can commence.") (Sept. 26, 2024).

Where, as here, the basis for a trial court's separation of claims is not definitively based on either Rule 21 or 42(b), federal appellate courts review the nature of the separated claims to determine whether they have been severed for final judgment and appeal purposes. Where a trial court referenced its inherent case

management authority in sequencing the adjudication of the claims of various groups of public employees asserting constitutional violations pursuant to 42 U.S.C.A. § 1983, the First Circuit Court of Appeals reviewed the nature of the separated claims to determine whether the order effected a severance or merely separate trials of interrelated issues. *Acevedo-Garcia*, 351 F.3d at 559 ("Although the court accurately observed that it had wide discretion to manage the litigation under either [Rule 21 or 42(b)], the particular procedural device it employed is of paramount importance in this appeal."). Clarifying that "[n]othing on the face of Rule 21 indicates that it must be explicitly invoked in order to have effect," the court reviewed the trial court's expressed intent. *Id*. at 560 (quoting *White*, 199 F.3d at 145).

Here, the Superior Court's intent to sever the claims is clear: it rejected complete settlement of Plaintiffs' 2022 claims in order to maintain the pending class action to address a new claim – simultaneously encouraging the Parties to separately settle the 2022 claim. Feb. 2024 Combined Order at 16 (advising, "The parties are urged to consider settling the Phase 2 issues apart from, and without prejudice to, either side's right to adjudicate claims and defenses in the Phase 1 trial."). The Superior Court likewise contemplated entirely separate adjudications of Plaintiffs' 2022 and 2024 claims. JA 184 ("It is not possible to know when or how the Phase 1 litigation will conclude and when resolution of the original claims can commence."); *id.* ("[T]he claims and defenses asserted when this lawsuit was filed

over two years ago await adjudication of the claims and defenses raised regarding the hundreds of individuals who have been charged with criminal offenses but who remain unrepresented for days, weeks, or months due to the shortage of lawyers willing and qualified to represent them.").

Moreover, until this Court issued its Order Staying Trial Court Action on Count 3 Habeas Hearings on June 20, 2025, the Superior Court intended to apply its ruling of law that the Sixth Amendment requires "continuous representation" rendered in its adjudication of the "Phase 1" claim against MCPDS to pending criminal matters: separately pending actions in the Unified Criminal Docket ("UCD"). JA 131 (". . . Plaintiffs are entitled to habeas corpus relief for violations of their Sixth Amendment and Article I, Section 6 rights to continuous representation."); Order of Court, 1 (Jun. 13, 2025) (setting hearing for June 24, 2025 to "establish a process for future habeas proceedings," and "institute a protocol for these proceedings."). "[A] valid final judgment," is a necessary element to apply res judicata: including the issue preclusion that the court anticipated in the stayed individual habeas corpus hearings. *Wilmington Tr. Co. v. Sullivan-Thorne*, 2013 ME 94, ¶ 7, 81 A.3d 371 (*Guardianship of Jewel M.,* 2010 ME 80, ¶ 40, 2 A.3d 301). Accordingly, by including a provision that, for indigent criminal defendants "without counsel for more than 60 days," the Superior Court "shall order that the charges against the Subclass member be dismissed," the Superior Court expressed its intent

that conclusions of law contained in the March 7, 2025 Order constituted a final, and therefore appealable, judgment.

Appellate courts evaluating whether judgment on a claim constitutes a severed final judgment also evaluate whether the adjudicated and still-pending claims are "discrete and separate." *Gaffney*, 451 F.3d at 442 (quoting *Rice*, 209 F.3d at 1014 n.8). To be severed, claims must be "discrete and separate," which means that, "one claim must be capable of resolution *despite the outcome of the other claim.*" *Gaffney*, 451 F.3d at 442 (quoting *Rice*, 209 F.3d at 1016) (emphasis added).

In contrast, consistent with this Court's interpretation of M. R. Civ. P. 42(b), separate trials are appropriate to promote efficiency where resolution of an issue in the trial of one claim could eliminate the need for a second trial. *Thornton v. Cressey's Est.*, 413 A.2d 540, 545 (Me. 1980) (judgment final where, rather than furthering convenience or avoiding prejudice, construing order as non-final judgment would require separately adjudicating related issue involving same witnesses and evidence); *see also Gaffney*, 451 F.3d at 442 ("bifurcation under Rule 42(b) is appropriate where claims are factually interlinked, such that a separate trial may be appropriate, *but final resolution of one claim affects the resolution of the other*.") (citing *Reinholdson v. Minnesota*, 346 F.3d 847, 850 (8th Cir. 2003)) (emphasis added).

The basis for liability on Plaintiffs' "Phase 1" claim is independent of the basis for liability on their "Phase 2" claim. The trial court's judgment on liability and imposition of relief on the "Phase 1" claim is a separate judgment on a severed claim: a final judgment. Moreover, since holding a separate trial on a new claim in lieu of approving the settlement of a pending claim does not promote efficiency or simplification of the issues, the Superior Court's sequencing of Plaintiffs' legally and factually distinct claims does not comport with the letter or intent of Rule 42(b). *See Thornton*, 413 A.2d at 544 (noting that, without any motion for separate trial by any party, *sua sponte* "resort to such procedure would be the exception to what is already an exception" and "such action by the presiding Justice would have been most unusual, if not strange.").

The severance inquiry is, ultimately, a pragmatic one: does the still pending claim address the issues subject to appeal, potentially resulting in a waste of time and resources if review is granted? M. R. Civ. P. 42(b) (allowing trial courts to order separate trial of any claim, "in furtherance of convenience or to avoid prejudice."). Here, the answer to that question is "no". The adjudicated "Phase 1" and pending "Phase 2" claims, respectively, assert a claim that no lawyer has been appointed and a claim that appointed lawyers will not provide effective representation. The controlling issue on the adjudicated "Phase 1" claims – whether Plaintiffs were without counsel at a "critical stage" – has no bearing on whether the "traditional

markers of representation" such as client meetings, review of discovery, or filing evidentiary motions, are missing in Plaintiffs' pending criminal prosecutions. Plaintiffs' Opposition to MCPDS's Motion to Dismiss, 6 (May 13, 2022) (identifying standard of proof on "Phase 2" claim as "showing that substantial structural limitations have compromised traditional markers of representation – for example, timely and confidential consultation with clients or appropriate investigation by counsel – on a system-wide basis" (quoting *Kuren v. Luzerne County*, 146 A.3d 715, 743 (Pa. 2016) (internal quotations omitted)). Nor has adjudication of the "Phase 1" claim answered any question of law or fact controlling liability in the "Phase 2" claim. *Cf. Thornton*, 413 A.2d at 545 (noting circumstances, "where one issue can be ready for trial immediately, and another more complicated issue involving more and different witnesses would take much longer to prepare," supports separate trials on single claim). The Superior Court severed the now-adjudicated "Phase 1" litigation from the "Phase 2" claim. The Superior Court's March 7, 2025 Order is a final, reviewable judgment.

B. Imminent trial court action to enforce its erroneous conclusion of law enjoining MCPDS and violating Maine's constitutional separation of powers justifies the Court's consideration of this appeal.

This Court applies the final judgment rule to, "avoid piecemeal appeals and to promote the efficient and effective resolution of legal disputes." *Forest Ecology Network v. Land Use Regul. Comm'n*, 2012 ME 36, ¶ 16, 39 A.3d 74. "The

requirement of a final judgment for appellate review" is not jurisdictional. *Id.* "When the purposes of the final judgment rule would be thwarted by the dismissal of an appeal, the rule will not be applied." *Moore v. Cent. Maine Power Co.*, 673 A.2d 699, 701 (Me. 1996). This Court has, accordingly, recognized exceptions to the final judgment rule, including: (1) the death knell, collateral order, and judicial economy exceptions, *Maples v. Compass Harbor Vill. Condo. Ass'n*, 2022 ME 26, ¶ 16, 273 A.3d 358 (citing *Hearts with Haiti, Inc. v. Kendrick*, 2019 ME 26, ¶ 16, 202 A.3d 1189; (2) where injunctive relief would result in "irreparable loss," *Dinerman v. Neal*, 450 A.2d 487, 487–88 (Me. 1982); and (3) a separation of powers exception supporting immediate appellate review "to avoid a trial court's infringement on powers constitutionally allocated to a different branch of government." Order Dismissing Appeal, *Robbins v. Maine Comm'n on Indigent Legal Svcs.*, Ken-24-132 (May 1, 2024) (citing *Forest Ecology Network*, 2012 ME 36 at ¶¶ 18-23, 39 A.3d 74; *Bar Harbor Banking & Tr. Co. v. Alexander*, 411 A.2d 74, 77 (Me. 1980)).

The pendency of the Plaintiffs' "Phase 2" claim, asserting that MCPDS inadequately trained and oversaw appointed private defense counsel, should not prevent this Court's review of the Superior Court's judgment on the "Phase 1" claim for two reasons. First, the Superior Court both imposed permanent injunctive relief against MCPDS in resolving the "Phase 1" claim (Count I) and rendered judgment on Plaintiffs' claim for habeas relief (Count III) based entirely on its finding of

liability against MCPDS on the "Phase 1" claim. JA 175 (granting Plaintiffs' motion for summary judgment on liability in Count III, "[a]s the Court has found that the liability of the MCPDS Defendants under the Sixth Amendment has been established as a matter of law, the Court will apply the legal findings made on Count I in the bench trial on Count III . . . .").

The Superior Court's declaration of the scope of Plaintiffs' Sixth Amendment rights and ruling that MCPDS violated those rights will trigger and be applied in further enforcement action by the Superior Court: in this litigation and/or by courts in criminal prosecutions within the UCD. *See Taylor v. Walker*, 2017 ME 218, ¶9, 173 A.3d 539 (further trial court action implementing Superior Court's error of law and overstepping of its jurisdiction justifies applying judicial economy exception to final judgment rule to consider appeal). Second, the Superior Court imposed an injunction of indeterminate duration on MCPDS subject to ongoing modification to address specific judicially determined "priority" subsets of the class plaintiffs, *see* JA 071-072.[5] That indefinite oversight by the Superior Court infringes on powers reserved to the executive branch under Article III of the Maine Constitution. *Forest Ecology Network*, 2012 ME 36 at ¶¶ 18-23, 39 A.3d 74; *Bar Harbor Banking & Tr.*

[5] Noting MCPDS Defendants' compliance with March 7, 2025 injunctive order to "prioritize Plaintiffs who remained in custody awaiting representation," as of March 7, 2025, observing, "the Court understands that there were likely around 30 additional unrepresented individuals in custody as of [April 3, 2025], and reporting Judicial Branch data indicating in-custody numbers on April 18, 23rd, and 25th.

Co., 411 A.2d at 77). The Superior Court also exceeded its jurisdiction by ordering MCPDS to provide representation at civil habeas corpus hearings for individuals subject to relief pursuant to the Superior Court's judgment on Count III against the sheriffs: a mandate that also exceeds MCPDS's legislatively delegated authority. JA 132 ("MCPDS will provide counsel for these Plaintiffs at every [habeas corpus] hearing conducted."). Moreover, MCPDS is not even a party to Count III.

Interlocutory review is appropriate where a trial court transgresses the "constitutionally mandated separation of powers [which] forbids precipitous injunctive interference with the legitimate, ongoing executive function." *Bar Harbor Banking & Tr. Co.*, 411 A.2d at 75. While the "judicial economy" exception to the final judgment rule typically requires that "review of a non-final order can establish a final, or practically final, disposition of the entire litigation." *Forest Ecology Network*, 2012 ME 36 at ¶17, 39 A.3d 74. This Court subsequently observed, "[W]e have, in a handful of instances, relaxed this first requirement when it is apparent that denial of appellate review could result in 'judicial interference with apparently legitimate executive department activity' and therefore appellate review is necessary to 'safe-guard the separation of powers.'" *Id*. at ¶18 (collecting cases).[6] The Superior Court's injunction ". . . shall not be stayed during the period after its

[6] *Bar Harbor Banking*, 411 A.2d at 77; *York Cnty. Bd. of Realtors v. York Cnty. Comm'rs*, 634 A.2d 958, 959–60 (Me. 1993); *State v. St. Regis Paper Co.*, 432 A.2d 383, 385–86 (Me. 1981).

entry and until an appeal is taken *or during the pendency of an appeal*." M. R. Civ. P. 62(a) (emphasis added). The Superior Court may, therefore, continue to modify its March 7, 2025 injunction to compel MCPDS to "prioritize" identifying counsel for additional discrete subsets of Plaintiffs' class – thereby threatening imminent interference with the executive function of MCPDS safeguarded under Maine's separation of powers. *See U.S. Dep't of Agric. & Rural Hous. Serv. v. Carter*, 2002 ME 103, ¶ 12, 799 A.2d 1232 (explaining, in context of "death knell" exception, that the irreparable loss of a right occurs "if the appellant would not have an effective remedy if the interlocutory determination were to be vacated after a final disposition of the entire litigation."); *see also Dep't of Enviro. Prot. v. Emerson*, 563 A.2d 762, 765-67 (Me. 1989).

Finally, the Superior Court's March 7, 2025 Order directs MCPDS to take specific action to implement the court's judgment on against the sheriffs on Plaintiffs' claim for habeas relief (Count III): a claim to which MCPDS is not a party. JA 132 ("MCPDS will provide counsel for these Plaintiffs at every hearing conducted."); *id.* ("At the hearings for incarcerated Plaintiffs, the Court will determine if MCPDS has made a good faith effort to secure representation. This determination for the hearings conducted in April 2025 shall be made in person by an MCPDS employee designated by the agency."). This order exceeds the Superior Court's authority.

The current and future interference with MCPDS's legitimate executive agency action and the court's order overstepping its jurisdictional limits support this Court's application of the "judicial economy," "extraordinary circumstances", or "death knell" exceptions to the prudential final judgment rule to consider this appeal.

II. The Superior Court erred in denying MCPDS's Motion for Summary Judgment on Count I and granting Plaintiffs' Motion for Summary Judgment on Count I.

A. Standard of Review

Summary judgment is appropriate when there is no genuine issue of material fact, entitling the moving party to judgment as a matter of law. *Est. of Frost*, 2016 ME 132, ¶ 15, 146 A.3d 118. A fact is "material" where that fact has, "the potential to affect the outcome of the suit." *MMG Ins. Co. v. Estate of Greenlaw*, 2024 ME 28, ¶13, 314 A.3d 262 (quoting *Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶10, 814 A.2d 989). "[T]o survive a defendant's motion for summary judgment, a plaintiff must produce evidence that, if produced at trial would be sufficient to resist a motion for a judgment as a matter of law." *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶7, 742 A.2d 933; *see also* M. R. Civ. P. 56(e) ("[A]n adverse party may not rest upon the mere allegations or denials of that party's pleading, but must respond by affidavits or as otherwise provided in this rule, setting forth specific facts showing that there is a genuine issue for trial.").

This Court reviews an order disposing of a motion for summary judgment, "for errors of law, viewing the evidence in the light most favorable to the non-moving party." *Acadia Ins. Co. v. Buck Constr. Co.,* 2000 ME 154, ¶ 7, 756 A.2d 515; *see also Sanford v. Town of Shapleigh*, 2004 ME 73, ¶ 6, 850 A.2d 325 ("We review the denial of a motion for a summary judgment for errors of law by viewing the evidence in the light most favorable to [the non-moving party].") When there are no material facts in dispute, this Court reviews disposition of a motion for summary judgment *de novo*. *Maddocks v. Whitcomb*, 2006 ME 47, ¶ 4, 896 A.2d 265 (citing *State Farm Mut. Auto. Ins. Co. v. Montagna,* 2005 ME 68, ¶ 7, 874 A.2d 406). Likewise, this Court reviews issues of constitutional interpretation *de novo*. *Burr v. Dep't of Corr.*, 2020 ME 130, ¶ 20, 240 A.3d 371 (quoting *Goggin v. State Tax Assessor*, 2018 ME 111, ¶ 20, 191 A.3d 341)).

MCPDS's Motion for Summary Judgment ("MCPDS Motion") was based on the absence of any genuine issue of material fact supporting Plaintiffs' claim that MCPDS had violated Plaintiffs' Sixth Amendment rights. JA 285-286. Specifically, there is no genuine issue of material fact regarding whether any of the Class Representatives were denied counsel at a "critical stage" in their underlying criminal prosecutions following their initial appearance. In Maine's criminal process, the first "critical stage" is the dispositional conference. *Peterson v. Johnson*, Docket No. SJC-23-2 at 21 (Jan. 12, 2024) (Douglas, J.). The absence of any dispute of material

fact is reflected in the total of six (6) material facts asserted by MCPDS in support of the MCPDS Motion, none of which Plaintiffs denied, JA 315-318, and Plaintiffs' six (6) additional material facts, none of which MCPDS denied. JA 319-320.

While Plaintiffs' Motion for Summary Judgment ("Plaintiffs' Motion"), by contrast, included almost two hundred purportedly material facts, those facts were not material to the standard controlling MCPDS's liability on Count I. The materiality of a fact is determined by the standard controlling liability. *MMG Ins. Co.*, 2024 ME 28 at ¶13, 314 A.3d 262. Plaintiffs' claim is that MCPDS "failed to provide attorneys to the Subclass of individuals within a reasonable time after the right to counsel attaches to allow for adequate representation at every critical stage, and have failed to provide attorneys to the Subclass at all critical stages of the proceedings." JA 236. As the Parties and the Superior Court agreed, the standard controlling MCPDS's liability for Plaintiffs' claim that MCPDS had violated Plaintiffs' right to counsel under the Sixth Amendment is whether Plaintiffs were denied the assistance of counsel at a "critical stage" of their underlying criminal prosecution. JA 236; JA 285 ("The question controlling liability is whether Plaintiffs' Subclass have been denied counsel at a 'critical stage' in their underlying prosecutions after initial appearance."); JA 151 ("After the right [to counsel] attaches, a criminal defendant is entitled to have counsel present at all 'critical

stages' of the process." (quoting *Rothgery v. Gillespie Cnty., Tex.*, 554 U.S. 191, 198 (2008)).

B. The Superior Court's conclusion of law that the Sixth Amendment requires that MCPDS provide immediate and continuous representation to indigent criminal defendants following their initial appearance is erroneous.

Count I of the Amended Complaint asserts a claim pursuant to Section 1983 that MCPDS has denied Plaintiffs' Sixth Amendment right to counsel by failing to timely provide Plaintiffs' Subclass with defense counsel. Amended Complaint, 44. Section 1983 provides in pertinent part, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ." 42 U.S.C.A. § 1983. The Superior Court's order granting Plaintiffs' Motion for Partial Summary judgment on Plaintiffs' claim for actual denial of counsel in Count I was controlled by the Superior Court's answer to the question of "whether the Sixth Amendment requires continuous representation for the [Plaintiffs]." JA 149.

The Superior Court concluded that, "[f]rom the time when the Sixth Amendment rights attach to the time of the dispositional conference is a critical stage requiring representation . . . ." JA 158; *see also* JA 179 ("the Sixth Amendment

requires [MCPDS] to provide [Plaintiffs] continuous representation from the time the right attaches at a defendant's first appearance before the Court, throughout pretrial events and proceedings, and throughout the plea-bargaining process and trial process."). The Superior Court's conclusion, rendering every moment after initial appearance a "critical stage" is an error of law, requiring reversal of the Superior Court's grant of summary judgment in Plaintiffs' favor. The Superior Court's application of an erroneous standard of law also requires this Court to vacate the Superior Court's denial of MCPDS's Motion for Summary Judgment and remand either for entry of an order granting MCPDS's Motion for Summary Judgment or for further proceedings based on the correct Sixth Amendment standard for a claim of actual denial of counsel.

Three concepts control an analysis of an indigent criminal defendant's claim of actual denial of counsel under the Sixth Amendment: attachment, reasonableness, and "critical stage." "[C]ounsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself." *Rothgery*, 554 U.S. at 212.

1. The right to counsel attaches at the inception of a criminal prosecution

The right to counsel under the Sixth Amendment "attaches" when adversarial proceedings in a prosecution begin. *See Rothgery*, 554 U.S. at 211–12 ("Attachment occurs when the government has used the judicial machinery to signal a commitment

to prosecute as spelled out in *Brewer* [*v. Williams*, 430 U.S. 387 (1977)] and [*Michigan v.*] *Jackson* [475 U.S. 625 (1986)].”). “Whatever else it may mean, the right to counsel granted by the Sixth and Fourteenth Amendments means at least that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him....” *State v. Smith*, 615 A.2d 1162, 1164 (Me. 1992) (quoting *Brewer,* 430 U.S. at 398). As defined in the Amended Class Certification, Plaintiffs are class members whose right to counsel has “attached.” Order on Motion to Amend Subclass at 10 (defining Subclass as Class members “who remain unrepresented *after arraignment or first appearance*.”) (emphasis added).

2. The Plaintiffs must prove denial of counsel at a “critical stage” to establish presumptive harm.

The concept of a “critical stage” is relevant to one of the two standards for evaluating an alleged Sixth Amendment violation: *Cronic*, 466 U.S. at 659 and *Strickland*, 466 U.S. at 688. In a claim asserting actual denial of counsel, under the standard announced in *Cronic*, denial of counsel at a “critical stage” creates a presumption of prejudice: obviating the need for the party asserting deprivation to establish actual prejudice. *Cronic*, 466 U.S. at 659. As the First Circuit Court of Appeals observed:

> While both Cronic and Strickland concern Sixth Amendment violations, they are distinct legal claims and the difference between the two “is not of degree but of kind.” Strickland requires a case-by-case analysis of whether counsel’s deficiencies affected the outcome of a trial, while Cronic permits a presumption of prejudice if an actual or constructive denial of counsel occurs

> during a critical stage of the trial. These claims, while based on similar factual underpinnings, are separate and distinct.

Fusi v. O'Brien, 621 F.3d 1, 6 (1st Cir. 2010) (quoting *Bell v. Cone*, 535 U.S. 685, 697 (2002)) (internal citation omitted). "A criminal defendant who is entitled to counsel but goes unrepresented at a critical stage of prosecution suffers an actual denial of counsel and is entitled to a presumption of prejudice. *Tucker v. State*, 394 P.3d 54 at 63 (Idaho 2017) (citing *Cronic*, 466 U.S. at 658–60) (emphasis added); *see also Betschart v. Garrett*, 700 F. Supp. 3d 965, 982 (D. Or. 2023) ("The prejudice to the defendant is not that the defendant is assured success at a hearing they would otherwise not enjoy; rather, it is the fact that they were denied the ability to access the court with counsel in a critical proceeding."). The Plaintiffs only pursued a claim under the *Cronic* standard.

3. To be a "critical stage," a procedural event must necessarily entail the risk of irremediable loss of a right affecting the fairness of trial.

A "critical stage" in a criminal prosecution is a stage at which "counsel's absence at such stages might derogate from [defendant's] right to a fair trial." *United States v. Wade*, 388 U.S. 218, 227–28 (1967) (counsel's absence at forensic analyses did not violate the Sixth Amendment right to counsel at "critical stages" because, "they are not critical stages since there is minimal risk that [defendant's] counsel's absence at such stages might derogate from his right to a fair trial."). The guiding principle behind the "critical stage" analysis is the effect of the absence of counsel

on "the reliability of the trial process." *Cronic*, 466 U.S. at 658 ("Absent some effect of challenged conduct on the reliability of the trial process, the Sixth Amendment guarantee is generally not implicated."). What constitutes a "critical stage" depends on whether denial of counsel at that stage prejudices a criminal defendant's rights at trial. *See, e.g., Coleman v. Alabama*, 399 U.S. 1, 9 (1970) ("The determination whether the hearing is a 'critical stage' requiring the provision of counsel depends, as noted, upon an analysis 'whether potential substantial prejudice to defendant's rights inheres in the particular confrontation and the ability of counsel to help avoid that prejudice.'" (quoting *Wade*, 388 U.S. at 227)); *McNeil v. Wisconsin*, 501 U.S. 171, 177–78 (1991) ("The purpose of the Sixth Amendment counsel guarantee—and hence the purpose of invoking it—is to 'protec[t] the unaided layman at critical confrontations' with his 'expert adversary,' the government, after 'the adverse positions of government and defendant have solidified' with respect to a particular alleged crime." (quoting *United States v. Gouveia*, 467 U.S. 180, 189, (1984)); *see also Rothgery* at 218 ("Texas counties need only appoint counsel as far in advance of trial, and as far in advance of any pretrial 'critical stage,' as necessary to guarantee effective assistance at trial.") (Alito, J. concurring).

According to the Supreme Court of the United States, established caselaw, "defined critical stages as proceedings between an individual and agents of the State (whether 'formal or informal, in court or out') that amount to 'trial-like

confrontations,' at which counsel would help the accused 'in coping with legal problems or . . . meeting his adversary.'" *Rothgery*, 554 U.S. at 212 n.16 (quoting *Wade*, 388 U.S. at 226 and *United States v. Ash*, 413 U.S. 300, 312–313 (1973)) (internal citations omitted). "[T]he [Supreme] Court has clarified that not every 'critical' pretrial event comes with Sixth Amendment protection: the possibility that [such an event] may have important consequences at trial, standing alone, is insufficient to trigger the Sixth Amendment right to counsel." *United States v. Boskic*, 545 F.3d 69, 82 (1st Cir. 2008) (quoting *Moran v. Burbine*, 475 U.S. 412, 432 (1986)) (internal quotations omitted). Instead, "what makes a stage critical is what shows the need for counsel's presence." *Rothgery*, 554 U.S. at 212.

This Court has, likewise, characterized a "critical stage" as one, "where the results might well settle the accused's fate and reduce the trial to a mere formality." *Smith*, 615 A.2d at 1164 (quoting *Maine v. Moulton,* 474 U.S. 159, 170 (1985)). "[T]he purpose of the constitutional requirement of effective counsel is to ensure a fair trial." *Aldus v. State*, 2000 ME 47, ¶ 15, 748 A.2d 463 (internal quotation omitted). Consistent with that formulation of the Sixth Amendment right to counsel, this Court has recognized that the basis for characterizing a stage as "critical" is the irremediable loss of rights at trial. In *Nadeau v. State*, 232 A.2d 82, 86 (Me. 1967)[7],

[7] This Court's holding in *Nadeau* relied on a conclusion of law that the holding in a then-recently-decided Supreme Court case, *White v. State of Maryland*, 373 U.S. 59 (1963), was not retroactive. *Nadeau*, 232 A.2d at 86. The following year, this Court reversed its denial of

this Court concluded that a recently announced 'critical stage' became "critical" "only upon and because of the occurrence of a subsequent event at trial stage." *Id.* ("[T]he adverse effect upon the respondent came only when an admission obtained when he did not have the benefit of the advice of counsel was used against him at his trial. If this had not occurred, the lack of assistance of counsel at the preliminary examination would have had no effect whatever, 'no right of the slightest value (having) been lost.'" (quoting *Commonwealth v. O'Leary*, 347 Mass. 387, 198 N.E.2d 403 (1964)). The Court in *Nadeau* also noted the parameters of a critical stage, consistent with *Hamilton v. State of Alabama*, 368 U.S. 52 (1961). 232 A.2d at 85 (noting stage at issue in *Hamilton* was hearing "at which under Alabama law certain defenses, pleas and motions must be tendered or the opportunity therefor is lost.").

More recently, in a claim alleging "denial of access to [appellant's] court appointed counsel," this Court addressed whether the alleged denial occurred, "during a critical stage of a criminal prosecution against [appellant]," citing to federal caselaw summarizing and applying definitions of a "critical stage." *Anctil v. Cassese*, 2020 ME 59, ¶ 17, 232 A.3d 245 (citing *Van*, 475 F.3d at 312-315).[8] The

petitioner's habeas corpus petition based on a subsequent Supreme Court case declaring that the holding in *White* had retroactive effect. *Nadeau*, 247 A.2d at 113.

[8] This Court's citation to *Van* explained and supported its conclusion that, "[Anctil] did not allege that [Cassese]'s action resulted in a denial of access to his court-appointed counsel during a critical stage of a criminal prosecution against him." *Anctil*, 2020 ME 59 at ¶ 17, 232 A.2d 245. (emphasis added).

Court in *Van* concluded that, "[w]hether [a Michigan defendant's consolidation hearing] was a critical stage depends on whether there was a reasonable probability that [appellant]'s case could suffer significant consequences from his total denial of counsel at the stage," *Van*, 475 F.3d at 313, observing, "many of the stages found to be critical are those in which an opportunity may be *irretrievably lost*, or material may come out that may be *incurably damaging*." *Id.* at 314-15 (emphasis added).

Most recently, a single justice of this Court, addressing a claim for habeas corpus alleging that petitioners' continued pre-trial confinement was "unlawful" based on delays in the appointment of defense counsel, concluded that the dispositional conference required in criminal prosecutions pursuant to M. R. U. Crim. P.18 was the earliest "critical stage" in a criminal prosecution in Maine. *Peterson* at 21.[9] "At a minimum, therefore, the Sixth Amendment requires assignment of counsel sufficiently in advance of a dispositional conference to be able to provide effective representation in connection with the conference as well as related matters." *Id*. Recognizing that the "assistance" of counsel includes plea bargaining, *id*. at p.19-20 (citing *Missouri v. Frye,* 566 U.S. 134, 144 (2012)), the court in *Peterson* relied on the dispositional conference as the inflection point for

[9] Reflecting the distinct standards pursuant to *Strickland*, applicable here, and *Cronic*, requiring proof of actual prejudice to a criminal defendant based on the circumstances specific to their underlying criminal matter, the Court in *Peterson* noted, "This is not to suggest that entitlement to court-appointed counsel under current Sixth Amendment jurisprudence is necessarily timed to the scheduling of a dispositional conference. The right could inhere earlier, depending upon the circumstances of each case." *Peterson* at 21 n.16.

determination of a criminal defendant's substantive rights. *Id*. at 20. The *Peterson* court noted that "[c]ounsel for the State and defense counsel [] are required to appear and '[] be prepared to engage in meaningful discussion regarding all aspects of the case with a view toward reaching an appropriate resolution," *id.* (quoting M. R. U. Crim. P. 18(a)-(b)) and that, "[o]ther significant pretrial events are timed to the date of the dispositional conference as well," such as, motions to dismiss, motions for joinder or severance, discovery motions, motions to suppress, and certain discovery from the State. *Id*. at 20-21.

The single Justice's view in *Peterson* accords with other cases addressing Sixth Amendment claims in the context of that jurisdiction's criminal procedure. *See, e.g., Betschart*, 700 F.Supp.3d at 982 (noting that, under Oregon law, criminal defendants had time-limited right to request hearing court identified as a "critical stage"); *see also David v. Missouri*, Case No. 20AC-CC00093 at 12 (Feb. 18, 2021) (noting that local rules of criminal procedure required asserting specific procedural rights "within the first ten days after entry of the initial plea").

Therefore, the Superior Court erred in ruling that the entire time following a criminal defendant's initial appearance through trial is a "critical stage" whereby any delay in the appointment of counsel presumptively irremediably denies that criminal defendant's right to a fair trial.

C. Plaintiffs' failure to identify any Class Representative who reached a stage where the absence of counsel irremediably destroys a criminal

defendant's right to a fair trial eliminates Plaintiffs' standing and entitlement to a permanent injunction.

"Reported cases brought as class actions in Maine are rare," 2 Harvey, Maine Civil Practice § 23:1 at 578 (3d. 2024-2025 ed.)), and a Maine class action alleging class wide denial of the Sixth Amendment right to counsel is unique. Courts in other jurisdictions have addressed the substantive standard of proof to maintain and prevail on such a claim. To succeed on the merits of their claims, prove their allegations at trial, and justify their entitlement to class action status, Plaintiffs were required to prove that at least one of the Class representatives have suffered the harm alleged: actual denial of the assistance of counsel at a critical stage. *Tucker*, 484 P.3d at 865 (plaintiffs must prove that the alleged harm was actually suffered "by at least one named plaintiffs [sic] that formed the basis of standing.").

Many of the foreign decisions addressing the standard of proof apply materially different standards of review than the standard of proof at trial: standards evaluating allegations, not evidence, applied before the inception, let alone completion, of discovery. *Luckey v. Harris*, 860 F.2d 1012 (11th Cir. 1988) (evaluating the sufficiency of allegations at the motion to dismiss stage); *Kuren*, 146 A.3d 715 (reviewing dismissal of complaint for failure to state a claim upon which relief could be granted); *Hurrell-Harring v. State*, 15 N.Y.3d 8 (2010) (addressing justiciability, standing of plaintiffs, and ripeness of systemic claims at motion to dismiss stage); *Duncan v. State*, 284 Mich. App. 246, 328 (2009) ("[T]he case is

presently justiciable, because a case or controversy exists. *Whether plaintiffs can ultimately prove their allegations and establish their case is a matter for another day.*) (emphasis added). Unique among reported caselaw for establishing class action plaintiffs' standard of proof at trial, the Idaho Supreme Court in *Tucker* concluded: (i) to meet their burden of proof, class action plaintiffs alleging actual denial of counsel must establish that there is a substantial likelihood that they will be denied counsel at a critical stage and (ii) proof of that "substantial likelihood" requires proving allegations of harm by a named plaintiff. *Tucker*, 484 P.3d at 865 ("Evidence of the 'likelihood of substantial and immediate irreparable injury' means that Appellants must establish a likelihood of future systemic harm to members of the certified class.") To succeed on the merits of their claims, prove their allegations at trial, and justify their entitlement to class action status, Plaintiffs were required to prove that at least one of the Class representatives have suffered the harm alleged: actual denial of the assistance of counsel at a critical stage. *Id.* (plaintiffs must prove that the alleged harm was actually suffered "by at least one named plaintiffs [sic] that formed the basis of standing.").

In a class action, the continued viability of a class depends on meeting the "typicality" prong of M. R. Civ. P. 23(a), requiring that "[o]ne or more members of a class may sue or be sued as representative parties on behalf of all *only if* . . . he claims or defenses of the representative parties are typical of the claims or defenses

of the class . . ." M. R. Civ. P. 23(a)(3). "[P]laintiffs must show they are members of the class." *Morrow v. Washington*, 277 F.R.D. 172, 188 (E.D. Tex. 2011) (quoting *Forbush v. J.C. Penney Co.,* 994 F.2d 1101, 1105 (5th Cir.1993)) ("Accordingly, certifying a class of which the proposed class representatives are not members, such as Plaintiffs' proposed class, is inappropriate."). "When members of a common class seeking injunctive and declaratory relief are certified, this includes a finding that the named class members have established claims that are common to—and representative of—the class as a whole." *Tucker*, 484 P.3d at 864 (citing *In re Carbon Dioxide Indus. Antitrust Litig.*, 155 F.R.D. 209, 212 (M.D. Fla. 1993)). Accordingly, to prevail and maintain their putative class status, Plaintiffs were required to prove that a named Plaintiff was unrepresented at a critical stage: a standard which acknowledges the representative nature of a class action while relying on the "typicality" required for that named Plaintiffs to proceed in a representative capacity. Plaintiffs' failure to meet that standard, as evidenced in the argument and material facts at issue in MCPDS's Motion for Summary Judgment, JA 283-300, merits summary judgment in MCPDS's favor.

CONCLUSION

The Superior Court erred in denying MCPDS's Motion for Summary Judgment, granting Plaintiffs' Motion for Summary Judgment, and imposing injunctive relief upon MCPDS as a result.

Dated July 28, 2025

Respectfully submitted,

/s/ Sean D. Magenis

Sean D. Magenis (Bar No. 9495)
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
(207) 626-8800
sean.d.magenis@maine.gov
Counsel for Appellants

CERTIFICATE OF SERVICE

I, Sean D. Magenis, Assistant Attorney General, hereby certify that that I have caused two copies of the foregoing Brief of Appellee to be served by sending them via e-mail, addressed as follows:

Zachary L. Heiden Esq. (heiden@aclumaine.org)
Carol J. Garvan Esq. (cgarvan@aclumaine.org)
Alexandra A. Harriman Esq. (aharriman@preti.com)
Valerie A. Wright Esq. (valerie.a.wright@maine.gov)
Peter T. Marchesi Esq. (peter@wheelerlegal.com)
Erica Marie Johanson Esq. (ejohanson@jensenbaird.com)
Tyler J. Smith Esq. (tsmith@lokllc.com)
Scott W. Boak Esq. (scott.boak@maine.gov)
Paul E. Suitter Esq. (paul.suitter@maine.gov)
John K. Hamer Esq. (jhamer@rudmanwinchell.com)

Dated: July 28, 2025

/s/ Sean D. Magenis
Sean D. Magenis
Assistant Attorney General