STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. YOR-23-89

YORK COUNTY, et al.,

Appellee

v.

CALEB GAUL,

Appellant.

On Appeal from York County Superior Court
Docket No. CV-19-164

BRIEF FOR APPELLANT

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I. INTRODUCTION

This is a case about Mainers' right to be free from unreasonable, intrusive custodial arrests that do nothing to preserve public safety or order. Caleb Gaul was arrested without a warrant, for a minor nonviolent misdemeanor charge, in circumstances that did not present any public safety or flight risk. He was handcuffed in front of his wife and children on his own property, taken to a police station, strip-searched, locked in a cell, and then held until his wife could post his bail. Caleb was charged only with a Class D misdemeanor, which was later downgraded to a Class E misdemeanor and then dismissed altogether. But the consequences of that unreasonable arrest will follow Caleb forever.

Arresting Caleb in this manner violated Article I, Section 5 of the Maine Constitution, which prohibits "all unreasonable searches and seizures." Consistent with that unequivocal command, this Court has consistently used a reasonableness standard to evaluate claims under Article I, Section 5. Under the reasonableness standard, *all* searches and seizures must be reasonable in order to be constitutional. Because his misdemeanor arrest was not reasonable, Caleb brought a civil rights suit against the officers involved.

The trial court erroneously dismissed that lawsuit. Rather than rely on this Court's interpretation of the Maine Constitution, the trial court looked to the U.S.

Supreme Court's interpretation of the U.S. Constitution, and specifically to *Atwater v. Lago Vista*, 532 U.S. 318 (2001). *Atwater* minted a new per se rule that "[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence," then the officer may arrest the alleged offender without violating the Fourth Amendment. *Id.* at 354.

But this Court has never endorsed *Atwater*, and it should not do so now. This Court's precedents make clear that, in interpreting the Maine Constitution, it does not fall in lockstep with the Supreme Court's interpretations of the U.S. Constitution. That is true for Article I, Section 5 in particular. Far from endorsing the kind of bright-line police entitlement articulated in *Atwater*—which holds that custodial arrests for offenses committed in an officer's presence *automatically* satisfy the Fourth Amendment—this Court's Article I, Section 5 precedents consistently apply a reasonableness standard that accounts for both the facts of each case and the values animating the Maine Constitution.

Applying that reasonableness standard, which requires balancing the intrusion on individual liberty against the government interest served, a jury could reasonably find that Caleb's arrest violated Article I, Section 5. This Court should therefore reverse the trial court's summary judgment ruling on Caleb's Article I, Section 5 claim and allow Caleb to proceed on his claim for declaratory relief. The Court should further hold that Caleb's arrest violated his clearly established

constitutional right to be free from unreasonable seizures, permitting him to proceed to trial on his claim for damages.

II. STATEMENT OF FACTS

A. Caleb Gaul is arrested and taken into custody for parking at the bottom of his private road, even after he promptly moved his car at the officer's request.

Most Mainers could imagine themselves in Caleb's position as he headed to work on an icy morning in January, after a recent snowstorm. Appendix ("A") 175 (Opp. S.M.F. ¶¶ 64-65.) But far from making it to work, Caleb wasn't even able to make it off his property before being arrested in front of his wife and kids, taken into custody at the York County Sheriff's Office, strip-searched, and held for hours before his wife was able to pay his bail. A. 178, 181, 184 (Opp. S.M.F. ¶¶ 88, 106-08, 127-29.)

Caleb's home is connected to the public road by a long, private driveway he maintains, which ends in a steep hill. A. 176 (Opp. S.M.F. ¶ 66.) On the day he was arrested, January 30, 2018, the final hill on Caleb's driveway was icy and treacherous. A. 175 (Opp. S.M.F. ¶ 64.) As he turned the corner down this icy hill, Caleb had to veer out of the way to avoid hitting a school bus parked at the base of the hill, a bus that did not have permission to be there. A. 176 (Opp. S.M.F. ¶¶ 66-68.) Caleb got out of his truck to speak to the bus driver, temporarily leaving his truck next to the school bus. A. 176 (Opp. S.M.F. ¶ 69-70.) Caleb told the bus

driver: "[t]his is my road here," and "[w]hen it's real slippery right there, it's not really smart for you all to be parking at the bottom of it because I'm sliding down, almost right into your bus this morning." A. 176 (Opp. S.M.F. ¶ 71.) The bus driver refused to move the bus, even after Caleb told him that "you can't park on my private road." A. 176 (Opp. S.M.F. ¶ 72.)

Caleb's primary concern was the safety of his wife and their kids, who would be leaving shortly for school in the family van and might slide down the hill and hit the school bus if it continued to block the road. A. 176 (Opp. S.M.F. ¶ 73.) As Caleb told the bus driver, "[i]f my wife would've come down here, she would've smashed into your van." *Id*. When the bus driver still refused to move the bus, Caleb parked his truck in the safest place available, at the base of the hill in front of the school bus. A. 177, 160 (Opp. S.M.F. ¶¶ 74-75, 10.)[1] He then walked back up the hill to warn his wife about the safety risk posed by the school bus. A. 177 (Opp. S.M.F. ¶ 74.)

When Caleb walked back down the hill after speaking with his wife about the danger, he was surprised to see Deputy Morneau at the base of the hill, waiting with a hand on his gun. A. 177 (Opp. S.M.F. ¶¶ 76-77.) Morneau immediately told Caleb to "freeze and put your hands up." A. 177 (Opp. S.M.F. ¶ 77.) Caleb

[1] Deputy Morneau acknowledged that the only other safe places for Caleb to park were in the public road or in a neighbor's private driveway, which Caleb did not believe was allowed. A. 177 (Opp. S.M.F. ¶ 75.)

explained to Morneau that the road was his private property and the bus was not allowed to park on it. A. 177 (Opp. S.M.F. ¶ 78.)

Before even asking Caleb to move his truck, Morneau walked over to the bus and asked the driver, "so do you guys want to press charges if I can find an applicable law?" A. 162-63, 177 (Opp. S.M.F. ¶¶ 12, 79.) The Deputy went on to say he would "like to be able to arrest [Caleb]" and didn't "want to dillydally." A. 177 (Opp. S.M.F. ¶ 80.) The Deputy then ordered Caleb to move his truck, which Caleb did within less than two minutes of the order. A. 178 (Opp. S.M.F. ¶¶ 83-85.) After Caleb moved his truck off the driveway and onto the public road, the bus left Caleb's private property. A. 178 (Opp. S.M.F. ¶ 86.)

That could have been the end of the incident—with everyone safely going their separate ways after a weather-related inconvenience. Indeed, Deputy Morneau previously told the bus driver that Caleb would have to move his truck "or he gets arrested." A. 177 (Opp. S.M.F. ¶ 81.) But this turned out to be a false choice: even though Caleb promptly moved his truck, Morneau arrested him for the alleged Class D misdemeanor of "obstructing government administration." A. 165-66, 177-78 (Opp. S.M.F. ¶¶ 21-23, 82-85.) The Deputy handcuffed Caleb in front of his wife and kids, brought him to the station to be fingerprinted and booked, and held him until he could make bail. A. 178, 181 (Opp. S.M.F. ¶¶ 88-89, 107-09.) An officer at the York County Jail then strip-searched Caleb, forcing him

to remove all his clothes and conducting a visual inspection of his anal and genital areas. A. 181, 184 (Opp. S.M.F. ¶¶ 108, 127-29.)

After several more hours of detention and missed time at work, Caleb's wife arrived to pay $360 in bail to obtain Caleb's release. A. 185 (Opp. S.M.F. ¶ 133.) Caleb had to update his then-employer about the arrest, which had consequences for Caleb's work as an audio engineer serving numerous clients with sensitive facilities and exacting security requirements. A. 186 (Opp. S.M.F. ¶ 142.)

After Caleb was released, the charge against him was downgraded from the Class D offense of "obstructing government administration" to the even lesser Class E offense of "obstructing a public way." A. 185 (Opp. S.M.F. ¶ 135.)[2] Ultimately, the York County District Attorney's office dismissed all charges against him. A. 185 (Opp. S.M.F. ¶ 136.) This suit followed.

B. After Caleb was arrested and strip-searched based on a minor misdemeanor charge, he brought this action to defend his right under the Maine constitution to be free from unreasonable government search and seizure.

On July 30, 2019, Caleb filed this civil rights action alleging that Deputy Morneau subjected him to an unreasonable warrantless misdemeanor arrest in

[2] *Compare* 17-A M.R.S. § 751(1) ("A person is guilty of obstructing government administration if the person intentionally interferes by force, violence or intimidation or by any physical act with a public servant performing . . . an official function"); *with* 17-A M.R.S. § 505(1) ("A person is guilty of obstructing public ways if he unreasonably obstructs the free passage of foot or vehicular traffic on any public way and refuses to cease or remove the obstruction upon a lawful order to do so given him by a law enforcement officer.").

violation of Article 1, Section 5 of the Maine Constitution (Count I), and seeking declaratory relief and damages. A. 92-93, 96 (Second Am. Compl., Count I, 18-19, 23.)[3] Caleb did not assert any claim under the Fourth Amendment to the U.S. Constitution. Nevertheless, on summary judgment, the trial court dismissed Caleb's Section 5 claim on the basis of the U.S. Supreme Court's Fourth Amendment majority opinion in *Atwater v. Lago Vista*, 532 U.S. 318, 326 (2001), reasoning that it was "not this court's prerogative to depart from established precedent."[4] A. 18-19 (Order on Def.'s Mot. Summ. J. 8-9, n.8.) This appeal followed.[5]

III. ISSUES FOR REVIEW

The following issues are presented for review:

1. Whether the trial court erred when it rejected Maine's traditional reasonableness balancing analysis under Article I, Section 5 of the Maine Constitution, and instead concluded, by relying on federal case law interpreting the Fourth Amendment to the U.S. Constitution, that a warrantless misdemeanor arrest

[3] The sole count Mr. Gaul pursues on this appeal is Count I of the Second Amended Complaint.
[4] All internal citations and punctuation are omitted unless otherwise indicated.
[5] Following the trial court's summary judgment order dismissing all but Counts V and VI of the Second Amended Complaint, the parties stipulated to dismissal with prejudice of Counts V and VI. That joint stipulation expressly reserved Mr. Gaul's right to appeal the Court's January 12, 2022 summary judgment order as to Count I. A. 216 (Stip. of Dismissal 1.) The court entered final judgment on March 1, 2023, based on the parties' stipulation of dismissal. A. 10 (Docket Record, 3/1/23 Entry: Finding - Final Judgment Case Closed).

is automatically constitutional whenever the arresting officer has probable cause to believe that an offense occurred in his presence;

2. Whether Caleb Gaul's warrantless custodial arrest on a minor misdemeanor charge, in circumstances presenting no public safety or flight risk, was unreasonable in violation of Me. Const. art. I, § 5;

3. Whether the trial court erred in dismissing Caleb Gaul's declaratory relief claim, which is not subject to qualified immunity; and

4. Whether the trial court erred in determining that qualified immunity barred Caleb Gaul's damages claims against Morneau.

IV. SUMMARY OF ARGUMENT

There is a genuine dispute that the custodial arrest of Caleb for a low-level misdemeanor violated the reasonableness mandate of Article I, Section 5 of the Maine Constitution. Although the trial court viewed its constitutional analysis as bound by the Supreme Court's ruling in *Atwater*, this Court has never endorsed *Atwater*'s narrow majority holding. Instead, this Court can and should reject *Atwater* as unpersuasive and inconsistent with the longstanding state precedent, tradition, and values that animate Section 5 of the Maine Constitution. The plain text of Section 5 of the Maine Constitution, as well as over a century of precedents from this Court, establish the "core state constitutional value" that "all" seizures must be "reasonable," based on a sensitive balancing of the intrusions on

individual liberty against the government interests at stake. Me. Const. art. I, § 5; *State v. Melvin*, 2008 ME 118, ¶ 13, 955 A.2d 245. Applying this reasonableness balancing and taking all inferences in Caleb's favor, as the court does on summary judgment, a jury could find that Caleb was subjected to an unreasonable seizure when York County Deputy Morneau arrested him, booked him, and held him for hours at York County jail before he could make bail, all based on a minor misdemeanor charge for briefly parking his truck at the bottom of his private drive and then moving it as soon as the Deputy asked. This finding that Caleb's custodial arrest was unreasonable under Section 5 alone permits Caleb to proceed on his claim for declaratory relief, because qualified immunity does not apply to this claim. And because Caleb's right to be free from unreasonable arrest violated clearly established Maine law, qualified immunity does not bar Caleb's claim for damages. This Court should reverse the trial court's summary judgment order dismissing Count I and remand for further proceedings.

V. ARGUMENT

Summary judgment is appropriate only if, viewing both the evidence and all reasonable inferences in the light most favorable to Caleb, there are no genuine issue of material fact and the defendant is entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *Levis v. Konitzky*, 2016 ME 167, ¶ 20, 151 A.3d 20. The trial court's interpretation and application of relevant law on summary judgment are

reviewed de novo. *Lever v. Acadia Hosp. Corp.*, 2004 ME 35, ¶ 2, 845 A.2d 1178. For the reasons explained below, the trial court's grant of summary judgment on Count I should be reversed.

A. Article 1, Section 5 of the Maine Constitution requires that warrantless, custodial arrests for minor misdemeanor offenses must be reasonable.

The trial court erred when it adopted a lockstep application of the U.S. Supreme Court's interpretation of the Fourth Amendment in *Atwater*.[6] *Atwater* created a per se rule that a custodial arrest, even for a very minor misdemeanor offense, automatically satisfies the Fourth Amendment so long as the arresting officer had probable cause to believe the offense was committed in his presence. This Court has never adopted the controversial views of the 5-4 majority in *Atwater*, and should not do so now. The Court should reject *Atwater's* bright-line rule as unpersuasive and inconsistent with Maine's core state constitutional values, this Court's precedents, and the well-reasoned decisions of other state high courts, and should instead adhere to Maine's core value that *all* arrests must be reasonable.

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[6] Article I, Section 5 of the Maine Constitution provides:

> The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause—supported by oath or affirmation.

Me. Const. art. I, § 5.

The Fourth Amendment to the United States Constitution reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV

1. The Court has the authority and duty to independently interpret Article I, Section 5 of the Maine Constitution.

This Court has made clear that it has an independent "authority and important responsibility to construe the Maine Constitution," and although the federal constitution creates a floor for protection of individual rights, Maine is "'free, pursuant to [its] own law, to adopt a higher standard' than that set by the federal constitution." *All. for Retired Ams. v. Sec'y of State*, 2020 ME 123, ¶ 23, 240 A.3d 45 (quoting *State v. Rees,* 2000 ME 55, ¶ 5, 748 A.2d 976). The Court interprets our state constitutional provisions independently based on the "value[s]" and "public policy" that animate the Maine Constitution, even when the language of the state constitutional provision is similar or identical to that of the federal provision. *State v. Collins*, 297 A.2d 620, 626 (Me. 1972). The Maine Constitution is "a live and flexible instrument fully capable of meeting and serving the imperative needs of society in a changing world," and thus "analysis of the scope of a constitutional protection can require consideration of the 'public policy for the State of Maine and the appropriate resolution of the values we find at stake.'" *Winchester v. State*, 2023 ME 23, ¶ 24, 291 A.3d 707 (quoting *Opinion of the Justices*, 231 A.2d 431, 434 (Me. 1967) and *State v. Rees*, 2000 ME 55, ¶ 8, 748 A.2d 976).[7]

[7] State constitutional provisions do not "*depend* on the interpretation of" parallel federal provisions. *State v. Flick*, 495 A.2d 339, 343 (Me. 1985) (emphasis in original). "[T]o construe such opinions as expressing

The trial court's lockstep application of the federal court's construction of the Fourth Amendment in *Atwater* was legal error. The trial court acknowledged that Caleb had urged the court to reject *Atwater* and to take a broader, independent view of Section 5 than its federal counterpart, but then concluded that "[i]t is not this court's prerogative to depart from established precedent as presented in this context." A. 18-19. This conclusion, which is directly contrary to this Court's teachings that Maine is free to adopt a higher constitutional standard under its own constitution, was based on general statements of this Court that the Maine Constitution's protections against unreasonable searches and seizures "are coextensive with the Fourth Amendment." A. 18-19 (citing *State v. Martin*, 2015 ME 91, ¶ 17 n.2, 120 A.3d 113; *Clifford v. MaineGeneral Med. Ctr*., 2014 ME 60, ¶ 67 n.21, 91 A.3d 567).

But these general statements about "coextensiveness" cannot be understood as a blanket rule that the state court's interpretations of Section 5 must always be bound by federal interpretations of the Fourth Amendment, regardless of the

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a limitation upon the scope of" a state constitutional provision "would be to stand the state-federal relationship . . . on [its] head[]." *State v. Caouette*, 446 A.2d 1120, 1122 (Me. 1982). Thus, even when federal and Maine constitutional provisions are similar, this Court looks to federal precedent only as "*potentially persuasive* but not dispositive guidance." *State v. Fleming*, 2020 ME 120, ¶ 17 n.9, 239 A.3d 648 (emphasis added); *State v. Reeves*, 2022 ME 10, ¶ 41, 268 A.3d 281 (when analyzing the Maine Constitution, this Court considers the interpretations of other courts (including the United States Supreme Court) only to the extent that such interpretations are persuasive). This Court must examine the merits of the state constitutional claim "independently of the federal constitutional claim," *State v. Athayde*, 2022 ME 41, ¶ 20, 277 A.3d 387, to avoid unnecessary federal rulings and give primacy to the Maine Constitution as the "primary protector of the fundamental liberties of Maine people since statehood was achieved." *State v. Larrivee*, 479 A.2d 347, 349 (Me. 1984).

circumstances of the particular case and regardless of the (often unpredictable) development of federal law over time. Such a rule would override the Court's independent "authority and important responsibility to construe the Maine Constitution." *All. for Retired Ams.*, 2020 ME 123, ¶ 23, 240 A.3d 45. And such a rule would undermine the important federalist interests served by the primacy approach: "The diversity of federalism recognizes that there is often no one right, static answer to difficult issues regarding the scope of constitutional protections," and thus "[b]oth horizontal federalism, whereby state courts look to each other for persuasive reasoning, and vertical federalism, whereby the Supreme Court looks to the reasoning of state courts, provide healthy and productive avenues for many minds to tackle difficult questions." Catherine R. Connors, Connor Finch, *Primacy in Theory and Application: Lessons From a Half-Century of New Judicial Federalism*, 75 Me. L. Rev. 1, 12-13 (2023).

Not only was the trial court permitted to independently construe Section 5; it was required to: "[t]he state court does not sporadically look to a state constitution only after considering an issue under the United States Constitution. Instead, the state court systematically interprets its own constitutional provisions by applying a consistent, transparent methodology." *Id*. at 15. The Court "write[s] on a clean slate" when construing Section 5 in the specific context of this case. *State v. Bouchles*, 457 A.2d 798, 801 (Me. 1983). The Court must independently decide

whether the *Atwater* majority's per se rule—that a custodial arrest even for a minor misdemeanor offense is constitutional whenever the arresting officer has probable cause to believe the offense was committed in his presence, regardless of whether the arrest is reasonable—is persuasive and consistent with Maine's longstanding traditions and values. It is not.

2. This Court has long safeguarded the core constitutional value that all government seizures must be reasonable, based on a balancing of the intrusion on individual privacy against the government interest.

Turning to the precise right at issue here —Article 1, Section 5 of the Maine Constitution—this Court has forcefully "reject[ed] any straitjacket approach by which we would automatically adopt the federal construction of the fourth amendment ban of 'unreasonable searches and seizures' as the meaning of the nearly identical provision of the Maine Constitution." *Bouchles*, 457 A.2d at 801–02; [8] *see also State v. Hawkins*, 261 A.2d 255, 257 (Me. 1970) (making clear that "in the first instance, the legality of a search and seizure must be determined under State law").

Rather than rigidly adopting federal Fourth Amendment case law, this Court has interpreted Section 5 as providing a more protective "reasonableness" standard. In *State v. Melvin*, for example, the Court departed from the Supreme Court's

[8] The *Bouchles* court ultimately concluded that the warrantless search of a closed box in the defendant's vehicle did not violate Section 5 of the Maine Constitution.

decision in *New York v. Burger*, 482 U.S. 691 (1987) (allowing for warrantless inspections), holding:

> [O]ur state constitutional analog to the Fourth Amendment—article I, section 5 of the Maine Constitution—stands as a reminder that, in discharging our constitutional responsibilities, we should not rigidly restrict our inquiry to the *Burger* criteria if, by doing so, we fail to account for the core state constitutional value that all searches and seizures must not be 'unreasonable.'

Melvin, 2008 ME 118, ¶ 13, 955 A.2d 245.[9] Indeed, this Court has expressly "recognized that the Maine Constitution may offer additional protections" beyond the Fourth Amendment. *State v. Hutchinson*, 2009 ME 44, ¶ 18 n.9, 969 A.2d 923.

This Court has scrupulously guarded the right of Maine people to be free from "unreasonable" searches and seizures under Article I, Section 5, recognizing the "core state constitutional value that all searches and seizures must not be 'unreasonable.'" *Melvin*, 2008 ME 118, ¶ 13, 955 A.2d 245. And to protect that core constitutional value, this Court has consistently held that the reasonableness analysis requires a case-by-case "balancing" of "the intrusion on individual privacy" against the "government interests" at stake. *Hutchinson*, 2009 ME 44, ¶¶ 18, 22, 25, n.9, 969 A.2d 923; *accord*: *State v. LaPlante*, 2011 ME 85, ¶ 10, 26, A.3d 337 ("[W]hen the State points to a public concern to justify the reasonableness of a search or seizure, courts must consider the gravity of that

[9] The *Melvin* court determined that the vehicle search was reasonable for reasons unrelated to the administrative search authority articulated in *Burger*.

public concern in the context of the constitutionally-protected right to be free from unreasonable searches and seizures."); *State v. Little*, 468 A.2d 615, 617 (Me. 1983) ("a seizure must be reasonable . . . . The reasonableness in general … is measured by balancing the level of intrusion on individual privacy against the particular law enforcement interests which would be served"); *State v. Chapman*, 250 A.2d 203, 209 (Me. 1969) (explaining that the Court's "general guidelines for constitutionally permissible" searches and seizures require courts to balance "the governmental interest" justifying the intrusion, against the "constitutionally protected interests of the private citizen.").

Dating back well over a century, this Court has emphasized again and again the core constitutional value of "reasonableness," applying a fact-sensitive balancing of interests. As early as 1893, the Court declared the fundamental principle that "[t]he bill of rights in the constitution of this state declares prohibition against 'all unreasonable searches and seizures.'" *State v. Riley*, 86 Me. 144, 144, 29 A. 920, 920 (1893) (citing Me. Const. art. I, § 5). In the 130 years since, there is an unbroken line of precedents from this Court underscoring the core value that above all else, all searches and seizures must be reasonable.[10]

[10] *See, e.g., State v. Little*, 468 A.2d 615, 617 (Me. 1983) ("a 'seizure'…must be 'reasonable'…The reasonableness in general of the field sobriety tests is measured by balancing the level of intrusion on individual privacy against the particular law enforcement interests which would be served by permitting it on less than probable cause." (quoting Me. Const. art. I, § 5)).

This Court's emphasis on the core value of reasonableness is mandated by the plain text of Section 5 of the Maine Constitution. Section 5 states that "[t]he people shall be secure in their persons, houses, papers and possessions *from all unreasonable searches and seizures*; …" Me. Const. art. I, § 5 (emphasis added). Indeed, the plain text of Section 5 arguably provides the accused with even more robust protections against unreasonable searches and seizures than does its federal corollary. Section 5's text broadly protects Maine people from "*all* unreasonable searches and seizures," whereas the federal Fourth Amendment lacks the intensifier "all." U.S. Const. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…").[11]

The values that animated this Court's holdings over a century ago in *Riley* and just a decade ago in *Melvin* are the same values that ought to guide the Court's decision in this case: Maine people are protected from "all unreasonable searches and seizures," *Riley*, 86 Me. at 144; to safeguard that right courts must be guided by the "core state constitutional value that all searches and seizures must not be unreasonable," *Melvin*, 2008 ME 118, ¶ 13, 955 A.2d 245; [12] and the

[11] The plain meaning of the term "all" is "every," "the whole amount," "as much as possible." Merriam-Webster, *All,* merriam-webster.com, https://www.merriam-webster.com/dictionary/all (last visited July 13, 2023).

[12] Maine statutory law permits officers to exercise their discretion to conduct warrantless arrests for Class D or E misdemeanors in certain circumstances. 17-A M.R.S. §15(2). But the statutory scheme cannot trump the state Constitution. The statute gives officers discretion to perform custodial misdemeanor

reasonableness inquiry requires balancing the intrusion caused by arrest against the government's interest, *Little*, 468 A.2d at 617.

3. This Court has never adopted the Supreme Court's decision in *Atwater*, and should reject it now as unpersuasive and inconsistent with Maine's values and longstanding precedents guaranteeing freedom from unreasonable seizure.

In the 22 years since *Atwater* was decided, this Court has never adopted the majority's controversial rule,[13] and it should not do so now. Instead, this Court should reject the majority's reasoning in *Atwater* as unpersuasive and inconsistent with Maine's precedents "core state constitutional value" that all seizures must be reasonable.

In *Atwater*, a slim 5-4 majority created a new bright-line rule: as long as an officer "has probable cause to believe that an individual has committed even a very minor criminal offense in his presence"—in that case, the driver and her children not wearing seatbelts—then the officer can constitutionally subject the individual to warrantless custodial arrest. *Atwater*, 532 U.S. at 354. In creating this new per se rule, the majority declined to analyze the reasonableness of the arrest, stating that "a responsible Fourth Amendment balance is not well served by standards

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arrests in certain situations, but in order to be *constitutionally* valid, the officers' exercise of that discretion must always be reasonable as required by Article I, Section 5. *See, e.g., State v. Bauer*, 36 P.3d 892, 896 (Mont. 2001) (rejecting *Atwater* and holding that although the state's statutory scheme "gives officers discretion" to arrest individuals for misdemeanors, "[w]e conclude that to be constitutionally valid, an officer's exercise of discretion must be reasonable").

[13] Indeed, Plaintiff's counsel have not been able to find *any* Maine court decision (including any superior court decision) that has adopted *Atwater*, other than the trial court order in this case.

requiring sensitive, case-by-case determinations of government need." *Id*. at 347. The majority declined to perform a reasonableness balancing of the individual and societal interests at stake even as it recognized that if it did so, Ms. Atwater "might well prevail" on the facts of the case, because "Atwater's claim to live free of pointless indignity and confinement clearly outweighs anything the City can raise against it specific to her case." *Id.* at 346-47. The majority rejected this case-by-case reasonableness balancing as insufficiently clear and judicially administrable, and instead favored the clarity of a bright-line rule that a custodial arrest is automatically permissible whenever the officer has probable cause to believe an (even very minor) offense was committed in his presence. The majority also expressed skepticism (though without any empirical data) about "how bad the problem is out there" and "wonder[ed] whether warrantless misdemeanor arrests" even "need constitutional attention." *Id.* at 351-52.

Justice O'Connor, writing for the four-justice dissent, persuasively explained that the majority had "mint[ed] a new rule" that was "unsupported by our precedent" and "runs contrary to the principles that lie at the core of the Fourth Amendment." *Id.* at 361-62 (O'Connor, J., dissenting). The majority's new per se rule ignored the "plain language" of the Fourth Amendment requiring that arrests must be "reasonable." *Id.* at 360. The majority rule also ignored the Court's own longstanding precedents that "[t]he touchstone of our analysis under the Fourth

Amendment is always the 'reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" *Id*. at 360 (quoting *Pennsylvania v. Mimms*, 434 U. S. 106, 108–109 (1977)).

Contrary to the majority's assertion that the Fourth Amendment is not "well served" by sensitive, case-by-case determinations, the dissent catalogued the Supreme Court's long history of precedents requiring exactly that: the Court must "evaluate the search or seizure under traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Id*. at 361 (citing cases requiring this balancing analysis). Although the Court had long held that probable cause is a "necessary" condition for warrantless arrest, it had never before held that probable cause alone is a "sufficient condition" for a warrantless misdemeanor arrest. *Id*. at 363.

On these grounds, the dissent flatly rejected the majority's new "rule which deems a full custodial arrest to be reasonable in every circumstance." *Id*. at 365. Instead, the dissent stayed true to the Court's traditional reasonableness balancing: "[b]ecause a full custodial arrest is such a severe intrusion on an individual's liberty, its reasonableness hinges on the 'degree to which it is needed for the promotion of legitimate governmental interests.'" *Id.* (quotation omitted). Responding to the majority's assertion that a reasonableness balancing was not

sufficiently clear and administrable, the dissent noted that the majority's "probable cause" standard was likewise "not a model of precision." *Id*. at 366. But more fundamentally, the dissent noted that "[w]hile clarity is certainly a value worthy of consideration in our Fourth Amendment jurisprudence, it by no means trumps the values of liberty and privacy at the heart of the Amendment's protections." *Id*.

Applying the traditional balancing-of-interests analysis, the dissent concluded that the seizure at issue—a custodial arrest for a minor misdemeanor charge of not wearing a seatbelt—was unreasonable. On the individual-liberty side of the equation, the dissent emphasized the "obvious toll" of a custodial arrest "even when the period of custody is relatively brief," including not only the "potentially dangerous" detention period but also the longstanding harms caused by having an arrest on one's permanent public record. *Id.* at 364. And on the government-interest side of the equation, the custodial arrest served no legitimate law enforcement interests where the defendant was not a repeat offender, posed no danger to the community, and was unlikely to flee. *Id.* at 370.[14]

Finally, in prescient language, the dissent noted that the majority's new "*per se* rule" has "potentially serious consequences of the everyday lives of

[14] The trial court in this case also relied on *Columbia v. Wesby* to find that the Fourth Amendment allows warrantless misdemeanor arrests if the arresting officer has probable cause to believe that an offense occurred and the offense was committed or continuing to be committed in that officer's presence. A. 18-19 **(**citing *Columbia v. Wesby*, 583 U.S. 1 (2018)). Because *Wesby* recites *Atwater* but does not modify *Atwater*'s rule, it is not addressed separately here.

Americans": it gives police officers "unfettered discretion to choose [to arrest] without articulating a single reason why such action is appropriate," and this "unbounded discretion carries with it grave potential for abuse." *Id*. at 371-72. The dissent observed that "as the recent debate over racial profiling demonstrates all too clearly, a relatively minor traffic infraction may often serve as an excuse for stopping and harassing an individual," and as a result of the majority's ruling "the arsenal available" to officers now includes a full custodial arrest. *Id.* at 372. History has proven these fears all too true, as detailed below in Part V.A.5.

Not surprisingly, the narrow majority opinion in *Atwater* has engendered significant criticism among commentators and legal scholars in the two decades since it was issued, particularly for how it grants law enforcement unfettered discretion to carry out "unnecessary and disproportionate arrests." Richard S. Frase, *What Were They Thinking? Fourth Amendment Unreasonableness in Atwater v. City of Lago Vista*, 71 Fordham L. Rev. 329, 329 (2002) (noting that "[t]he extremely broad arrest power recognized by the Court" creates "grave potential for abuse").[15]

[15] *See also, e.g.,* Jason M. Katz, *Atwater v. City of Lago Vista: Buckle-Up or Get Locked-Up: Warrantless Arrests for Fine-Only Misdemeanors Under the Fourth Amendment*, 36 Akron L. Rev. 491, 542 (2003) (critiquing the *Atwater* majority's holding and explaining that it "serves to tolerate and further those officers that participate in racial profiling"); Eric Manch, *Throwing the Baby Out with the Bathwater: How Continental-Style Police Procedural Reforms Can Combat Racial Profiling and Police Misconduct*, 19 Ariz. J. Int'l & Comp. L. 1025, 1026 (2002) (noting that under the *Atwater* holding, "an officer may choose to arrest based on the scofflaw's skin color or personal creed," and the decision "threatens to erode the trust citizens have in their police departments"); Patrick S. Yatchak, *Breaching the Peace: The Trivialization of the Fourth Amendment Reasonableness Standard in the Wake of* Atwater v. City of Lago

Twenty-two years later, no Maine court has ever adopted *Atwater,* and for good reason: to adopt *Atwater* would nullify the reasonableness requirement in Maine's Constitution and would be unfaithful to Maine's "core state constitutional value" that all seizures must be reasonable. This Court's focus on reasonableness is consistent with Justice O'Connor's dissent in *Atwater*, which calls for a balancing of "the degree to which [a search or seizure] intrudes upon an individual's privacy" against "the degree to which it is needed for the promotion of legitimate governmental interests." *Atwater*, 532 U.S. at 361. This Court should reject *Atwater* and apply its own jurisprudence to Caleb Gaul's claim under the Maine Constitution.

4. Decisions from other states' high courts offer persuasive constitutional analyses that are consistent with Maine's core constitutional value of freedom from unreasonable seizure.

In the 22 years since *Atwater* was decided, many state courts have rejected the 5-4 majority's reasoning on state law grounds, finding it inconsistent with their

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Vista*, 121 St.ct. 1536 (2001)*, 25 Hamline L. Rev. 329, 368 (2002) (observing that under the Atwater rule, "[t]his unbridled discretion afforded to police officers opens the floodgates for a potential deluge of pretextual arrests"); Rachael M. Dockery, *Atwater v. City of Lago Vista: A Simple, Bright-Line Holding Results in Future Fourth Amendment Confusion*, 55 Ark. L. Rev. 577, 578 (2002) (noting that although *Atwater* aimed to create a bright-line rule, "this purportedly simple rule seriously complicates the Supreme Court's Fourth Amendment jurisprudence"); Laurence A. Benner, *Protecting Constitutional Rights in an Age of Anxiety: A New Approach,* American Bar Association's Human Rights Magazine (April 1, 2002) ("Although the Fourth Amendment was intended by the Framers to protect against the arbitrary exercise of power, in *Atwater* the Supreme Court, by the margin of a single vote, abdicated its role as guardian of that constitutional protection"); Shawn M. Mamasis, *Fear of the Common Traffic Stop - "Am I Going to Jail?" the Right of Police to Arbitrarily Arrest or Issue Citations for Minor Misdemeanors in Atwater v. City of Lago Vista*, 27 T. Marshall L. Rev. 85, 87–88 (2001) (noting that the Atwater decision "has been widely condemned" and observing "the high probability of abuse" raised by the decision).

own more protective constitutional values and traditions. These state court decisions offer persuasive analyses that are far more faithful to Maine's core constitutional value of prohibiting all "unreasonable" seizures.

In *State v. Bricker*, for example, the New Mexico court of appeals declined to follow the *Atwater* majority when interpreting its state constitution, noting that (even just four years after the decision) "[s]everal state courts have distanced themselves from *Atwater*." *State v. Bricker*, 134 P.3d 800, 806 (N.M. Ct. App. 2006) (citing cases). The New Mexico court explained that its courts preferred a sensitive "balancing-of-interests test for reasonableness," rather than a "bright-line test" like that announced by the *Atwater* majority. *Id.* at 807. Instead, the court embraced the reasoning in Justice O'Connor's dissent: "the reasonableness inquiry require[s] not only a determination of the existence of probable cause, but also an evaluation of the seizure [for reasonableness]. . . by assessing the intrusion upon individual privacy against the need to promote legitimate governmental interests." *Id.* at 805.

Likewise, in *State v. Askerooth*, Minnesota's high court rejected *Atwater* as inconsistent with its own constitutional values and precedents. *State v. Askerooth*, 681 N.W.2d 353 (Minn. 2004). The court held that "*Atwater*'s sharp departure from our traditional understanding of the protections from unreasonable seizure provides a similar principled basis for us to look to our own constitution." *Id.* at

362. Importantly, the court found that "Atwater's apparent removal of any consideration of a balancing of individual interests with governmental interests troubles us because this removal is in tension with a broad range of our precedent applying the Fourth Amendment." *Id*.

In *Lunn v. Commonwealth*, the high court of Massachusetts observed that warrantless misdemeanor arrests have long been found unlawful under Massachusetts common law unless the misdemeanor "amount[s] to a breach of the peace," and noted that the court has "consistently enforced" this breach of the peace requirement for misdemeanor arrests—both before and after *Atwater*. *Lunn v. Commonwealth*, 78 N.E.3d 1143, n.20 (Mass. 2017). In doing so, the Massachusetts high court expressly acknowledged the contrary holding in *Atwater*, but chose not to adopt that holding. *Id.* (cataloguing Massachusetts decisions finding warrantless misdemeanor arrests not involving breach of the peace unlawful, and then stating: "*Contrast Atwater v. Lago Vista*, 532 U.S. 318, 327-355 (2001) (surveying common law; holding that Fourth Amendment to United States Constitution does not require breach of peace for warrantless misdemeanor arrest).").[16]

[16] In a later case, *Commonwealth v. Buckley*, a case about the legality of pretextual traffic stops, the Massachusetts court cited *Atwater* for the general statement that the Fourth Amendment (and its Massachusetts counterpart) must often "be applied on the spur (and in the heat) of the moment" and this favors clear standards. *Commonwealth v. Buckley,* 90 N.E.3d 767, 775 (Mass. 2018). But *Buckley* did not endorse or adopt the holding of *Atwater*, and *Buckley* did not in any way disapprove of its earlier departure from *Atwater*'s holding in *Lunn*.

And in *Bayard*, the high court of Nevada rejected *Atwater* in favor of broader state constitutional protections against unreasonable misdemeanor arrests. *State v. Bayard*, 71 P.3d 498 (Nev. 2003). The court noted that "[a]lthough the Nevada Constitution and the United States Constitution contain similar search and seizure clauses," it was "free to interpret" its own constitutional provision more expansively than the federal analogue. *Id* at 502. The court held that under its constitution, "[t]o make a valid arrest based on state constitutional grounds, 'an officer's exercise of discretion must be reasonable.'" *Id.* (citation omitted). In keeping with the policy concerns raised in Justice O'Connor's dissent, the court reasoned that its rule "will help minimize arbitrary arrests based on race, religion, or other improper factors and will benefit law enforcement by limiting the high costs associated with arrests for minor traffic offenses." *Id.*

Many other state courts, including the high courts of Montana and Ohio, have rejected from *Atwater* and interpreted their own constitutional protections more broadly. *See, e.g.*, *State v. Bauer,* 36 P.3d 892 (Mont. 2001) (holding that under the Montana Constitution, it was unreasonable for a police officer to effect a custodial arrest for a non-jailable offense absent special circumstances); *State v. Brown,* 792 N.E.2d 175 (Ohio 2003) (applying the Ohio Constitution and holding that arrest of jaywalker violated the constitutional provision against unreasonable seizures); *see also People v. McKay*, 41 P.3d 59, 84 (Cal. 2002) (Brown, J.,

concurring in part and dissenting in part) ("Requiring the police to behave reasonably—i.e., to assess their conduct in light of all the surrounding circumstances—is not asking too much. It is the same burden we impose on every adult. The Constitution demands no less of the government."); *New York v. Abdul-Akim*, 910 N.Y.S.2d 764 (2010), WL 1856007, at **11-12 (stating that, "this court does not find *Atwater* to be controlling or even persuasive authority," and holding that "even if [the officer] had probable cause to believe that defendant . . . drove his car while unlawfully using a cell phone, that was not a valid predicate for the resultant arrest, search of the car, and recovery of the firearm"); *State v. Harris*, 916 So.2d 284, 289 (La. Ct. App. 2005) ("Considering Louisiana cases, we conclude that an officer's exercise of the discretion to arrest for a minor misdemeanor offense must be reasonable rather than arbitrary. Accordingly, the trial judge must find that in addition to probable cause, there were circumstances requiring immediate arrest for an offense which Louisiana customarily requires only a summons for a violation of the States littering law.").

The persuasive analysis in these state court decisions are consistent with Maine's core constitutional value of prohibiting all "unreasonable" seizures. Montana, Ohio, Minnesota, Nevada, and New Mexico each emphasized that arrests must, under their constitutions, be reasonable. *Bauer*, 36 P.3d at 894; *Brown*, 792 N.E.2d at 179; *Askerooth*, 681 N.W.2d at 356; *Bayard*, 71 P.3d at 246; *Bricker*,

134 P.3d at 804. Each state has further reasoned, like Maine, that reasonableness under their state constitutions requires balancing government interests with the intrusions on privacy and liberty caused by an arrest. *Bauer*, 36 P.3d at 895; *Brown*, 792 N.E.2d at 178; *Askerooth*, 681 N.W.2d at 362; *Bayard*, 71 P.3d at 247; *Bricker,* 134 P.3d at 807. And each state has concluded that application of those principles requires rejecting *Atwater*. These rationales apply with equal force to Maine's Constitution.

5. Since *Atwater*, social science research has validated the *Atwater* dissent's concerns about arbitrary arrests and highlighted the far-reaching harms of unreasonable custodial arrest.

In the two decades since *Atwater* was decided, social science research has powerfully undercut the majority's reasoning and provided further validation for the concerns expressed in Justice O'Connor's dissent, for at least three reasons.

First, one key component of the *Atwater* majority's reasoning was its skepticism about "how bad the problem is out there": the Court speculated that warrantless misdemeanor arrests were infrequent and "wonder[ed] whether warrantless misdemeanor arrests" even "need constitutional attention." *Atwater*, 532 U.S. at 352-53. But the majority's unfounded speculation that arrests for minor misdemeanors were infrequent and not a "problem" was incorrect. Atwater's petition for rehearing provided statistics indicating that these kinds of arrests were common, with an estimated 250,000 annual arrests occurring nationwide at the

time for minor traffic violations alone. Richard S. Frase, *What Were They Thinking? Fourth Amendment Unreasonableness in Atwater v. City of Lago Vista*, 71 Fordham L. Rev. 329, 366 nn.172-75 (2002) (citing Atwater's Petition for Rehearing, *Atwater* (No. 99-1408)). And as discussed in more detail below, more recent empirical research has shown that misdemeanor arrests are not at all uncommon.

Moreover, "how bad the problem is out there" is demonstrated not only by the sheer number of misdemeanor arrests, but also by the grave intrusion on personal liberty and dignity that each individual arrest causes, and by the constant threat that officials may exercise this unchecked power at any time. Caleb's arrest is a vivid example of the immediate and long-term harms inflicted by an unwarranted arrest. Caleb was handcuffed in front of his wife and kids, brought to the station to be fingerprinted and booked, subjected to an invasive strip search in which an officer conducted a visual inspection of his anal and genital areas, and held for several hours until he could make bail. A. 178, 181, 184 (Opp. S.M.F. ¶¶ 88-89, 107-09, 127-29.) He missed time from work and his wife was forced to pay $360 in bail to obtain his release. A. 185 (Opp. S.M.F. ¶ 133.) Even when he was released, the nightmare was not over. Caleb had to update his then-employer about the arrest, which then had consequences for Caleb's work serving clients with exacting security requirements. A. 186 (Opp. S.M.F. ¶ 142.) Under *Atwater*, an

officer has complete discretion to inflict these harms on any individual so long as they have probable cause to believe an offense occurred in their presence, no matter how trivial the offense. And many of those misdemeanor offenses—like the one at issue here—are themselves vague and highly susceptible to officer discretion. This case highlights the gravity of the harm that can result from Atwater's grant of unchecked power to law enforcement to make minor misdemeanor arrests.

Second, social science research has validated the dissent's concern, based on the then-recent "debate over racial profiling," that "unbounded discretion" in performing misdemeanor arrests "carries with it grave potential for abuse" 532 U.S. at 372. Study after study has shown that racial profiling by the police is all too common. *See* Radley Balko, *There's overwhelming evidence that the criminal justice system is racist. Here's the proof*, The Washington Post (June 10, 2020) (cataloguing dozens of recent empirical studies).[17] Black people in America are more likely to be pulled over by police while driving than white people. *Id.* They are more likely to be stopped when not driving. After they are stopped, Black

[17] *See* Radley Balko, *There's overwhelming evidence that the criminal justice system is racist. Here's the proof.* Washington Post (June 10, 2020), https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/. One cited study, for example, examined 95 million traffic stops by 56 police agencies and determined that "while black people were much more likely to be pulled over than whites, the disparity lessens at night, when police are less able to distinguish the race of the driver." Another cited study reported that Black motorists were 30 percent more likely to be pulled over than white motorists in Cincinnati; another that Black people in California were stopped at a rate 2.5 times higher than the per capita rate of whites.

people are more likely to be searched. *Id*.[18] They are more likely to be ticketed and arrested. *Id.* They are more likely to be on the receiving end of police use of force. *Id*. And Black people are far more likely to be killed by police in America. *Id*.[19]

Empirical research focused on the specific issue here—misdemeanor arrests—has found similarly alarming racial disparities. A 2020 multi-year study of misdemeanor arrests in eight major jurisdictions found that Black people were arrested for misdemeanors at the highest rates of any racial or ethnic group in all jurisdictions, and these disparities persisted despite fluctuations in the overall rates of arrest.[20] Misdemeanor arrest rates for Latinx people were generally the second-highest of any racial or ethnic group.[21] Although misdemeanor arrest rates varied over time and by jurisdiction, with rates in many jurisdictions increasing significantly from 2000-2010 and then decreasing 2010-present, stark racial disparities persisted.[22] Finally, the study found that despite fluctuations,

[18] A 2019 report from Vermont, for example, found that Black drivers were six times more likely than white drivers to be searched by police after a traffic stop. And another from North Carolina found that Blacks and Latinos were more likely to be searched than whites, even though searches of white motorists were more likely to turn up contraband. *Id*.

[19] Statistics on racial profiling by police in Maine are unavailable because "Maine law enforcement agencies lack the data needed to address racial disparities" in our state. Matt Byrne*, Maine Law Enforcement Agencies Lack the Data Needed to Address Racial Disparities*, Portland Press Herald (June 19, 2020). Unfortunately, there is no reason to think that the trends in Maine are any different than those nationally.

[20] Becca Cadoff, MPA, Preeti Chauhan, PhD, Erica Bond, JD, *Misdemeanor Enforcement Trends across Seven U.S. Jurisdictions*, Data Collaborative for Justice at John Jay College, at 2 (Oct. 2020), https://datacollaborativeforjustice.org/wp-content/uploads/2020/10/2020_20_10_Crosssite-Draft-Final.pdf.

[21] *Id*. at 9.

[22] *Id*.

misdemeanor arrests remained common and affected thousands of people in all jurisdictions: recent misdemeanor arrest rates ranged from lows of between 700 and 800 per 100,000 people (Prince George's County, MD; St. Louis, MO) to highs of between 2,500 and 4,500 per 100,000 (New York City; Louisville, KY).[23]

Third, social science research has underscored the devastating and long-lasting harms a custodial arrest can inflict, further undermining the *Atwater* majority's suggestion that this is not a "problem" needing "constitutional attention." The unrebutted expert testimony of Plaintiff Gaul's expert, Jonathan Barkan, Ph.D., explained that arrest as the first stage of criminal justice involvement can be a shattering, even devastating experience for many people. A. 185 (Opp. S.M.F. ¶ 137.) Arrestees suffer from a serious intrusion on their freedom of movement and, during the timeframe of their arrest, are unable to work or maintain relationships with friends and family. And jail confinement brings with it the added family stress arising from the uncertainty and unpredictability associated with pending court cases. A. 185 (Opp. S.M.F. ¶ 139.)

Empirical research has found that arrests for lower-level misdemeanors negatively affects individuals and their communities in a variety of ways, including "decreasing the likelihood of cooperation with law enforcement in the future," "[r]educing opportunities related to education, employment, and housing," and

[23] *Id.* at 6-7.

"[i]ncreasing the likelihood that an individual is stopped or arrested again as a consequence of reduced access to education, employment, and housing.[24] Any arrest, even for minor offenses, can have long-term effects on employment stability. A. 186 (Opp. S.M.F. ¶ 145.)[25] Moreover, handcuffing a person in public causes public shame and, if in front of the arrestee's family, distress and trauma to the family. Once a person is subject to custodial arrest, they are detained in jail until bail is set and the arrestee is able to pay it. Some arrestees are unable to pay bail, and many others are forced to languish in jail while waiting to gather bail money.

These harms are suffered by people who have committed no crime, pose no risk to public safety, and are not a flight risk. Contrary to the *Atwater* majority's holding, unwarranted misdemeanor arrest is plainly a harm that "need[s] constitutional attention." *Atwater*, 532 U.S. at 351-52.

B. Caleb Gaul's warrantless custodial arrest on a minor misdemeanor charge violated Maine's constitutional reasonableness requirement.

Viewing the evidence and all factual inferences in Caleb's favor (as the Court must at this stage), the intrusion on Caleb's liberty resulting from the

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[24] *See* Becca Cadoff, M.P.A., Preeti Chauhan, Ph.D., Erica Bond, J.D., *Misdemeanor Enforcement Trends across Seven U.S. Jurisdictions* (Oct. 2020) (Data Collaborative for Justice at John Jay College), at 4, https://datacollaborativeforjustice.org/wp-content/uploads/2020/10/2020_20_10_Crosssite-Draft-Final.pdf. (citing studies).

[25] *See also, e.g.,* Gary Fields, John R. Emshwiller, *As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime*, The Wall Street J. (Aug. 18, 2014) https://www.wsj.com/articles/as-arrest-records-rise-americans-find-consequences-can-last-a-lifetime-1408415402.

custodial arrest greatly outweighed any legitimate government need for the arrest, and was therefore unreasonable in violation of Article I, Section 5.

On the one hand, the custodial arrest by Deputy Morneau imposed an extreme intrusion on Caleb's liberty. A.178-79 (Opp. S.M.F. ¶¶ 89-90.) Morneau handcuffed and arrested Caleb in front of his wife and children. A. 181 (Opp. S.M.F. ¶ 106.) He then transported Caleb to the jail, where Caleb was fingerprinted, required to take a mug shot, and subjected to an invasive strip search in which he was required to remove all of his clothes and subjected to a visual inspection of his anal and genital areas. Caleb was then held in jail for hours until his wife could pay his $360 bail, and was prevented from going to work. A. 181, 184, 186-87 (Opp. S.M.F. ¶¶ 107-108, 128-129, 146, 155.) Although some of these events took place after Defendant Morneau departed from the jail, it was Morneau's arrest that triggered all subsequent intrusions. The arrest has had long-term consequences for Caleb and his family, A. 185-86 (Opp. S.M.F. ¶¶ 138, 140-144, 146-149), consistent with studies demonstrating the harmful consequences of arrest and even short-term incarceration on employment, family stability, and stress. A 185-86 (Opp. S.M.F. ¶¶ 137, 139, 145.) This incarceration is not only harmful to the individual and family, but costly for the taxpayer. A. 187 (Opp. S.M.F. ¶ 156). It is for these reasons that Professor Steven Barkan has offered the uncontested expert opinion that any legitimate government interests in enforcing

low-level criminal offenses are often better served by issuing a citation (or defusing the conflict) in lieu of custodial arrest. A. 187-88 (Opp. S.M.F. ¶¶ 150, 161).

On the other side of the reasonableness equation, there was no legitimate government interest in a full custodial arrest. There was no legitimate interest in subjecting Caleb to a custodial arrest in lieu of issuing a summons or requesting an arrest warrant from a neutral arbiter.[26] Pretrial incarceration, however brief, is generally permissible only for regulatory purposes such as preserving public safety or ensuring appearance in court. *See United States v. Salerno*, 481 U.S. 739, 749 (1987). Neither justification applies here. There was no evidence suggesting Caleb would not show up in court. And even if there had been, law enforcement knew where Caleb lived because the arrest occurred on his own property. Moreover, there was no reason to believe Caleb presented any public safety threat or could not safely drive away. He was not, for example, arrested for an offense that made driving his vehicle impermissible or unsafe. No reasonable officer would believe that Caleb's conduct presented an articulable public safety or flight risk.

[26] With regard to summons, courts have recognized that a custodial arrest may not be necessary when "an alternative summons was available." *People v. Bradford*, 957 N.Y.S.2d 637 (N.Y. Co. Ct. 2010) (citing *People v. Troiano,* 35 N.Y.2d 476, 478). And with regard to seeking a warrant, Morneau admitted that "if there is no immediate flight risk or immediate public safety issue, there is no harm to requesting a warrant from a neutral arbiter instead of immediately performing a custodial arrest." A. 187 (Opp. S.M.F. ¶ 157.)

C. At minimum, Caleb Gaul should be permitted to proceed on his claim for declaratory relief.

Because there is a genuine dispute that Caleb's arrest violated the Maine Constitution, Caleb is entitled to a trial with respect to his claim for declaratory relief. Under the Uniform Declaratory Judgments Act, "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." 14 M.R.S. § 5953. In his Second Amended Complaint, Caleb requested "[a] declaration that the custodial arrest . . . was in excess of Defendants' authority and in violation of the Maine Constitution, statute, and common law." A. 75, 185 (Second Am. Compl. ¶¶ 4, 136.) Because an individual officer "may not invoke qualified immunity as a defense" to claims for "declaratory . . . relief," *Andrews v. Dep't of Env't Prot*, 1998 ME 198, ¶ 19, 716 A.2d 212. Caleb's claim for declaratory relief should be allowed to proceed.

D. Officer Morneau is not entitled to qualified immunity.

Deputy Morneau is not entitled to summary judgment based upon qualified immunity because he acted contrary to "clearly established" law. Qualified immunity shields governmental employees from liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Lyons v. Lewiston*, 666 A.2d 95, 99 (Me. 1995) (quotation omitted). Courts must first determine "whether the plaintiff's

constitutional rights were violated, and (2) whether those rights were so clearly established that reasonable defendants would have known that their specific actions transgressed those rights." *Lyons*, 66 A.2d at 99. "[T]he facts of previous cases need not be materially similar to the case at hand in order to conclude that one is not entitled to qualified immunity"; instead, "'a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question,' even if the specific action in question has not previously been held unlawful." *Clifford v. MaineGeneral Med. Ctr.*, 2014 ME 60, ¶ 64, 91 A.3d 567 (quoting *United States v. Lanier*, 520 U.S. 259, 271 (1997)) (finding defendant was not entitled to qualified immunity on Maine Civil Rights Act claim). A clearly established right can arise from just "a handful" of rulings from other jurisdictions. *Ryan v. Augusta*, 622 A.2d 74, 76 (Me. 1993) (finding a right clearly established based on cases from other federal circuits).

Here, as detailed above in Section V.A.2, it has long been clearly established as a "core state constitutional value" in Maine that "all" seizures must not be "unreasonable," based on a sensitive balancing of the intrusions on individual liberty against the government interests at stake. Me. Const. art. I, § 5; *Melvin*, 2008 ME 118, ¶ 13, 955 A.2d 245. Although *Atwater* held otherwise in its analysis of the Fourth Amendment, no Maine court has ever adopted *Atwater*. A reasonable officer therefore would have understood that his decision to subject Caleb to

warrantless custodial arrest for a minor misdemeanor offense of parking his truck in front of a bus and then immediately moving it when asked, in circumstances that presented no reasonable public safety or flight risk, was not reasonable.

VI. CONCLUSION

For the reasons set forth above, Appellant Caleb Gaul respectfully requests that this Court reverse the trial court's grant of summary judgment on Count I and remand for further proceedings.

Respectfully submitted this 14th day of July, 2023,

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