



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**

PETITION FOR REHEARING

Michael Donatelli &
Peter Chien

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PETITION FOR REHEARING

In accordance with this Court's Rule 44.2, Petitioners Michael Donatelli and Peter Chien respectfully seek rehearing of this Court's April 1, 2024 Order denying their petition for writ of certiorari based on substantial grounds not previously presented.

This Court appears unpersuaded that the questions presented in the petition for writ of certiorari merit intervention, in particular that an outstanding Plaintiffs' motion for sanctions for evidence spoliated by the Defendants was not properly disposed of when the Maine Supreme Judicial Court granted a summary judgment motion in favor of the Defendants.

The Plaintiffs' spoliation motion (Appendix F), outlines in particular, attempts made by police officer Jami Ladakakos in wrongfully telling Plaintiff Donatelli that it was illegal to record the police. A video clip from Plaintiff's phone was previously submitted to this Court on a USB drive, also available on https://drive.google.com/file/d/1-5v-hHC_RCSrnhGgbPhMleI0uyLk1nzy/view?usp=sharing, or <https://tinyurl.com/badpoliceorder>. Defendant Ladakakos then committed perjury in a notarized RFA written response that denied giving a wrongful verbal order that it was illegal to record the police (Spoliation Motion Paragraph 10), contrary to Defendant Ladakakos' deposition and the video evidence. As described in the spoliation motion, after depriving Plaintiff Donatelli of the right to record the

police in his own home by lying to him with a fictitious law about how it was illegal to record the police, the police officers then committed acts of discrimination against Plaintiff Donatelli on the basis of his disability, including bullying him with jokes about his disorganized bedroom being a fire hazard while Donatelli was already observed by the deposed Defendants as having problems even walking. The video shows Officer Peter Guay wearing Watchguard recording equipment, as he confirmed in deposition, and as described in the spoliation motion. The Defendants had already been put on notice to preserve the evidence, and this notice was also contemporaneously memorialized as a text between Plaintiff Chien and Attorney Stanley Tupper III (Spoliation motion paragraph #12). Attorney Tupper also followed up with a letter to the Defendants to obtain the Watchguard recordings (Spoliation motion paragraph #13). The Watchguard recordings of audio and/or video of the incident on October 11, 2017 would have aided the Plaintiffs in proving their claims of Count III of the Complaint, that discrimination based on disability had occurred. But the evidence spoliated by the Defendants deprived the Plaintiffs of the opportunity to prove Count III. Furthermore, on notice to preserve the evidence for pending civil action, the Defendants had a duty to preserve the evidence, but failed to do so.

Since the spoliation issue was raised by the Plaintiffs, as a matter of law (*Jones v. United States*), summary judgment could not be made, or at least not until the spoliation issue motion is properly disposed of by the Maine Supreme Judicial Court, which ignored it instead while it granted summary

judgment in favor of the Defendants. Additionally, since the Defendants admitted they would have definitely recorded the incident (Spoliation Motion Paragraph 11), their failure to preserve the evidence under notice for civil action constitutes at least gross negligence if not willful intent to deprive. See the Fourth Circuit ruling in *QueTel Corporation v. Abbas* and Federal Rule of Civil Procedure 37(e)(2) on preservation of ESI. Maine Rule of Civil Procedure 37(e) also allows for sanctions over loss of ESI under exceptional circumstances, but the Maine courts have all passed in reviewing the facts to determine whether exceptional circumstances have occurred as propounded by the Plaintiffs in their spoliation motion. Municipalities are not immune from the duty to preserve evidence.

In light of the above facts set forth in the motion for sanctions for evidence spoliated by the Defendants, along with this Court's prior decision in *Jones v. United States*, the Forth Circuit ruling, and Federal and Maine Rules of Civil Procedure 37(e), the Petitioners' civil rights under the due process and equal protection clauses of the 14th Amendment of the United States Constitution have been violated by the Maine Supreme Judicial Court. Thus the Petitoners beseech this Court to rehear to grant writ of certiorari.

CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that the U.S. Supreme Court grant the petition for rehearing and the petition for writ of certiorari.

Respectfully submitted,

The image shows two handwritten signatures in blue ink. The signature on the left appears to be "Michael Donatelli" and the signature on the right appears to be "Peter Chien".

Michael Donatelli and Peter Chien
Petitioners, Pro Se
10 Dwight St, Unit 3
Boston, MA 02118

Dated: April 24, 2024

**CERTIFICATE OF COUNSEL (OR PARTY
UNREPRESENTED BY COUNSEL)**

We hereby certify that this petition for rehearing is restricted to the grounds specified in Rule 44.2 and presented in good faith and not for delay.

We declare under penalty of perjury that the foregoing is true and correct.

Executed on April 24, 2024



Michael Donatelli and Peter Chien
Petitioners, Pro Se

CERTIFICATE OF SERVICE

No. 23-817

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

Per Supreme Court Rules 12.3 and 29.3, we certify
that three copies of the petition for rehearing were
served via United States Postal Service mail upon all
parties required to be served, the Respondents Scott
E. Jarrett, Dana M. Kelley, Gerard Hamilton,
Anthony Germaine, Steven Broy, Jami Ladakakos,
Dan Feeney, Rod Belanger, Town of Old Orchard
Beach, by way of their Counsel, all represented by
John J. Wall, III of Monaghan Leahy, LLP
95 Exchange Street, P.O. Box 7046
Portland, ME 04112-7046, (207) 774-3906

We declare under penalty of perjury that the
foregoing is true and correct.

Executed on April 24, 2024



Michael Donatelli and Peter Chien, Petitioners

CERTIFICATE OF COMPLIANCE

No. 23-817

Michael Donatelli and Peter Chien,
Petitioners

versus

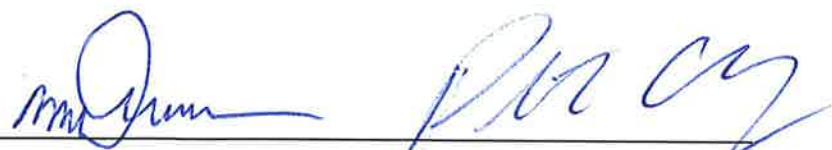
Scott E. Jarrett, Dana M. Kelley, Gerard Hamilton,
Anthony Germaine, Steven Broy, Jami Ladakakos,
Dan Feeney, Rod Belanger, Town of Old Orchard
Beach,

Respondents

As required by Supreme Court Rule 33.1(h), we
certify that the Petitioners' petition for rehearing
contains 742 words, excluding the parts of the
petition that are exempted by Supreme Court Rule
33.1(d).

We declare under penalty of perjury that the
foregoing is true and correct.

Executed on April 24, 2024



Michael Donatelli and Peter Chien, Petitioners