STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. YOR-23-89

CALEB GAUL,

Plaintiff-Appellant,

v.

JOSHUA E. MORNEAU,

Defendant - Appellee.

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

REPLY BRIEF FOR APPELLANT CALEB GAUL

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INTRODUCTION

Appellee Morneau's argument on appeal is built on a series of flawed premises. Appellee disregards this Court's primacy approach to constitutional interpretation, asserting that the Court must exercise restraint when asked to construe a provision of the Maine constitution any differently than its federal analogue. And Appellee disregards cardinal rules of summary judgment, relying on his own disputed version of the facts.

This Court can and should reject *Atwater*'s per se rule permitting warrantless misdemeanor arrests, and should instead apply a traditional balancing of the intrusion on individual liberty against the government interests at stake. Applying this balancing test and viewing the facts in Caleb's favor, as required on summary judgment, a jury could readily find that the severe intrusion of arresting Caleb on a minor misdemeanor charge outweighed any legitimate government interests.

ARGUMENT

I. Appellee misunderstands the primacy approach to interpretation of the Maine Constitution.

First, Appellee misunderstands the primacy approach to state constitutional interpretation, arguing that this Court is "reluctan[t] to construe analogous provisions of the Maine Constitution and the federal Constitution to provide different protections" and must exercise "restraint" when asked to independently

construe the state constitution. Red Br. 20-22. But this Court has held precisely the opposite. This Court follows the "primacy approach," which requires this Court to examine the merits of any state constitutional claim "independently of the federal constitutional claim." *State v. Athayde*, 2022 ME 41, ¶ 20; *State v. Moore*, 2023 ME 18, ¶ 17. That independent analysis respects our federalist system and gives primacy to the Maine constitution as the "primary protector of the fundamental liberties of Maine people." *State v. Larrivee*, 479 A.2d 347, 349 (Me. 1984). Interpreting Maine constitutional rights identically to parallel federal rights fails to account for the unique Maine values, policies, and circumstances that underpin our state constitution. Marshall Tinkle, State Constitutional Law in Maine: At the Crossroads, 13 Vt. L. Rev. 61, 78 (1988).

The Court is not, as Appellee suggests, bound by the Supreme Court's interpretation of analogous provisions of the federal constitution. Red Br. 22. State constitutional provisions do not "*depend* on the interpretation of" parallel federal provisions. *State v. Flick*, 495 A.2d 339, 343 (Me. 1985) (emphasis original). Instead, when analyzing the Maine constitution, the Court looks to federal precedent, including the United States Supreme Court, only as "*potentially persuasive* but not dispositive guidance." *State v. Fleming*, 2020 ME 120, ¶ 17 n.9 (emphasis added); *State v. Reeves*, 2022 ME 10, ¶ 41. Applying the primacy approach, this Court has repeatedly interpreted provisions of the Maine

constitution—including Section 5, Section 6, and other constitutional protections for the accused—as more protective than their federal analogues.[1]

Second, Appellee incorrectly assumes that this Court's interpretation of Maine's constitution depends solely on the drafters' original intent, and that evolving understandings of public policy are irrelevant to "the interpretation of constitutional provisions ratified decades or centuries before." Red Br. 26. 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 (citations omitted).

When this Court engages in its independent constitutional interpretation, that "review includes, without limitation, an examination of the text, legislative history, and general historical context of the state constitutional provision; relevant common law, statutes, and rules; economic and sociological considerations; and precedent from jurisdictions with similar provisions to the extent that precedent is deemed persuasive." *Moore*, 2023 ME 18, ¶ 18. This Court's constitutional analysis is informed by empirical research and scholarship that reveal "practical

[1] *See, e.g., Fleming*, 2020 ME 120, n. 9; *State v. Melvin*, 2008 ME 118, ¶ 13; *State v. Rees*, 2000 ME 55, ¶ 5-6; *State v. Sklar*, 317 A.2d 160, 171 (Me. 1974); *State v. Collins*, 297 A.2d 620, 627 (1972).

reality." *Fleming*, 239 A.3d 648, ¶¶ 19-22 (relying on social science research about implicit bias and census data for interpretation of constitutional guarantee of impartial jury).

II. No Maine Court has ever adopted *Atwater* until the trial court's decision in this case, and this Court should not do so now.

This Court should reject Appellee's invitation to adopt—for the first time—the *Atwater* majority's per se rule that a warrantless custodial arrest is automatically permissible whenever the officer has probable cause to believe an offense was committed in his presence, no matter how minor.

First, contrary to Appellee's suggestion, this Court has never adopted *Atwater's* controversial majority holding. Appellee's central argument is that the Law Court has previously stated that Section 5 is "coextensive" with the Fourth Amendment, and therefore the Court must follow the federal court's *Atwater* holding giving police broad discretion to conduct warrantless misdemeanor arrests. Red Br. 11-20. But this argument requires multiple leaps of logic. That this Court has held in some cases that Section 5 protections are comparable to the Fourth Amendment does not mean that the two constitutional provisions are identical for all cases and for all time. And the decisions Appellee relies on (*see* Red Br. 13-14) make general statements about coextensiveness without discussion, often in footnotes, providing little guidance on whether their reasoning extends to this case.

Moreover, while the Court has analogized to the Fourth Amendment in some Section 5 cases, in other cases it has concluded that Section 5 can offer different, broader protections than the Fourth Amendment. *See, e.g., State v. Melvin*, 2008 ME 118, ¶ 13[2]; *State v. Hutchinson*, 2009 ME 44, ¶ 18 n.9.

Critically, none of Appellee's cited cases analogizing to the federal Fourth Amendment address the issue here: whether a warrantless misdemeanor arrest is automatically constitutional whenever the arresting officer has probable cause to believe that an offense occurred in his presence. Appellee cites Maine cases relying on Fourth Amendment precedent to evaluate traffic stops (*State v. Gulick*, 2000 ME 170, 759 A.2d 1085) and other brief investigatory stops (*State v. Blier,* 2017 ME 103, 162 A.2d 829) under Section 5, but none of these cases analyzed a *warrantless custodial arrest* for a misdemeanor charge, and none of these cases adopted or even cited *Atwater*. Red Br. 14.[3]

[2] Appellee urges this Court to disregard *Melvin* because it addressed an "unsettled question of federal law," whereas here the U.S. Supreme Court has issued "clear precedent" in *Atwater*. But under the primacy approach, this Court's responsibility to independently interpret the state constitution is not limited to situations when there is an unsettled question of federal law. Similarly, Appellee disputes Appellant's reliance on *Bouchles*, claiming that there, the Court adhered to federal precedent. But even in Appellee's quoted language, this Court acknowledged that it would "seek guidance from other jurisdictions." *State v. Bouchles*, 457 A.2d 798, 802 (Me. 1983). That is precisely what Appellant asks this Court to do.

[3] Appellee also relies in part on *Clifford v. MaineGeneral Med. Ctr*, which did not address seizures at all but was instead concerned with searches. 2014 ME 60, ¶ 66, 91 A.3d 567, 586. Similarly, *State v. Martin* was also concerned exclusively with protections against searches rather than seizures. 2015 ME 91, 120 A.3d 113. And neither case referenced *Atwater* at all.

Appellee's primary support for his assertion that "warrantless arrests under both the Fourth Amendment and Section 5 are governed by the same 'reasonableness' standard" is not Maine law, but federal case law construing the federal Fourth Amendment. Red Br. 14-15 (citing *Atwater*, *Wesby*, and federal circuit decisions). Appellee's only cited Maine case law for this assertion, *State v. Parkinson,* actually undermines Appellee's position. Red Br. 15, 17. *Parkinson* held that an officer has probable cause to conduct a warrantless arrest if they reasonably believe "the arrestee did commit or is committing *the felonious offense*" (there, felony breaking and entering and theft). *Parkinson*, 389 A.2d 1, 5 (1978) (emphasis added). The *Parkinson* line of case law established a limited rule permitting warrantless arrests when the officer has a reasonable belief of a "*felonious* offense," not a misdemeanor offense. Appellee does not cite any Maine case law extending that rule to misdemeanors.

It is particularly inappropriate to infer adoption of *Atwater* from this Court's general pronouncements about coextensiveness in other Section 5 contexts, because *Atwater* itself was a sharp departure from the Supreme Court's (and this Court's) traditional understanding of the protection against unreasonable seizures. The *Atwater* majority deviated from traditional Fourth Amendment jurisprudence, abandoning the traditional balancing of individual and government interests and minting a new bright-line rule permitting warrantless misdemeanor arrests.

Atwater, 532 U.S. at 361-62 (J. O'Connor, dissenting) (rejecting the majority's "new rule" as "unsupported by our precedent" and "contrary to the principles that lie at the core of the Fourth Amendment"); *State v. Askerooth*, 681 N.W.2d 353, 362 (Minn. 2004) (noting "*Atwater*'s sharp departure from our traditional understanding of the protections from unreasonable seizure").

Second, Appellee exaggerates the *Atwater* majority opinion's power over this Court, repeatedly calling it "precedent" and labeling the powerful four-justice dissent irrelevant because a "slim" majority is still "controlling law." Red Br. 20-22. These would be good arguments to make to a federal court. But for this Court, under the primacy approach, the inquiry is very different. The U.S. Supreme Court's interpretation of a federal constitutional provision is not binding on this Court's interpretation of the Maine constitution, even when it addresses a comparable constitutional provision in similar factual circumstances. Instead, this Court looks to the interpretations of the Supreme Court only to the extent it finds their reasoning persuasive. *Reeves*, 2022 ME 10, ¶ 41; *Fleming*, 2020 ME 120, ¶ 17 n.9. *Atwater*'s majority ruling proscribes a constitutional floor, but "[o]f course, the States are free, pursuant to their own law, to adopt a higher [constitutional] standard" and "[t]hey may indeed differ as to the appropriate resolution of the values they find at stake." *Collins*, 297 A.2d at 626.

Contrary to Appellee's assertion, a strong four-justice dissent is highly relevant to this Court's assessment of whether a Supreme Court majority opinion's reasoning is persuasive. The *Atwater* dissent points out serious flaws in the majority's reasoning, undermining the decision's persuasive power and offering a compelling alternative analysis. *See* Blue Br. at 17-22. When this Court conducts an independent construction of a state constitutional provision, it routinely looks to the reasoning of the Supreme Court's dissenting opinion. *See, e.g., Collins*, 297 A.2d 620, 627 (disagreeing with recent U.S. Supreme Court majority opinion on the constitutional protection against self-incrimination and concluding that "[w]e agree with the observation of Mr. Justice Brennan in his dissent"); *see also Com. v. Clarke*, 960 N.E.2d 306, 320 (Mass. 2012) (declining to adopt U.S. Supreme Court majority's holding concerning the Fifth Amendment right to remain silent and instead adopting reasoning of Justice Sotomayor's dissent); *State v. Bricker*, 134 P.3d 800, 806 (N.M. Ct. App. 2006) (embracing reasoning of Justice O'Connor's *Atwater* dissent).

Appellee likewise incorrectly dismisses the decisions of other state courts as "not germane." Red Br. 21. When interpreting the Maine constitution, this Court looks to persuasive "precedent from jurisdictions with similar provisions." *Moore*, 2023 ME 18, ¶ 18. Here, the groundswell of state court decisions rejecting the *Atwater* majority's reasoning undercuts *Atwater*'s continued persuasiveness: at

least seven different state appellate courts have compellingly rejected *Atwater*. *See* Blue Br. 23-28.[4] The tidal wave of legal scholarship criticizing *Atwater* for facilitating disproportionate arrests and furthering racial profiling likewise casts serious doubt on the persuasiveness of *Atwater*'s reasoning. *See* Blue Br. 22 & n. 15.

Third, Appellee conflates two separate steps of the analysis when he argues that the *Atwater* dissent's adoption of a reasonableness balancing test is unpersuasive given the specific nature of Caleb's misdemeanor arrest. Red Br. 22-23. The threshold question the *Atwater* court grappled with is purely legal: is the appropriate test for analyzing the constitutionality of warrantless misdemeanor arrests under the Fourth Amendment a per se rule or a fact-sensitive balancing test? The question of the appropriate test for evaluating warrantless misdemeanor arrests is distinct from how that test applies to the specific facts of a given arrest, and this Court should reject Appellee's attempt to conflate the issues.

The *Atwater* majority and the dissent both framed the threshold legal issue as how to analyze "warrantless misdemeanor arrests" under the Fourth Amendment, as distinct from the already settled question of how to analyze warrantless *felony* arrests. *Atwater*, 532 U.S. at 351; *id.* at 362-63 (O'Connor, J.,

[4] While Appellee is of course correct that these decisions are not binding on this Court, neither is *Atwater*. These other state court opinions have precisely the same status as does the *Atwater* majority: they are useful guides to the extent their reasoning is persuasive.

dissenting). The majority took a per se approach and held that "[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Id*. at 354. The dissent, by contrast, rejected the majority's new per se rule and concluded that the Fourth Amendment's traditional balancing-of-interests test should apply to warrantless misdemeanor arrests. *Id*. at 361.

The *Atwater* dissent's conclusion that warrantless misdemeanor arrests must be evaluated by the traditional reasonableness balancing-of-interests is squarely applicable here, regardless of the precise nature of the misdemeanor charge at issue, as detailed in Appellant's Opening Brief. *See* Blue Br. at 18-32. Consistent with the plain language of Section 5, Maine has long applied a traditional fact-sensitive balancing test to evaluate searches and seizures. *See Atwater*, 532 U.S. at 360-61 (O'Connor, J., dissenting). Adopting the *Atwater* rule and abandoning this traditional reasonableness balancing would be both "unsupported by [this Court's] precedent" and "contrary to the principles that lie at the core of" Section 5. *Id*. at 361-62. There is no evidence that Maine had any "clear and consistently applied" common law rule for warrantless misdemeanor arrests, and so the Court "must engage in the balancing test required by" Section 5. *Id.* at 363. Finally, the *Atwater* majority's per se rule gives officers "unbounded discretion" to enact custodial

arrests, and that "carries with it grave potential for abuse." *Id.* at 372. The *Atwater* dissent's reasoning on each of these points is applicable and persuasive here.

The general applicability of the *Atwater* dissent's reasonableness analysis is further underscored by the cases that have adopted it. Contrary to Appellee's suggestion, state courts have rejected the *Atwater* majority not only in cases involving fine-only offenses, but also in cases involving jailable offenses. *See, e.g.*, *Bricker*, 134 P.3d at 806-07 (adopting *Atwater* dissent and holding that "it is appropriate to apply the balance-of-interests standard" to custodial arrest for driving with suspended license, even though "we are faced in this case with a jailable offense and not a fine-only offense")[5]; *Lunn*, 78 N.E. 3d 1143, 1155 n. 20 (finding arrest on federal immigration detainer following state criminal charges unreasonable, observing that warrantless misdemeanor arrests were not lawful at common law in Massachusetts unless they amounted to breach of the peace).[6] The *Bricker* court explained, "[j]ailability cannot justify overlooking an unlawful

[5] Appellee incorrectly states that *Bricker* involved a "non-jailable offense," Red Br. 24, but the offense there carried a sentence of up to 364 days in jail. *Bricker*, 134 P.3d at 807. Appellee also argues that *Bricker* is inapposite because the court made no statements about the co-extensiveness of the Fourth Amendment and its own corresponding constitutional. But as discussed above, this Court's pronouncements in other cases about co-extensiveness do not bind this Court to interpret Section 5 in lockstep with the federal courts for all purposes or for all time.

[6] Appellee suggests *Lunn* is distinguishable because it relied in part on a Massachusetts common law tradition that warrantless misdemeanor arrests were permissible if they involved a breach of the peace, while (Appellee argues) Caleb was charged with a breach of the peace offense. But as *Lunn* explained, "breach of the peace" requires "disorderly, dangerous conduct disrupting of public peace," actions that cause "a public disturbance or endanger public safety," *Lunn*, 78 N.E. 3d at 1154-55. Caleb's parking his truck in front of a school bus and then moving it within two minutes of the officer's request falls well short of that standard. Moreover, Appellee identifies no clear or consistent rule at Maine common law allowing warrantless misdemeanor offenses whenever they involve a breach of the peace.

custodial arrest and permitting searches based on the unlawful arrest. The intrusion upon one's liberty is no less significant in cases in which the offense is jailable than in cases in which the offense is non-jailable." *Bricker*, 134 P.3d at 807.

In sum, the threshold legal question of what legal test applies to analyze "warrantless misdemeanor arrests" under Section 5 is distinct from the question of how that test applies to the specific facts of any arrest, and this Court should decline Appellee's invitation to conflate the issues. It is only the second question before the Court—how the reasonableness balancing-of-interests should be applied to the specific facts of the case—that turns on the specifics of the alleged offense and other factual circumstances of the arrest. *See Atwater*, 532 U.S. at 368-371 (O'Connor, dissenting) (applying reasonableness balancing test to facts of Ms. Atwater's arrest). As discussed below, a proper application of that fact-sensitive balancing test demonstrates that Caleb's arrest was unreasonable.

III. Applying the traditional balancing-of-interests test, Caleb Gaul's arrest was unreasonable under Section 5 of the Maine Constitution.

A reasonable juror could readily conclude that Caleb Gaul's custodial arrest on a minor Class D misdemeanor offense, in circumstances that presented no public safety or flight risk, was unreasonable in violation of Article I, Section 5.

As an initial matter, Appellee's brief rests entirely on his own version of the facts, ignoring the cardinal summary judgment rule that "[i]n reviewing an appeal

from a summary judgment, [the Court] view[s] the evidence in the light most favorable to the party against whom the judgment was entered." *Watt v. UniFirst Corp*., 2009 ME 4, ¶ 2 (vacating summary judgment) (cleaned up). Appellee's factual recitation relies on multiple asserted facts that Caleb disputed in the trial court with supporting record citations. Red Br. 3-6 & nn. 2-6. Appellee was unsuccessful in his efforts to urge the trial court to resolve these disputes of fact in his favor, and he should not be permitted to have this Court step in as factfinder. Appellee is free to argue his version of events to a jury on remand, but summary judgment "is not a substitute for trial." *Cookson v. Brewer School Dept*., 974 A.2d 276, ¶ 12 (cleaned up).

Resolving all factual disputes and taking all reasonable inferences in Caleb's favor, as required on summary judgment, a reasonable juror could conclude that the severe intrusion on Caleb's liberty resulting from the custodial arrest outweighed any legitimate government need for the arrest. As detailed in Caleb's Opening Brief, he was handcuffed in front of his wife and children on his own property, taken to a police station, strip-searched, and locked in a cell until his wife could post his bail. This extreme intrusion on his personal liberty came after he parked his truck briefly in front of a school bus and then moved it within two minutes of the officer's request. Caleb was charged with a Class D misdemeanor of

"obstruction government administration," which was later downgraded to a Class E misdemeanor of "obstructing a public way" and then dismissed altogether.

Appellee seeks to justify the custodial arrest by asserting that Deputy Morneau had "specific and articulable facts" that warranted his arrest of Caleb Gaul, but this statement is not supported by citations to any actual specific and articulable facts in the record. Red Br. 24 (quoting *Atwater*, 532 U.S. at 366 (O'Connor, J., dissenting). Appellee relies heavily on Morneau's feelings, claiming that Morneau "had a concern about Gaul's behavior" and found it "alarming that someone would blockade a bus." Red. Br. 5, 24. But an officer's subjective feelings do not create the "specific and articulable facts" that can "reasonably warrant the additional intrusion of a full custodial arrest." *Atwater*, 532 U.S. at 366 (O'Connor, J., dissenting) (citing *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). [7] Instead, "it is imperative that the facts be judged against an objective standard," because "[a]nything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches." *Terry*, 392 U.S. at 21 (cleaned up).

Viewing the facts in the light most favorable to Caleb, as required on summary judgment, the specific facts are these: as Caleb turned the corner down

[7] If a law enforcement officer's subjective feelings about an individual were enough to support an arrest, then an officer could always avoid liability by simply declaring on summary judgment that they were alarmed and concerned.

the icy private drive, he 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 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," and explained that "[i]f my wife would've come down here, she would've smashed into your van." A. 176 (Opp. S.M.F. ¶¶ 71, 73.) When the bus driver still refused to move the bus, Caleb parked his truck in the safest place permitted, at the base of the hill in front of the school bus, and then walked back to his house to warn his wife about the safety risk. A. 160, 177 (Opp. S.M.F. ¶¶ 10, 74-75.) When Caleb returned soon after, he saw Deputy Morneau with his hand on his gun, and Morneau immediately told him to "freeze and put your hands up." A. 177 (Opp. S.M.F. ¶ 77.) 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.) There are no facts that would indicate to an objectively reasonable officer that Caleb posed a public safety threat, nor are there any facts that would support a reasonable belief that Caleb posed any flight risk. These facts fall well short of warranting the severe additional intrusion

of a custodial arrest, rather than issuing a summons or requesting an arrest warrant.[8]

Deputy Morneau also attempts to justify the arrest with claims about what he and others in positions of power "wanted": the school district transportation director "wanted to press charges against Gaul," and Morneau "wanted Gaul to be subject to bail conditions to prevent future issues." Red. Br. 4, 24. But Morneau's "wants" are irrelevant; the reasonableness of a custodial arrest is measured against an objective standard. There are no specific and articulable facts supporting an objectively reasonable belief that bail conditions were necessary here, given the minor misdemeanor charge and the total absence of any public safety or flight risk.

IV. Qualified immunity does not bar Caleb's claims.

Qualified immunity does not bar Caleb's claims for either declaratory or monetary relief. As to Caleb's claims for prospective relief, Appellee does not dispute that the qualified immunity defense is irrelevant: this defense cannot be invoked as to claims for declaratory relief. *Andrews v. Dep't of Env't Prot*, 1998 ME 198, ¶ 19, 716 A.2d 212.

[8] As discussed above, Appellee's factual recitation also relies on several disputed facts. Red Br. 3-5 & nn. 3-6 (citing Defendant's statement of material facts ¶¶ 12, 21, and 23). Caleb denied each of these facts (with supporting record citations) in his summary judgment opposition, and the trial court appropriately did not include these facts in its factual recitation. The Court should disregard these disputed facts on appeal.

As to Caleb's claims for monetary relief, and as detailed in his Opening Brief, it has long been clearly established as a "core state constitutional value" in Maine that seizures must not be "unreasonable," based on a balancing of the intrusions on individual liberty against the government interests at stake. Me. Const. art. I, § 5; *Melvin*, 2008 ME 118, ¶ 13.[9] *Atwater*'s ruling does not nullify the values underlying Maine's constitution or this Court's earlier adherence to a balancing test. The *Atwater* majority's deviation from this traditional balancing test under federal law does not render otherwise settled issues of Maine law unsettled. A reasonable officer would have understood that arresting Caleb for a minor misdemeanor offense–parking his truck in front of a bus and then immediately moving it when asked—was unreasonable. Qualified immunity does not bar Caleb's claim for monetary relief.

I. 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.

[9] Appellee, relying exclusively on federal law, suggests that a right is only clearly established if a multitude of factually similar cases identify constitutional violations in similar circumstances. Red Br. 29-30. But this Court has determined that a right may be clearly established for qualified immunity purposes "even though that action has not previously been held to be unlawful." *Andrews v. Dep't of Envtl. Protection,* 1998 ME 198, ¶ 12, 716 A.2d 212, 217; *see also Ryan v. Augusta*, 622 A.2d 74, 76 (Me. 1993) (stating "[i]t is not necessary, however, for the action in question to have been previously held to be unlawful" and relying on three cases from the Seventh and Fifth Circuits to find a clearly established right). For the qualified immunity analysis, like other matters of state constitutional law, this Court has not and need not rotely follow federal case law.

Respectfully submitted this September 22, 2023,

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