

No. 23-817

In the

Supreme Court of the United States

Michael Donatelli and Peter Chien,
Petitioners

versus

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**

REPLY BRIEF FOR PETITIONERS

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I. INTRODUCTION

The Respondents' Brief in Opposition mischaracterizes the Petitioners' claims and overlooks key issues that warrant this Court's review. This Reply Brief addresses the Respondents' arguments and further substantiates the need for a Writ of Certiorari.

II. ARGUMENT

A. The U.S. Supreme Court has jurisdiction to review this case.

Contrary to the Respondents' assertion, the Petitioners have properly raised a federal question under the Fourteenth Amendment, since the petition specifically impugns the Maine Judicial Supreme Court's jurisprudence as it treats the petitioners differently under Maine statutes, civil procedure rules, and common law than it does for other citizens (elaborated in Argument II.B. below). Its procedural irregularities and the Maine Judicial Supreme Court's failure to address the spoliation issue, seemingly in violation of due process and equal protection under the law, implicate federal issues concerning the Petitioners' constitutional rights. The U.S. Supreme Court has jurisdiction over such constitutional claims (see *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 487 (1975)). The Respondents also misrepresented *Cardinale v. Louisiana*, 394 U.S. 437 (1969), which although describes that "a state must address and resolve any federal constitutional issues before a federal court can intervene in the

matter,” it does not preclude a federal court from intervening, particularly if a state court passes on deciding on the constitutional issues, as was done in this instant case. Indeed, the Respondents completely missed understanding such claims that the Petitioners brought forth to the U.S. Supreme Court, as described below.

B. The Fourteenth Amendment issue was properly raised and addressed.

The Petitioners have argued that the Maine Supreme Judicial Court’s handling of their pleadings violated their constitutional rights under the Fourteenth Amendment, as presented in the October 20, 2023 motion to reconsider the memorandum of decision by the Maine Judicial Supreme Court. The Respondents however did not understand the petition. They got confused into thinking that the issue needed to be raised first in the Superior Court which mistakenly interpreted a motion for spoliation sanctions as a motion for summary judgment as it was mis-styled as a motion for summary judgment. But by not adhering to Maine statute M.R.S. Title 4, §57 in reviewing the motion for spoliation sanctions, in ignoring Maine Rules of Civil Procedure Me.R.Civ.P. 8(f) and 37(b)(2), and in ignoring its own common laws supporting liberal construction of pleadings that was denied for the Petitioners, *Travelers Indem. Co. v. Dingwell* 414 A.2d 220 (1980) and *National Hearing Aid Centers, Inc. v. Smith* 376 A.2d 456 (1977), and in its procedural errors in issuing a final decision before properly disposing of a motion to reconsider oral argument, it is the **Maine Supreme Judicial Court itself** that is presently

being indicted for violation of the due process and equal protection clauses of the Fourteenth Amendment of the U.S. Constitution. The Respondents' attempts to persuade the court that a motion for spoliation sanctions mis-styled as a summary judgment motion was interpreted correctly as a summary judgment motion contradicts all the above statutes, rules, and common laws of the state that support the liberal construction of a pleading, thus implicating violation of Fourteenth Amendment rights for due process and equal protection under the law.

Also please notice that in *Cox Broadcasting Corp. v. Cohn*, "the Appellants clearly raised the issue of the constitutionality of § 26-9901 in their motion for rehearing in the Georgia Supreme Court," analogous to how the Petitioners in the instant case raised constitutional issues in their motion for reconsideration in the Maine Supreme Judicial Court. The Respondents' notion that constitutional issues need to be raised even earlier in the lower court contradicts the experience of the U.S. Supreme Court in handling petitions for writ of certiorari.

C. The decisions by the Maine Supreme Judicial Court implicate a federal question.

The Respondents' claim that the decisions do not implicate a federal question is incorrect. The alleged procedural irregularities and potential constitutional violations present a substantial federal question that warrants this Court's review. Please see *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U.S. 308, 312 (2005), in which jurisdiction

over federal issues in state claims depends on whether the state claim necessarily states a federal issue that is actually disputed and substantial, and a federal forum may entertain the issue without disturbing the congressionally approved balance between federal and state courts. In the present case there is a strong national interest in ensuring that its citizens are subject to equal protection under the law in the application of state statutes, state rules of civil proceedings, and common law. The Respondents further misapplied the holding in *Clearwater Artesian Well Co. v. LaGrandeur*, 2007 ME 11, ¶ 8, 912 A.2d 1252, because in that case the plaintiff did not meet her burden of establishing that there was a genuine dispute of material fact, while the present case is asking whether the spoliation issues raised — which need not be presented in a 56(h) format — is sufficient to preclude summary judgment. The Respondents passed on arguing this issue, and the Petitioners are asking the U.S. Supreme Court to decide on this issue. The Respondents have failed to present any case laws on how the Maine Judicial Supreme Court have handled mis-styled motions, nor have they proffered any arguments against Me.R.Civ.P. 8(f) in which “all pleadings shall be so construed as to do substantial justice.”

Finally, the Respondents’ argument that oral hearing is not needed for due process simply demonstrates that they do not understand the issue presented in the petition — that the court erred in issuing a final decision prematurely before disposing of the outstanding motion to reconsider oral

argument. And because constitutional issues are at stake, namely, equal protection under the law in how the state should consider the spoliation motion that would preclude summary judgment in the context of how a “pleading shall be construed as to do substantial justice” pursuant to Me.R.Civ.P. 8(f), or how “a case may not be dismissed by the Law Court for technical errors in pleading alone or for want of proper procedure if the record of the case presents the merits of the controversy between the parties” pursuant to M.R.S. Title 4, §57, the Plaintiffs indeed have been deprived of protected interest in life, liberty, or property, and an inadequate state process. Thus a viable procedural due process claim is reached.

D. There was no res judicata, and the doctrine of res judicata does not bar the Petitioners' claims when unique issues raised are at stake. Also an issue cannot even be precluded where there is spoliated evidence that would change the evidentiary landscape.

The Respondents' reliance on the doctrine of res judicata is misplaced. The Respondents even acknowledge in their opposing brief's statement of the case that seven paragraphs are unique to the underlying complaint (Opp Brief at page 2), but they attempt to trivialize those unique issues and say they “simply purport to add details to events that were alleged in the Petitioners' first lawsuit.” The facts, being “unique,” in the Respondents' own words, therefore are not part of the same “nucleus of operative facts.” One of the unique facts include Police Officer Jami Ladakakos, who on October 11,

2017, falsely instructed Plaintiff Donatelli that it was "illegal to record the police," depriving him of further documenting the police's abuse of power. (For the court's convenience, Plaintiff Donatelli's attempted video recording previously entered into the record in the court of first instance, the York County Superior Court, is available at **https://drive.google.com/file/d/1-5v-hHC_RCSrnhGgbPhMleI0uyLk1nzy/view?usp=sharing**, and is also included in the enclosed USB drive.) Then the Respondents perjured themselves during Discovery in denying Officer Ladakakos ever uttered those false instructions, contrary to the evidence. In Count III of the Complaint, unique to the present case, the police officers then committed acts of discrimination against Plaintiff Donatelli on the basis of his disability, including making jokes about his disorganized bedroom while Donatelli was already observed by the deposed Respondents as having problems even walking. But since they failed to preserve the evidence on their own Watchguard body cams, which they had a duty to do so and were notified to do so (see spoliation motion in Appendix F), the Respondents committed spoliation of evidence that would have proved the Petitioners' Count III in the complaint. The complaint of the underlying present case also has four new defendants, including Respondent Ladakakos. New background facts, new defendants, and new counts based on actions of new defendants do not reach the level of the res judicata doctrine. Indeed, despite res judicata being asserted by the Respondents to bar the Petitioners' claim, given the unique facts and issues presented in seven

unique paragraphs that the Respondents acknowledge, the U.S. Supreme Court already decided (see *Allen v. McCurry*, 449 U.S. 90, 94 (1980)) that “collateral estoppel does not apply where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court,” and indeed the lower courts have passed on reviewing those mutually agreed upon unique facts and issues.

Finally, similar to the instant case, as described in *Jones v. United States*, No. 2020-2182 (Fed. Cir. Feb. 16, 2022), if spoliated evidence would change the evidentiary landscape, then issue preclusion cannot be reached. In the cited case the summary judgment decision was also reviewed de novo and then reversed because of such spoliated evidence, and in the instant case the Maine Supreme Judicial Court passed on reviewing the spoliation claim, leaving it up to the U.S. Supreme Court to decide.

E. The Petitioners have presented an issue worthy of review.

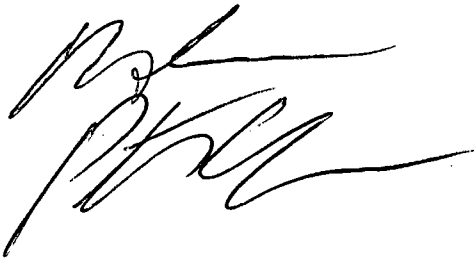
The Petitioners' claims raise important questions about due process, equal protection under the law, and the proper handling of motions, and whether the highest state court can treat some citizens differently than others under the same set of state statutes, rules of civil procedure, and common laws, especially when the matter involves discrimination on the basis of disability, and the Respondents committed spoliation of evidence of such discrimination, upon which a prayer for relief does not need to follow

summary judgment rules, and in which spoliation of such evidence would also disqualify res judicata and preclude summary judgment. These issues are of national importance and warrant this Court's review. The U.S. Supreme Court should therefore, determine if spoliation issues would preclude summary judgment motion and then reverse and remand accordingly. (See *U.S. Supreme Court Rule 10.*)

CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that the U.S. Supreme Court issue a writ of certiorari to review the judgment and opinion of the Maine Judicial Supreme Court.

Respectfully submitted,

Two handwritten signatures in black ink. The top signature is more fluid and cursive, while the bottom signature is more blocky and angular.

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Dated: March 21, 2024