No. 23-817

In The
Supreme Court of the United States

MICHAEL DONATELLI and PETER CHIEN,

Petitioners,

v.

SCOTT E. JARRETT, DANA M. KELLEY, GERARD HAMILTON, ANTHONY GERMAINE, STEVEN BROY, JAMI LADAKAKOS, DAN FEENEY, ROD BELANGER, TOWN OF OLD ORCHARD BEACH,

Respondents.

On Petition For Writ Of Certiorari To The Maine Supreme Judicial Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Petitioners properly raised below an issue under the Fourteenth Amendment and whether that issue was addressed by either the Maine Superior Court or the Maine Supreme Judicial Court.

2. Whether the decisions by the Maine Supreme Judicial Court implicate a question under federal law that requires resolution by this Court.

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JURISDICTION

This Court lacks jurisdiction to review the decision by the Maine Supreme Judicial Court, sitting as the Law Court ("the Law Court"). As discussed more thoroughly below, 28 U.S.C. § 1257(a) confers jurisdiction on this Court to review final judgments rendered by the highest court of a state only if Petitioners Michael Donatelli and Peter Chien raised a violation of the United States Constitution or federal law below or the state court expressly decided such an issue. The supposed constitutional violation the Petitioners mention in their Petition – an "apparent" violation of the Fourteenth Amendment – was neither properly raised below nor referenced by either the Maine Superior Court or the Law Court. Therefore, this Court lacks jurisdiction to conduct certiorari review of the Law Court's decision in this matter.

INTRODUCTION

Respondents Scott E. Jarrett, Dana M. Kelley, Gerard Hamilton, Anthony Germaine, Steven Broy, Jami Ladakakos, Dan Feeney, Rod Belanger, and Town of Old Orchard Beach respectfully request that the Court deny the Petition for Writ of Certiorari seeking review of the Memorandum of Decision by the Law Court issued on October 10, 2023, which affirmed the Order of the Maine Superior Court for York County ("the Superior Court") dated November 17, 2022. Pet. at 9-11 (App. A (Law Court decision)). The Petitioners

did not raise below – and the courts below did not decide – the federal question the Petitioners have identified in their Petition. Therefore, the Court lacks jurisdiction to review the Law Court's decision. In any event, the Petitioners have failed to generate an issue worthy of review by this Court. For both of these reasons, the Court should reject the Petitioners' request.

STATEMENT OF THE CASE

This is the second lawsuit Petitioners filed against Respondent Town of Old Orchard Beach ("the Town") and several Town employees arising out of events in 2017. The Superior Court dismissed with prejudice the first lawsuit, and the Law Court affirmed that judgment. This Court subsequently denied the Petitioners' request for a writ of certiorari to review the Law Court's decision in that matter. *See Chien v. Jarrett*, No. 22-1250 (U.S. Oct. 2, 2023).

The two lawsuits involve the same parties or their privies and arose out of the same nucleus of operative facts. In the Complaint in the present case, the Petitioners alleged a course of conduct by one or more of the Respondents beginning in May of 2017 and ending in October of 2017. Fifty-eight paragraphs in the "Background Facts" section of the Complaint are either verbatim copies of or substantively identical to paragraphs in the background section of the complaint in the Petitioners' first lawsuit. Only seven paragraphs in the Complaint's factual background section are unique

to this matter. Several of the "new" allegations simply purport to add details to events that were alleged in the Petitioners' first lawsuit.

Premised on those allegations, the Petitioners asserted several claims against the Respondents under the public accommodation provision of the Maine Human Rights Act, 5 M.R.S. § 4591 ("MHRA"). In Count I of their Complaint, Petitioners allege that Jarrett and the Town's police department discriminated against Chien on the basis of race. In Count II, Petitioners allege that the Respondents discriminated against them on the basis of sexual orientation. In Count III, Petitioners allege that Ladakakos and the Town's police department discriminated against Donatelli on the basis of disability.

Pursuant to a motion filed under Maine Rule of Civil Procedure 56, the Superior Court entered summary judgment for all Respondents and against the Petitioners on all claims. The Superior Court held the Petitioners' claims were barred by the doctrine of *res judicata*. In the alternative, the Superior Court also held the record facts did not support viable claims as a matter of law. In the order granting the Respondents summary judgment, the Superior Court also denied requests for relief by the Petitioners pertaining to several issues, including service of process, joinder of additional parties, and summary judgment. However, the Petitioners did not raise any arguments before the Superior Court based on an alleged violation of the Fourteenth Amendment by the Respondents, nor did

the Superior Court address such an alleged violation in its decision.

The Petitioners appealed the Superior Court's decision to the Law Court. In the introduction of their initial brief, the Petitioners represented that they "claim civil rights violation by the Appellee-Defendants upon the Appellant-Plaintiffs [sic] (Fourth Amendment of the United States Constitution), in particular, discrimination on the basis of race, sexual orientation, and disability enacted by the Appellee-Defendant upon the Appellant-Plaintiffs." However, the Petitioners did not refer to the Fourteenth Amendment in their brief, they did not include a constitutional question in their statement of issues, nor did they present any developed argument to the Law Court relative to such a question.

The Petitioners requested oral argument before the Law Court. They represented in their request that "[g]ranting oral argument is consistent with the principles of due process and the right to a fair hearing" and that they risked "losing due process under the federal constitution" if their request was not granted. The Law Court declined to hold oral argument on the Petitioners' appeal. The Law Court also denied as moot the Petitioners' motion to reconsider that ruling. Although the Petitioners suggested in their reconsideration motion that the Law Court was violating their rights under the Fourteenth Amendment by ignoring motions they made to the Superior Court and by declining to hold an oral argument, the Law Court did not reach any constitutional arguments in its rulings.

The Law Court issued a memorandum decision on October 10, 2023, denying the Petitioners' appeal. Pet. at 9-11 (App. A). The Law Court ruled that the Superior Court did not err in granting the Respondents summary judgment because the Petitioners had failed to dispute the material facts submitted by the Respondents in support of their summary judgment motion and the undisputed facts showed that the Respondents were entitled to judgment as a matter of law. *Id*. The Law Court further ruled that the Petitioners' other arguments – "all of which are based on a misapprehension of the Maine Rules of Civil Procedure" – were meritless. *Id*. The Law Court subsequently denied the Petitioners' motion to reconsider that ruling. Pet. at 31 (App. J).

REASONS FOR DENIAL OF THE WRIT

I. THIS COURT LACKS JURISDICTION TO REVIEW THE MAINE SUPREME JUDICIAL COURT'S DECISION.

This Court's authority to review final decisions by the highest court of a state derives from 28 U.S.C. § 1257. That statute provides in pertinent part:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in

> question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

§ 1257(a). The Petitioners do not maintain that jurisdiction for their Petition rests on the first two categories in Section 1257(a). Rather, they suggest that the Court can review the Law Court's decision under the third category by asserting that the decision to affirm the Superior Court's order was "in apparent violation of the Fourteenth Amendment." Pet. at 1.

However, jurisdiction under the third category in Section 1257(a) requires that the pertinent federal question be "raised, preserved, or passed upon in the state courts below." *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969). Based on its interpretation of the statutes governing its jurisdiction, this Court has long held that it "will not decide federal constitutional issues raised here for the first time on review of state court decisions." *Id*. Therefore, this Court has "consistently refused to decide federal constitutional issues raised here for the first time on review of state court decisions. . . ." *Id*.

This Court has also noted prudential reasons for declining to review state court decisions in which a federal question was not raised before or decided by the state courts. For example, "[q]uestions not raised below are those on which the record is very likely to be

inadequate, since it certainly was not compiled with those questions in mind." *Id*. Moreover, the Court has noted that "in a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality." *Id*. Finally, the Court has noted that a supposed federal issue "may be blocked by an adequate state ground." *Id*. In short, this Court has consistently recognized that state courts should be given the first opportunity to consider constitutional challenges in the context of potentially adequate state grounds. *Id*.

This Court has described what constitutes adequate preservation of federal issues before state courts. A party seeking certiorari review must clearly express before the state courts that its objection is premised on federal law rather than state law: "[T]here should be no doubt from the record that a claim under a *federal* statute or the *Federal* Constitution was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim at the time and in the manner required by the state law." *Webb v. Webb*, 451 U.S. 493, 501 (1981) (emphasis in original). This Court has held that passing references to violations of "due process" are insufficient to meet this standard, as the state courts could infer that the alleged violation implicated state – rather than federal – due process protection: "the passing invocations of 'due process' we found therein, *see* App. 196, 209, 226-227, fail to cite the Federal Constitution or any cases

relying on the Fourteenth Amendment, but could have just as easily referred to the due process guarantee of the Alabama Constitution, *see* Ala. Const., § 13 (1901), and thus they did not meet our minimal requirement that it must be clear that a *federal* claim was presented. . . ." *Adams v. Robertson*, 520 U.S. 83, 89 n.3 (1997) (emphasis in original) (citing *Webb*, 451 U.S. at 496-97 & 501; *Bowe* v. *Scott*, 233 U.S. 658, 664-65 (1914)). In fact, this Court considers it "settled" that "an averment making no reference to the Constitution of the United States and asserting no express rights thereunder is solely referable to the state constitution, which in this instance has a due process clause, and affords no basis whatever for invoking the jurisdiction of this court." *Bowe*, 233 U.S. at 665 (citing *Miller v. Cornwall R.R. Co.*, 168 U.S. 131, 134 (1897); *Harding v. Illinois*, 196 U.S. 78 (1904)).

In addition to raising a federal question below, the party seeking certiorari review of a decision by a state's highest court is obliged to demonstrate through the record that the state courts decided the pertinent federal question. *See* Sup. Ct. R. 14(1)(g)(i) (setting forth requirements for petition for writ of certiorari if review of a state-court judgment is sought). This requirement is two-fold: the proponent must show from the record that the issue was raised both before the trial court and before the state's highest court. *See id*.; *see also Webb*, 451 U.S. at 495-96 (holding that the party seeking certiorari review had failed to demonstrate in the record where the federal issue had been raised in the state trial court or in the state supreme

court). This Court has held that unless it affirmatively appears on the state court record that the state's highest court passed upon the question of constitutionality under the Constitution, "this Court is without jurisdiction of the appeal." *Bailey v. Anderson*, 326 U.S. 203, 207 (1945) (citations omitted). Moreover, if the state's highest court does not expressly discuss a federal constitutional challenge, this Court presumes it resolved the appeal without the need to address that challenge: "[t]his Court has frequently stated that when 'the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary.'" *Webb*, 451 U.S. at 495-96 (quoting *Street* v. *New York*, 394 U.S. 576, 582 (1969)).

The Petitioners have failed to meet any of these requirements to establish this Court's jurisdiction. First, the Petitioners have not demonstrated through the record that they preserved an argument under the Fourteenth Amendment. They have presented the Court with nothing to establish that they raised a Fourteenth Amendment issue against the Respondents with the Superior Court. Similarly, they have not shown that their appeal to the Law Court of the order granting the Respondents summary judgment and denying the Petitioners' various motions raised any Fourteenth Amendment issues. While the Petitioners suggest in the introduction to their initial Law Court brief that their claims in this case involve a Fourth Amendment violation, that is demonstrably untrue –

all claims were asserted under the MHRA. In any event, their initial brief to the Law Court does not include an assignment of error based on a federal constitutional violation. The Petitioners cannot ground jurisdiction on a federal constitutional claim that they did not raise or properly preserve below. *See Cardinale*, 394 U.S. at 438.

Second, the Petitioners have failed to demonstrate that the Maine courts actually decided a federal constitutional issue. The Superior Court did not refer to any constitutional issues – let alone a federal constitutional issue – in granting the Respondents summary judgment and denying the Petitioners' motions. Similarly, the Law Court's memorandum of decision does not allude to or decide any federal constitutional issues. Pet. at 9-11 (App. A). And even if the record could be read to suggest that the Petitioners had mentioned a federal constitutional issue at some juncture of the appeal, this Court should understand the Law Court's decision – which rests exclusively on Maine procedural rules and Maine law and makes no reference to constitutional issues – to mean that the constitutional issue was not properly preserved and that the Law Court was able to resolve the appeal without the need to address a federal constitutional issue. *See Webb*, 451 U.S. at 495-97. For all of these reasons, this Court lacks jurisdiction over the Law Court's decision because no federal constitutional issue was raised, preserved, or passed upon by Maine's courts.

II. THE PETITIONERS HAVE NOT RAISED AN ISSUE THAT MERITS RESOLUTION BY THIS COURT.

The Petitioners advance effectively three arguments in support of their Petition. First, they suggest that the Superior Court and the Law Court erred in failing to treat their "Motion for Leave for Summary Judgment on Count III Against Defendant and Instruction for Adverse Inference and Exclusion of Defendants' Testimonies or Evidence in Defense Against Count III" ("Motion for Leave") as a motion for sanctions. Pet. at 3. Second, the Petitioners maintain that the Law Court deprived them of a fair hearing by denying their motion for oral argument and by dismissing as moot their request for reconsideration of that motion. Pet. at 7. Third, the Petitioners suggest that the Law Court failed to comply with Maine law in resolving their appeal. Pet. at 7-8. None of these arguments involves an issue worthy of certiorari review by this Court.

A. The Maine courts' disposition of the "Motion for Leave" under the Maine Rules of Civil Procedure was correct as a matter of law and did not implicate any federal issues.

The Superior Court treated the "Motion for Leave" as a summary judgment motion and denied it for failing to comply with Maine Rule of Civil Procedure 56. The Law Court affirmed that ruling on appeal. Both rulings were legally correct. Moreover, neither ruling

turned on an issue of federal law. Therefore, the Court should decline to exercise certiorari review.

First, the Superior Court properly applied Maine law in denying the Petitioners' "Motion for Leave." The motion not only references summary judgment in the caption, it also requests entry of summary judgment in its prayer for relief. Pet. at 23 (App. F). While the prayer also requests an adverse-inference instruction and exclusion of evidence, it does so in the context of a jury trial. Pet. at 23-24 (App. F). Therefore, the Superior Court properly treated the "Motion for Leave" as a summary judgment motion. In addition, since the Petitioners did not submit a separate statement of material facts as required by Maine Rule of Civil Procedure 56(h), the Superior Court correctly denied the Petitioners' request for summary judgment on Count III. *See Levine v. R.B.K. Caly Corp.*, 2001 ME 77, ¶ 5, 770 A.2d 653 ("A party who moves for a summary judgment must properly put the motion and, most importantly, the material facts before the court, or the motion will not be granted, regardless of the adequacy, or inadequacy, of the nonmoving party's response.").

Second, even if the Petitioners had a valid argument with regard to spoliation of evidence (which the Respondents do not concede), they neglected to preserve it by failing to respond to the statement of material facts the Respondents filed in support of their summary judgment motion. Maine law provides that a party opposing a summary judgment motion supported by a statement of fact must submit "a separate, short, and concise opposition statement." M.R. Civ. P.

56(h)(2). Maine Rule of Civil Procedure 56(h)(4) further provides that "[f]acts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted." M.R. Civ. P. 56(h)(4); *see also Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted."). As the Superior Court noted, the Petitioners did not file any opposing statement of material facts, and certainly nothing that conformed to Rule 56(h)(2). Therefore, the Petitioners waived their opportunity to dispute facts that they believed should have been excluded due to alleged spoliation.

Third, the Law Court properly affirmed the Superior Court's rulings. Citing Rule 56, the Law Court rejected numerous arguments the Petitioners made on appeal as grounded on a misapprehension of the Maine Rules of Civil Procedure.

Fourth, the Petitioners' argument that the Maine courts erred in failing to construe their "Motion for Leave" liberally is contrary to established law. The Law Court has held repeatedly that "self-represented litigants are afforded no special consideration in procedural matters. . . ." *Clearwater Artesian Well Co. v. LaGrandeur*, 2007 ME 11, ¶ 8, 912 A.2d 1252 (citing *Dumont v. Fleet Bank of Me.*, 2000 ME 197, ¶ 13, 760 A.2d 1049). Therefore, under Maine law, the Petitioners are expected to comply with the Maine Rules of Civil Procedures and are accorded no special leniency

in terms of identifying the basis of a request for relief by motion. *See* M.R. Civ. P. 7(b)(1) ("An application to the court for an order shall be by motion which, unless made during a hearing or trial or under Rule 26(g), shall be made in writing, shall state with particularity the grounds therefor and the rule or statute invoked if the motion is brought pursuant to a rule or statute. . . ."). The Petitioners styled their motion as one for summary judgment, requested summary judgment in their prayer for relief, and failed to identify Maine Rule of Civil Procedure 37 as the basis for the relief they were seeking. Therefore, neither the Superior Court nor the Law Court erred in interpreting their "Motion for Leave" as a summary judgment motion and not a request for sanctions in advance of trial.

Finally, as the discussion above indicates, none of these rulings implicate issues of federal law that would justify certiorari review. As noted above, this Court's certiorari review of final decisions of the highest court in a state is limited to issues of federal law. 28 U.S.C. § 1257(a). Therefore, to the extent the Petitioners argue that this Court should overrule the Law Court's interpretation of the Maine Rules of Civil Procedure and the application of those rules to the "Motion for Leave," that argument seeks relief that is beyond this Court's authority. *See Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g*, 467 U.S. 138, 151 (1984) (acknowledging that this Court had no authority to revise a state supreme court's interpretation of its state's jurisdictional law); *Wardius v. Oregon*, 412

U.S. 470, 477 (1973) (acknowledging that state courts are the final arbiters of their state's own law).

B. As a matter of law, the Law Court did not deprive the Petitioners of a constitutionally protected property interest by declining to hold oral argument on their appeal.

To the extent the Petitioners suggest that the Law Court denied them a "fair hearing" by refusing to hold oral argument on their appeal, they fail to raise a constitutional issue that would merit review by this Court. In order to state a viable procedural due process claim, the Petitioners would be required to demonstrate two elements: "(i) deprivation by state action of a protected interest in life, liberty, or property, and (ii) inadequate state process." *Reed v. Goertz*, 143 S. Ct. 955, 961 (2023) (citing *Zinermon* v. *Burch*, 494 U.S. 113, 125 (1990)). However, this Court has held that "[o]ral argument on appeal is not an essential ingredient of due process. . . ." *Price v. Johnston*, 334 U.S. 266, 286 (1948). Federal courts have consistently applied this rule, both on appeal and at the trial court level. *See*, *e.g.*, *Groendyke Transport, Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir.), *cert. denied*, 394 U.S. 1012 (1969) (holding that due process does not require an opportunity for oral argument before the appellate court); *Magnesium Casting Co. v. Hoban*, 401 F.2d 516, 518 (1st Cir. 1968), *cert. denied*, 393 U.S. 1065 (1969) (same); *United States v. One 1974 Porsche 911-S*, 682 F.2d 283, 286 (1st Cir. 1982) ("There is no constitutional right to oral

argument on a summary judgment motion.") (citing *Spark v. Catholic Univ.*, 510 F.2d 1277, 1280 (D.C. Cir. 1975); *FCC v. WJR*, 337 U.S. 265, 274-77 (1949)). Therefore, the Law Court's decision not to hold oral argument could not have violated the Petitioners' due process rights.

C. The Court should not disturb the Law Court's interpretation and application of Maine law.

To the extent the Petitioners argue that the Law Court misapplied Maine law, they fail to present issues meriting review by this Court. In their motion asking the Law Court to reconsider its memorandum decision, the Petitioners argued that neither the Superior Court nor the Law Court had properly disposed of the Petitioners' pending motions. They further maintained that the failure to properly dispose of their pending motions constituted a violation of 4 M.R.S. § 57 and the Fourteenth Amendment, although they presented no developed argument for the latter alleged violation. The Law Court reviewed the motion to reconsider and denied it without further comment. Pet. at 31 (App. J). This Court must construe the Law Court's silence in that order with regard to the Fourteenth Amendment to mean that it did not consider the issue preserved and that its resolution of the Petitioners' appeal did not involve either a violation of Section 57 or a failure to dispose of any issues pending on appeal. *See Webb*, 451 U.S. at 495-97.

In addition, this Court has noted that certiorari review is not intended to reach decisions that would first require the Court to resolve issues that may turn on the correct interpretation of antecedent questions under state law. *See N.C.P. Mktg. Grp., Inc. v. BG Star Prods.*, 556 U.S. 1145, 1147 (2009) (statement of Kennedy, J., respecting denial of the petition for writ of certiorari). Since the Petitioners' Fourteenth Amendment arguments would require this Court, in the first instance, to interpret Section 57 and state law pleading standards in order to assess whether the Law Court complied with Maine law, they fail to raise an issue that justifies certiorari review.

Finally, the Petitioners' undeveloped accusations that the Maine courts violated Section 57 by failing to resolve pending motions are inadequate to preserve that issue. Maine follows the "'settled appellate rule' enunciated by the First Circuit Court of Appeals that 'issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.'" *Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290 (quoting *United States v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990)). Maine's treatment of undeveloped arguments is consistent with federal law. *See*, *e.g.*, *Rockwood v. SKF USA Inc.*, 687 F.3d 1, 9 (1st Cir. 2012) (noting our "clear" case law barring civil litigants from raising arguments for the first time on appeal); *United States v. Nishnianidze*, 342 F.3d 6, 18 (1st Cir. 2003) (finding *pro se* argument waived for failure to develop the argument on appeal). Since the Petitioners did not present a developed argument pertaining

to an alleged Fourteenth Amendment violation before the Law Court, the argument is deemed waived. For all of these reasons, the Petitioners have failed to raise an issue that merits resolution by this Court.

CONCLUSION

For the reasons discussed above, the Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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