STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. KENSC-CV-22-54

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

MAINE COMMISSION ON PUBLIC DEFENDER SERVICES, et al.,

Defendants.

ORDER ON PENDING MOTIONS TO DISMISS

Three Defendants in this action—the State of Maine, the Maine Commission on Public Defender Services ("MCPDS"),[1] and Attorney General Aaron Frey—have filed motions pursuant to M.R. Civ. P. 12(b)(1) and 12(b)(6) asking the Court to dismiss the claims against them as set forth in Plaintiffs' First Amended Class Action Complaint for Injunctive and Declaratory Relief and Class Action Petition for Habeas Relief ("the Amended Complaint"). The State of Maine and MCPDS are represented in this matter by Assistant Attorneys General Sean Magenis and Paul Suitter, and the Attorney General is separately represented by Assistant Attorneys General Valerie Wright and Jack Dafoe.

For the following reasons, the claims against MCPDS and the Attorney General will be dismissed. Moreover, the Court declines to dismiss the State of Maine as a party, though it clarifies the State's status as a party-in-interest to the Petition for Habeas Relief.

PROCEDURAL HISTORY

This case has an extensive procedural history that the Court has described in prior orders. *E.g., Order on Pls.' Mot. for Leave to Amend and Supp. the Compl.* 1-4 (May 23, 2024). The

[1] The agency formerly went by the name "Maine Commission on Indigent Legal Services."

Court dispenses with a recitation of that procedural history here and focuses on the context immediately relevant to the pending motions.

By order dated May 23, 2024, the Court granted in part Plaintiffs' Motion to Amend the Complaint over Defendants' objections. The order provided that the parties were being added subject to further challenges, such as those raised here on a motion to dismiss. The Amended Complaint added new claims and parties, including the State of Maine and the Attorney General, as well as a Petition for Habeas Relief. The claims in the Amended Complaint are summarized as follows:

Count	**Defendants**	**Cause of Action**	**Brief Description**
I	Attorney General; Executive Director & Commissioners of MCPDS	42 U.S.C. § 1983	Alleges violations of the right to counsel under the Sixth Amendment of the U.S. Constitution and seeks declaratory and injunctive relief
II	Attorney General; Executive Director & Commissioners of MCPDS	Maine Civil Rights Act ("MCRA"), 5 M.R.S. § 4682	Alleges violations of the right to counsel under Article I, Section 6 of the Maine Constitution and seeks declaratory and injunctive relief
III	State of Maine; County Sheriffs	Petition for a Writ of Habeas Corpus, 14 M.R.S. §§ 5501-5546	Alleges that members of the Plaintiff Subclass have been detained unlawfully without counsel in violation of their constitutional rights and seeks a writ of habeas corpus
IV	MCPDS	Declaratory Judgments Act ("DJA"), 14 M.R.S. §§ 5951-5963	Seeks a declaration that MCPDS has unconstitutionally failed to furnish representation to Class Members, *inter alia*, and requests injunctive relief
V	State of Maine	DJA, 14 M.R.S. §§ 5951-5963	Seeks a declaration that the State of Maine has unconstitutionally failed to furnish representation to Class Members and requests injunctive relief

After Plaintiffs filed their Amended Complaint, the Attorney General, State of Maine, and MCPDS each filed a motion to dismiss pursuant to M.R. Civ. P. 12(b)(1) and 12(b)(6). Specifically: (1) the Attorney General asks to be dismissed as a party from Counts I and II; (2) the State asks the Court to dismiss the DJA claim against it (Count V) and requests that the Court clarify its status as a party-in-interest with respect to Count III; and (3) MCPDS requests dismissal of the DJA claim in Count IV. All motions have been fully briefed and oral argument was heard on July 31, 2024.

STANDARD OF REVIEW

A motion to dismiss tests the legal sufficiency of the complaint. *Livonia v. Town of Rome*, 1998 ME 39, ¶ 5, 707 A.2d 83. "For purposes of a Rule 12(b)(6) motion, the material allegations of the complaint must be taken as admitted." *Id.* On review, the court examines the complaint "in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory." *Oakes v. Town of Richmond*, 2023 ME 65, ¶ 15, 303 A.3d 650 (quotation marks omitted). "A dismissal should only occur when it appears beyond doubt that a plaintiff is entitled to no relief under any set of facts that [she] might prove in support of [her] claim." *Id.* (quotation marks omitted) (alterations in original). Because Maine is a notice-pleading jurisdiction, "the level of scrutiny used to assess the sufficiency of a complaint is 'forgiving.'" *Id.* ¶ 16.

To the extent Defendants challenge this Court's subject matter jurisdiction over Plaintiffs' claims, that presents a question of law. *Tomer v. Me. Human Rights Comm'n*, 2008 ME 190, ¶ 9, 962 A.2d 335. "When a motion to dismiss is based on the court's lack of subject matter jurisdiction, [the court] make[s] no favorable inferences in favor of the plaintiff." *Id.*

DISCUSSION

For several reasons—some different and some overlapping—the Attorney General, State of Maine, and MCPDS ask the Court to dismiss them from the various counts set forth in the Amended Complaint. The Court addresses the arguments by party below.[2]

I. Attorney General (Counts I and II)

The Attorney General seeks dismissal from the Amended Complaint, which names him as a defendant to both the Section 1983 (Count I) and MCRA (Count II) claims. Among other contentions, the Attorney General argues that (1) Plaintiffs lack standing, as their constitutional injuries are not traceable to him and are unlikely to be redressed by the Court, and (2) Plaintiffs' claims do not fall within *Ex Parte Young*'s exception to sovereign immunity.

A. Standing

In Counts I-II, Plaintiffs allege that the Attorney General, along with other individual defendants, have violated their right to counsel under the Federal and Maine Constitution. To have standing to assert these claims, Plaintiffs "must show they suffered an injury that is fairly traceable to the challenged action and that is likely to be redressed by the judicial relief sought." *Collins v. State*, 2000 ME 85, ¶ 6, 750 A.2d 1257. At issue in this case are the traceability and redressability requirements—closely related concepts that "are often flip sides of the same coin." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024) (quotation marks omitted). Here, the Court agrees with the Attorney General that Plaintiffs are unable to

[2] To the extent any of the Court's statements or conclusions in this Order differ from those in its previous Order on Plaintiffs' Motion to Amend—which allowed the addition of parties the Court now dismisses today—that prior order was never intended to be the Court's final word on whether the parties were properly named. The conclusions reached in the Order on Plaintiffs' Motion to Amend were in part a function of the liberal standard of review governing motions to amend and were always subject to the filing of motions to dismiss in which the issues could be more fulsomely briefed by the newly-added parties.

demonstrate traceability and redressability and thus, lack standing to assert their Section 1983 and MCRA claims against the Attorney General.

First, Plaintiffs have failed to persuade the Court that the alleged violation of their right to counsel is traceable to the Attorney General's actions. The Amended Complaint alleges several ways in which the Attorney General and other Defendant officers have caused the constitutional injury Plaintiffs claim. Specifically, Plaintiffs point to (1) Defendants' failure to provide continuous representation of counsel at the initial appearance and at all stages of the proceedings thereafter; (2) their failure to develop and implement an effective system for the appointment of counsel; and (3) their implementation of the lawyer-of-the-day program. Am. Compl. ¶¶ 139-42, 150-53. The Attorney General, however, plays no role in furnishing counsel or implementing Maine's indigent defense system, and Plaintiffs do not point to any provision of Maine law suggesting that he does. Nor do any factual allegations establish that the Attorney General has assumed any role in providing indigent defense services.

Instead, to try to establish the requisite causal connection between their constitutional injuries and the Attorney General's actions, Plaintiffs look to the Attorney General's enforcement authority and supervisory authority over prosecutions, including his power to:

- institute and maintain "all such actions and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order, and *the protection of public rights*," *Superintendent of Ins. v. Attorney Gen.*, 558 A.2d 1197, 1199 (Me. 1989) (emphasis in original);
- "act in place of or with the district attorneys, or any of them, in instituting and conducting prosecutions for crime," 5 M.R.S. § 199; and
- direct and control the "investigation and prosecution of homicides and such other major crimes as the Attorney General may deem necessary for the peace and good order of the State of Maine," 5 M.R.S. § 200-A.

That the Attorney General may wield these powers does not demonstrate that Plaintiffs' alleged deprivation of counsel is traceable to the Attorney General. Courts elsewhere have rejected similar attempts to establish standing, concluding that provisions which "generally describ[e] the Attorney General's [enforcement] authority" are insufficient to demonstrate traceability. *Lewis v. Governor of Alabama*, 944 F.3d 1287, 1300 (11th Cir. 2019); *see also City of S. Miami v. Governor*, 65 F.4th 631, 640-45 (11th Cir. 2023). In the absence of any evidence that the Attorney General is responsible for furnishing counsel or implementing Maine's indigent defense system, Plaintiffs cannot rely on the Attorney General's general enforcement and supervisory authority to establish the traceability element of standing. Indeed, Maine law expressly gives control over the provision of counsel to other actors, including MCPDS and its officers. *E.g.*, 4 M.R.S. §§ 1801, 1804(3).

Plaintiffs argue that the "Attorney General shares the responsibility for the violation of Plaintiffs' constitutional rights," as he has failed to "adopt systems to ensure that [] prosecutions are maintained only when Plaintiffs have been appointed counsel." Pls.' Opp. to AG's Mot. to Dismiss 4. In other words, Plaintiffs appear to claim that they have been injured by the Attorney General's failure to scale down the number of prosecutions to match the limited supply of attorneys and/or his failure to dismiss charges when no attorney is available. Even accepting this theory of traceability, the Court is nevertheless unpersuaded that it has the authority to provide Plaintiffs with any meaningful redress.

Charging decisions are at the "core of the prosecutorial functions the courts have sought to insulate" from external influence. *Harrington v. Almy*, 977 F.2d 37, 40 (1st Cir. 1992). "If the court impermissibly interferes with an executive function," like a prosecutorial charging decision, "the doctrine of the separation of powers is implicated." *State v. Pelletier*, 2019 ME

112, ¶ 11, 212 A.3d 325; *see also Harrington*, 977 F.2d at 41 ("In the federal system, the separation of powers proscribes a judicial direction that a prosecutor commence a particular prosecution"). Yet, to rectify the Attorney General's alleged failure to "adopt systems to ensure that [] prosecutions are maintained only when Plaintiffs have been appointed counsel," Pls.' Opp. to AG's Mot. to Dismiss 4, the Court would have to do what constitutional separation of powers prohibits: Intrude on the Attorney General's power to bring charges and control criminal prosecutions. *See* Me. Const. art. III, § 2. Thus, the Court cannot provide meaningful redress against the Attorney General without running afoul of Maine's rigorous separation of powers doctrine. *Burr v. Dep't of Corr.*, 2020 ME 130, ¶ 20, 240 A.3d 371.

In short, Plaintiffs lack standing to pursue their claims against the Attorney General, as they have failed to establish that their constitutional injury is traceable to the Attorney General's actions and is capable of being redressed by the Court. *See Collins*, 2000 ME 85, ¶ 6, 750 A.2d 1257.

B. Sovereign Immunity

Alternatively, the counts against the Attorney General require dismissal on sovereign immunity grounds. To be sure, the Attorney General does not dispute that an exception to sovereign immunity exists—consistent with *Ex Parte Young*, 209 U.S. 123 (1908)—for claims under Section 1983 and the MCRA seeking prospective injunctive relief against state officers acting in their official capacity. *Will v. Mich. Dep't of State Police,* 491 U.S. 58, 71 n.10 (1989); *Wyman v. Sec'y of State*, 625 A.2d 307, 310-11 (Me. 1993).[3] Instead, the Attorney General

[3] While 42 U.S.C § 1983 and the MCRA are distinct statutory regimes, the MCRA was modeled after Section 1983, and courts have therefore interpreted them coextensively. *See Jenness v. Nickerson*, 637 A.2d 1152, 1158 (Me. 1994) (explaining that "[t]he MCRA was patterned after 42 U.S.C. § 1983" (quotation marks omitted)); *Estate of Bennett v. Wainwright*,

argues that Plaintiffs' claims do not fall within *Ex Parte Young*'s exception to the doctrine because the Attorney General lacks a sufficient connection to the alleged constitutional violations.

To qualify under the *Ex Parte Young* exception, the state officer must "by virtue of his office, ha[ve] some connection" with the allegedly unconstitutional conduct. *Ex Parte Young*, 209 U.S. at 157. "[W]hether [this connection] arises out of general law, or is specially created by the act itself, is not material so long as it exists." *Id.*

Here, the Court agrees that Plaintiffs have failed to demonstrate the requisite connection between the Attorney General and the claimed ongoing violations of their right to counsel. Although the standing analysis is distinct from *Ex Parte Young*'s "some connection" test, courts applying the latter standard have similarly rejected the notion that an official's generalized enforcement or supervisory powers suffice to establish the requisite nexus between the officer and unlawful conduct alleged. *E.g.*, *Shell Oil Co. v. Noel*, 608 F.2d 208, 211 (1st Cir. 1979) ("The mere fact that a governor is under a general duty to enforce state laws does not make him a proper defendant in every action attacking the constitutionality of a state statute. Nor is the mere fact that an attorney general has a duty to prosecute all actions in which the state is interested enough to make him a proper defendant in every such action."); *Pennington Seed, Inc. v. Produce Exch. No. 299*, 457 F.3d 1334, 1342 (Fed. Cir. 2006) ("A nexus between the violation of federal law and the individual accused of violating that law requires more than simply a broad general obligation to prevent a violation."); *Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir. 1998) ("[A] generalized duty to enforce state law or general supervisory power over the persons

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548 F.3d 155, 178-79 (1st Cir. 2008) ("[T]he protections provided by the Maine Civil Rights Act, including immunities, are coextensive with those afforded by 42 U.S.C. § 1983.").

responsible for enforcing the challenged provision will not subject an official to suit."); *see also Chamber of Commerce of U.S. v. Edmondson*, 594 F.3d 742, 760 (10th Cir. 2010) (under *Ex Parte Young*, the officer must "have a particular duty to 'enforce' the statute in question and a demonstrated willingness to exercise that duty" (quotation marks omitted)).[4]

Here, as noted above, Plaintiffs have not shown that the Attorney General has a particular obligation to furnish counsel or implement Maine's indigent defense system—pointing instead to provisions in Maine law that broadly describe the Attorney General's enforcement and prosecutorial powers. *See* 5 M.R.S. §§ 199, 200-A. Accordingly, the Court concludes that the Attorney General lacks the necessary connection to the alleged ongoing violation of the right to counsel, and Plaintiffs' claims therefore fall outside the scope of the *Ex Parte Young* exception.

II. State of Maine (Counts III & V)

The State requests that the Court dismiss Count V against it, arguing that it is immune from suit under the doctrine of sovereign immunity and that the DJA does not provide a proper cause of action. It furthermore requests that it be designated as a party-in-interest, rather than a formal respondent, for purposes of the Petition for Habeas Corpus (Count III).

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[4] *Luckey v. Harris*—previously cited by this Court and by the parties—does not hold otherwise. 860 F.2d 1012 (11th Cir. 1988). In that case, the 11th Circuit held that the governor was a proper defendant under *Ex parte Young* because "[a]ccording to the Georgia constitution, the governor is responsible for law enforcement in that state and is charged with executing the laws faithfully" and "[t]he governor further has the residual power to commence criminal prosecutions and has the final authority to direct the attorney general to 'institute and prosecute' on behalf of the state." *Id.* at 1016 (internal citations omitted); *City of S. Miami v. Governor*, 65 F.4th 631, 644 (11th Cir. 2023). To the extent *Luckey* might suggest that an officer's general enforcement authority satisfies *Ex Parte Young*'s "some connection" test, the 11th Circuit noted in a subsequent case that "[p]art of the [Georgia] governor's prosecutorial role included 'furnish[ing] counsel' to indigent defendants." *S. Miami v. Governor*, 65 F.4th at 644. Thus, in *Luckey*, it appears that the governor had some statutorily prescribed role in the provision of counsel and thus, had "some connection" to the plaintiffs' constitutional challenge to Georgia's indigent defense system. 209 U.S. at 157.

A. Sovereign Immunity

Plaintiffs seek a declaration under the DJA that the State—which bears the ultimate responsibility for furnishing counsel to indigent criminal defendants—has denied Class Members their fundamental right to counsel under the State and Federal Constitutions. *See* Pls.' Am. Compl. ¶¶ 175-83. The State argues that such relief is unavailable, as it enjoys absolute immunity from suit under the doctrine of sovereign immunity. Whether the State may claim sovereign immunity under these unique circumstances appears to be an issue of first impression in Maine.

To resolve the present question, the Court must reconcile important competing legal principles and interests. On the one hand is the well-recognized principle that the State, as the sovereign, is entitled to immunity from suit—"one of the highest attributes inherent in the nature of sovereignty." *Knowlton v. Attorney Gen.*, 2009 ME 79, ¶ 12, 976 A.2d 973 (quotation marks omitted). On the other hand is the interest of Maine citizens to seek redress for alleged violations of constitutionally imposed obligations. And still another interest to consider is the Court's responsibility to provide a forum to Maine citizens to seek enforcement of those constitutional rights. The latter interest is rooted in Me. Const. art. VI, § 1 and Maine's rigorous separation of powers doctrine, which assign this extraordinary responsibility to Maine's judicial branch. Me. Const. art. III, § 2; Me. Const. art. VI, § 1; *Burr*, 2020 ME 130, ¶ 20, 240 A.3d 371. The Court concludes that under the unique circumstances of this case, the doctrine of sovereign immunity does not stand as a barrier to Maine citizens to seek a judicial declaration that the State of Maine has violated their constitutional right to counsel.

The origins of the State's argument is the Eleventh Amendment to the United States Constitution, which "precludes the federal courts from circumventing the sovereign immunity of

the states." *Moody v. Comm'r, Dept. of Human Services*, 661 A.2d 156, 158 n.3 (Me. 1995). "Although the Eleventh Amendment is not directly applicable to state courts, the doctrine of sovereign immunity similarly protects the states from actions of state courts." *Id.* While the Law Court has relied on Eleventh Amendment jurisprudence to develop its own doctrine of sovereign immunity, *id.* at 159 (Lipez, J., concurring), the doctrine in Maine is rooted in common law and is not protected by a provision of the State Constitution, *see Noel v. Town of Ogunquit*, 555 A.2d 1054, 1056 (Me. 1989) (referring to sovereign immunity as a "common law defense").

The Law Court has stated that sovereign immunity "can only be waived by specific authority conferred by an enactment of the Legislature"; "[w]aivers are not generally implied." *Knowlton*, 2009 ME 79, ¶ 12, 976 A.2d 973 (quotation marks omitted). While Maine's sovereign immunity doctrine usually arises in the context of actions for monetary damages, the doctrine has been extended to actions seeking other forms of relief. *See Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985). Moreover, "the Declaratory Judgments Act alone does not override sovereign immunity when that doctrine is properly applied." *Bell v. Town of Wells*, 510 A.2d 509, 515 (Me. 1986).

Application of the doctrine becomes much less straightforward in a case such as this one. That is because it has long been understood that the State is the legal entity ultimately responsible for provision of the constitutional right to appointed counsel for indigent criminal defendants. It seems beyond dispute (and no Defendant really argues the point) that the constitutional right to counsel afforded by the Sixth Amendment of the Federal Constitution and article I, section 6 of the Maine Constitution "imposes an affirmative obligation on *the State* to provide court-appointed counsel" to indigent criminal defendants facing incarceration. *State v. Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702 (emphasis added); *Gideon v. Wainwright*, 372 U.S.

335, 343-44 (1963). Nevertheless, the Office of the Attorney General insists that it has authority to assert the doctrine to prevent judicial enforcement of this right against the State as a party. Plaintiffs counter that given the nature of the liberty interests at stake, the Court has authority to issue a declaration as to whether the State is fulfilling a well-accepted and fundamental constitutional obligation.

While the Law Court has not directly confronted this issue in the context of constitutional claims brought under the Sixth Amendment or article I, section 6, it has carved out exceptions and disallowed assertions of the sovereign immunity doctrine by the State. In *Welch v. State*, the Law Court addressed a claim involving property rights and held that sovereign immunity does not bar quiet title and declaratory judgment actions involving land to which the State holds title in its sovereign capacity. *See* 2004 ME 84, 853 A.2d 214.

In that case, the lower court granted summary judgment in favor of the State on the grounds that sovereign immunity barred the plaintiffs' declaratory judgment action, which sought a declaration that the plaintiffs enjoyed easement rights over certain state-owned land. The Law Court vacated the judgment on appeal. *Id.* ¶ 10. Its basis for doing so was twofold, and both considerations are relevant here. First, the plaintiffs' action—which "ask[ed] only that a court decide the relative rights of the private claimant and the State regarding ownership of some specific property interests"—did not implicate any of the "modern day considerations that would justify the State's invocation of sovereign immunity." *Id.* ¶¶ 6-7. Specifically, the action did not "seek[] monetary damages to be paid out from the State's treasury"; it did not ask the courts "to compel the Legislature or the Governor to do anything"; and it did not jeopardize "any essential governmental function of the State." *Id.*

Second, the *Welch* Court observed that the "State [wa]s bound by the obligations and restraints imposed by the Constitution." *Id.* ¶ 8. After commenting on the various constitutional provisions implicated in the case, the Law Court reasoned that those "constitutional protections would lose considerable meaning if the doctrine of sovereign immunity prohibited the people from bringing quiet title actions to settle ownership disputes with the State." *Id.* ¶ 9. "To allow the State to assert sovereign immunity as a bar to quiet title actions brought in its own courts by private citizens would fly in the face of the constitutional protections and property rights of the people." *Id.* ¶ 8. In other words, as the United States Supreme Court explained in *Alden v. Maine*, "'sovereign immunity . . . does not confer upon the State a concomitant right to disregard the Constitution.'" *Welch*, 2004 ME 84, ¶ 8, 853 A.2d 214 (quoting *Alden*, 527 U.S. 706, 754-55 (1999)).

Although *Welch* arose under different facts and involved "constitutional protections and property rights of the people," the Court nevertheless discerns from that case the following basic principle: The doctrine of sovereign immunity does not preclude the Court from declaring the rights and obligations of the State when the doctrine's invocation would permit the State to avoid accountability to its citizens for rights guaranteed by the State and Federal Constitution. *Id.* ¶¶ 6-10; *see also Farley v. Dep't of Human Services*, 621 A.2d 404, 406 (Me. 1993) ("The defense of sovereign immunity will not insulate the State from liability if it is found to have committed an unconstitutional taking in violation of either the United States or Maine Constitutions").[5]

[5] Moreover, as Judge Duddy observed in *NECEC Transmission LLC v. Bureau of Parks and Lands*: "Several courts in other states have held that in [actions seeking declaratory judgments regarding constitutionality], sovereign immunity is unavailable as a defense." No. BCD-CIV-2021-00058, 2021 WL 6125325, at *8 n. 15 (Me. B.C.D. Dec. 16, 2021) (citing *Jones v. Bd. of Trs. of Ky. Retirement Sys.*, 910 S.W.2d 710, 713 (Ky. 1995), among other cases).

It is difficult to discern a principled reason why the analysis used by the Law Court in *Welch* would not extend to the fundamental right at issue here: The right to counsel for indigent defendants— "a right of the highest order." *Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702. The Court therefore will apply *Welch*'s principles here and concludes that Plaintiffs may in an action for declaratory judgment seek a declaration defining the State's constitutional responsibilities and declaring whether the State is meeting its obligations under Sixth Amendment and article I, section 6.

As to the first concern expressed by *Welch*, the declaratory relief requested in this case neither requires the payment of monetary damages from the State's treasury nor does it compel the Legislature or the Governor to do anything. 2004 ME 84, ¶¶ 6-7, 853 A.2d 214. If Plaintiffs can establish a constitution violation at trial, a judicial declaration in the nature identified above would resolve an existing constitutional dispute without impeding any essential governmental functions. *Id.* ¶ 7.

More importantly, to allow the State to invoke sovereign immunity as a bar to the declaratory relief Plaintiffs seek "would fly in the face of the constitutional protections" guaranteed by the Sixth Amendment and article I, section 6. *Id.* ¶ 8. The Court once again emphasizes that it is clearly the State's obligation to furnish counsel as promised by the State and Federal Constitutions. *Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702; *Gideon*, 372 U.S. at 343-44. This constitutional obligation would "lose considerable meaning" if the doctrine of sovereign immunity prohibited the Court from issuing a declaration as to whether the State was fulfilling a responsibility so integral to our constitutional framework. *Welch*, 2004 ME 84, ¶ 8, 853 A.2d 214.

The Court is also mindful of its obligation to safeguard the constitutional rights of Maine citizens and its authority to resolve constitutional disputes. Me. Const. art. VI, § 1; *State v. Leclair*, 30 A. 7, 9 (Me. 1894). While the State suggests that it is up to the Legislature—or perhaps even an Assistant Attorney General—to decide whether sovereign immunity will be waived as a defense, the Court observes that it "is the duty as well as the function of this Court to safeguard . . . the fundamental principles of government vouchsafed . . . by the State and Federal Constitutions." *Morris v. Goss*, 83 A.2d 556, 565 (Me. 1951). And this is a function uniquely delegated to the Judicial Branch by Me. Const. art. VI, § 1 and protected by Maine's rigorous separation of powers principle. *See* Me. Const. art. III, § 2; Me. Const. art. VI, § 1; *Burr*, 2020 ME 130, ¶ 20, 240 A.3d 371; *Leclair*, 30 A. at 9. The Court will therefore permit Plaintiffs to seek a declaration if liability can be established at trial.

To be clear, the Court does not decide at this juncture whether it would be appropriate to issue an *injunction* against the State enforcing any declaration the Court may grant. That issue may be explored and argued after trial, should Plaintiffs prevail in establishing liability. For present purposes, however, the Court is satisfied that relief may be available in the form of a declaration under the DJA. *See Oakes*, 2023 ME 65, ¶ 15, 303 A.3d 650 (explaining that at the motion to dismiss stage, "[a] dismissal should only occur when it appears beyond doubt that a plaintiff is entitled to no relief under any set of facts that [she] might prove in support of [her] claim." (quotation marks omitted)). And the declaration alone is sufficient to provide Plaintiffs with some redress. *See* 14 M.R.S. § 5953 ("Courts . . . shall have power to declare rights, status and other legal relations *whether or not further relief is or could be claimed*" (emphasis added)); *Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, ¶¶ 38-39, 237 A.3d 882 (issuing declaratory relief but declining to issue an injunction).

In short, the doctrine of sovereign immunity does not bar the declaratory relief that Plaintiffs seek, and the Court declines to dismiss Count V on that basis.

B. Cause of Action Under the DJA

The State further argues that the DJA does not create an independent cause of action, but rather a remedy ancillary to some other valid claim. It also maintains that the DJA does not afford parties the opportunity to obtain a judicial declaration regarding a constitutional obligation. Neither argument is persuasive.

As to the former contention, the Law Court's recent jurisprudence suggests that parties may seek resolution of their disputes in actions for declaratory judgment under the DJA, thereby undercutting the State's contention that the DJA merely provides a remedy. *See, e.g.*, *Parker v. Dep't of Inland Fisheries & Wildlife*, 2024 ME 22, ¶¶ 5, 12-15, 25, 314 A.3d 208; *NECEC Transmission LLC v. Bureau of Parks & Lands*, 2022 ME 48, ¶¶ 3-4, 281 A.3d 618; *Avangrid*, 2020 ME 109, ¶¶ 7, 38, 237 A.3d 882. So long as a plaintiff pleads "a sufficiently justiciable claim," declaratory relief under the DJA may be available. *Parker*, 2024 ME 22, ¶¶ 12-15, 314 A.3d 208. This holds true in standalone actions for declaratory judgment in which the plaintiff asserts no other cause of action. *Id.* ¶¶ 5, 12-15. As the Court is satisfied that Plaintiffs have pled a justiciable controversy in Count V, it will allow their DJA claim to go forward against the State.

The Court similarly rejects the State's narrow reading of the relief available under the DJA. According to the State, the DJA "provides only the opportunity to obtain the determination of 'any question . . . arising under [an] instrument, *statute*, ordinance, contract or franchise," and because Count V does not seek clarification of Plaintiffs' rights under a "statute," relief is

unavailable under the Act. *See* State's Mot. to Dismiss 9-10 (quoting 14 M.R.S. § 5954) (emphasis in original). The DJA itself suggests otherwise.

14 M.R.S. § 5953 states that courts have the power to "declare rights, status and other legal relations," without limitation as to the sources of law for which parties may seek a judicial determination. While Section 5954 enumerates sources of law subject to a declaration, *see* 14 M.R.S. § 5954 (noting that courts may declare rights arising under an "instrument, statute, ordinance, contract or franchise"), this list is not exclusive and does not prevent parties from seeking a judicial interpretation of their rights under the constitution, *see id.* §§ 5953, 5957. The DJA even says so: "The enumeration in sections 5954 to 5956 does not limit or restrict the exercise of the general powers conferred in section 5953 in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty." *Id.* § 5957. The Court accordingly concludes that the type of relief requested by Plaintiffs is available under the DJA.

C. Petition for Habeas Corpus

The State does not ask to be dismissed entirely from Count III, but rather designated as a party-in-interest instead of a formal party. The Court follows the lead of Justice Douglas in *Peterson v. Johnson* and designates the State of Maine as a party-in-interest to the Habeas Count. *See* No. SJC-23-2 (Nov. 6, 2023) (Douglas, J.). As a party-in-interest, the State will have the opportunity to participate in the proceedings and to be heard on the propriety of any relief that may affect it.

III. MCPDS (Count IV)

MCPDS asks to be dismissed from the DJA claim in Count IV for many of the same reasons asserted by the State—among them, that the agency is immune from suit under the

doctrine of sovereign immunity. In rejecting the State's claim of sovereign immunity above, the Court emphasized that the application of the doctrine was incompatible with the constitutional promise that it is *the State* that is responsible for furnishing counsel to indigent criminal defendants. *See supra* Part II.A. Because MCPDS bears no similar constitutional obligation,[6] the Court therefore questions whether the same reasoning would save Count IV.

In any event, MCPDS is adequately represented in this lawsuit by its Executive Director and Commissioners, who have been named in their official capacity as officers of the agency. In such a case, the Court sees no added benefit of a declaration that MCPDS has failed to fulfill its constitutional obligations when the same relief may be afforded against the agency's officers in Counts I and II. Moreover, the Court believes that a declaration concerning the lawfulness of the officers' actions is sufficient to resolve the uncertainty regarding the lawfulness of the actions of the agency that those officers represent. *See* 4 M.R.S. § 1803(1) ("The commission consists of 9 members . . . ."). As Maine law holds that a "trial court should only issue a declaratory judgment when some useful purpose will be served," the Court is not inclined to grant the declaratory relief requested against MCPDS in Count IV. *Parker*, 2024 ME 22, ¶ 15 n.3, 314 A.3d 208 (quotation marks omitted); *see also* 14 M.R.S. § 5958 (the court "may refuse to render or enter a declaratory judgment . . . where such judgment . . . would not terminate the uncertainty or controversy giving rise to the proceeding"). Count IV is therefore dismissed.

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[6] Title 4 M.R.S. § 1801 imposes an obligation on MCPDS "to provide high-quality, effective and efficient representation and promote due process for persons who receive indigent legal services in parity with the resources of the State and consistent with federal and state constitutional and statutory obligations." That obligation, however, is imposed by statute and not the Constitution. *Cf. Welch*, 2004 ME 84, ¶¶ 8-9, 853 A.2d 214.

CONCLUSION

The entry is:

1. The Attorney General's Motion to Dismiss is **granted**, and he will be dismissed as a party from Counts I and II.
2. MCPDS's Motion to Dismiss Count IV is **granted.**
3. The State of Maine's Motion to Dismiss Count V is **denied**.
4. The State of Maine is designated as a party-in-interest with respect to Count III.
5. The State shall file their answer to the Amended Complaint within 14 days from the date of this order.

The clerk is directed to incorporate this order on the docket by reference pursuant to M.R. Civ. P. 79(a).

DATED: 8/13/24

Michaela Murphy
Justice, Maine Superior Court

8/13/24: Entered on the docket.

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Zachary Heiden, Esq.
PO Box 7860
Portland, Maine . 04112