

STATE OF MAINE  
CUMBERLAND, ss.

BUSINESS & CONSUMER COURT  
LOCATION: PORTLAND  
DOCKET NO. BCD-CIV-2021-00058

NECEC TRANSMISSION, LLC, et )  
al., )  
 )  
Plaintiffs & Intervenors, )  
 )  
v. )  
 )  
BUREAU OF PARKS AND )  
LANDS, et al., )  
 )  
Defendants & Intervenors. )

ORDER GRANTING IN PART AND  
RESERVING IN PART STATE  
DEFENDANTS' MOTION TO  
DISMISS CERTAIN PARTIES AND  
CLAIMS

Defendants Bureau of Parks and Lands (“BPL”), Public Utilities Commission (“PUC”), Maine House of Representatives (the “House”) and Maine Senate (the “Senate”) (collectively, the “State Defendants”) move to dismiss all claims against the House and Senate and certain other claims against the remaining defendants. The Court here takes up only the request to dismiss the claims against the House and Senate. The Court reserves, for the time being, on all other aspects of State Defendants’ Motion to Dismiss and will issue a separate order after Plaintiffs’ Motion for Judgment on the Pleadings is fully briefed.

Plaintiffs seek declaratory and injunctive relief against the House and Senate (collectively, the “Legislature”).<sup>1</sup> However, the Legislature enjoys absolute common

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<sup>1</sup> Plaintiffs note that at the preliminary injunction stage they made it clear they would limit their request for relief against the Legislature to a declaratory judgment, but in the ensuing year Plaintiffs have not sought to amend their Complaint, which still expressly seeks declaratory and injunctive relief against the Legislature. But even if Plaintiffs had asked to amend their Complaint to drop the claim for injunctive relief against the Legislature, it would make no

law immunity from suits for declaratory and injunctive relief. *Lightfoot v. State of Maine Legislature*, 583 A.2d 694, 694-95 (Me. 1990). Plaintiffs argue that this “legislative immunity” only protects legislators from personal liability, but that argument is unsupported by any citation to a Maine case and runs directly contrary to the pronouncement in *Lightfoot*. Plaintiffs also protest that legislative immunity is merely a variation on sovereign immunity, and this Court previously rejected the Legislature’s sovereign immunity defense. *NECEC Transmission LLC, et al. v. Bureau of Parks and Lands, et al.*, BCD-CIV-2021-00058, 2021 Me. Bus. & Consumer LEXIS 2, at \*21 n.15 (Dec. 16, 2021). However, the Constitutional underpinnings of the two types of immunity are distinct. *Compare Lightfoot*, 583 A.2d at 694-95 (legislative immunity based on separation of powers) *with Alden v. State*, 1998 ME 200, ¶ 6, 715 A.2d 172 (1999) (sovereign immunity based on ancient principle that a state cannot be sued without its consent). Accordingly, this Court’s previous ruling on sovereign immunity does not foreclose the application of legislative immunity.

Furthermore, the House and Senate are not necessary parties to this action. Complete relief (declaratory and injunctive) is still available to Plaintiffs because state agencies (the BPL and PUC) are parties to the suit.<sup>2</sup>

For all of these reasons, State Defendants’ Motion to Dismiss Certain Parties and Claims is GRANTED IN PART. All claims against the Maine House of

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difference to the outcome here. The Court’s analysis would be the same even if Plaintiffs were only seeking declaratory relief against the Legislature.

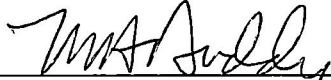
<sup>2</sup> There is also a pending Motion to Dismiss BPL from this litigation, because of the result in *Black et al. v. Bureau of Parks and Lands, et al.*, 2022 ME 58, \_\_\_ A.3d \_\_\_. Even if the BPL is dismissed, complete relief will remain available to Plaintiffs because the PUC will still be a party to the action.

Representatives and Maine Senate are dismissed, and the Maine House and Senate are dismissed as parties to the action.

So Ordered.

Pursuant to M.R. Civ. P. 79(a), the Clerk is instructed to incorporate this Order by reference on the docket for this case.

Dated: 12-7-2022

  
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Michael A. Duddy  
Judge, Business and Consumer Court

Entered on the docket: 12/07/2022