STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. KEN-22-411

VIRGINIA PARKER and JOEL PARKER
Plaintiffs-Appellants

v.

JUDITH A. CAMUSO, COMMISSIONER OF THE
MAINE DEPARTMENT OF INLAND FISHERIES AND WILDLIFE,
Defendant-Appellee

On Appeal from a Judgement of the Superior Court
Kennebec County, No. CV-2022-87

BRIEF OF APPELLANTS

March 16, 2023

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INTRODUCTION

In November 2021, Maine citizens amended the Maine Constitution to guarantee all persons "a natural, inherent, and unalienable right to food, including . . . the right to grow, raise, harvest, produce, and consume the food of their own choosing[.]" Me. Const. art. I, § 25 (the "Amendment" or "Right to Food Amendment"). As summarized by the Office of the Attorney General, the Amendment's purpose was to "add a right to food to the Declaration of Rights in Article I of the Maine Constitution[,]" the section that "sets forth the natural, inherent, and unalienable rights of the people of Maine."[1]

The people thus enshrined in the Maine Constitution the fundamental right to harvest food, including through hunting, an ancient and crucial method of harvest for many Maine families. The Amendment specifically excludes from its protections conduct that constitutes "trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources." Me. Const. art. I, § 25. Therefore, hunting regulations aimed to protect natural resources and property rights fall outside of constitutional scrutiny entirely. And as with any fundamental right, the State may still restrict the right to harvest when there is a compelling state interest, but the restriction must be narrowly tailored. Laws and regulations aimed at firearms

[1] Maine Citizen's Guide to the Referendum Election Tuesday, November 2, 2021, prepared by Shenna Bellows, Maine Secretary of State, at p. 19. Available at https://www.maine.gov/sos/cec/elec/upcoming/pdf/11-21citizensguide.pdf.

safety, preventing animal cruelty, and ensuring fair access to resources survive. But a blanket ban on Sunday hunting, a continuation from Puritanical bans on secular sabbath activity,[2] violates the fundamental right to harvest food. Appellants alleged sufficient facts to establish that the Sunday hunting ban infringes on their Constitutional right.

STATEMENT OF FACTS

The facts of this case, as alleged by Plaintiffs-Appellants,[3] are straightforward: Appellants Virginia and Joel Parker, like many other Mainers, rely in part on hunting to feed themselves and their five children.[4] The Parkers' reliance on hunting as a source of food is not unique. The Maine Department of Inland Fisheries and Wildlife ("IFW") estimated that, in 2018, deer hunting in Maine provided 1.5 million pounds of meat to feed hunters and their families, with an average field-dressed deer providing approximately 70 pounds of meat.[5] In a rural state facing the most food insecurity in New England, where one in four children go to bed hungry, access to food is not an academic question.[6]

[2] Mike Balestra, *Thou Shall Not Hunt: A Historical Introduction to and Discussion of the Modern Debate Over Sunday Hunting Laws*, 96 Ky. L. J. 447, 450-51 (2008).
[3] Because this appeal arises from a dismissal of the claims under M.R. Civ. P. 12(b)(6), the facts as alleged in the Complaint are taken as true. *In re Wage Payment Litigation*, 759 A.2d 217, 220 (Me. 2000).
[4] Appendix p. 6, 8.
[5] Appendix p. 7.
[6] Resolves 2019, ch. 32. Available at https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0848&item=3&snum=129.

Due to their work and school schedules, the Parkers are only able to hunt together on weekends.[7] Desiring to hunt on Sundays, and not just Saturdays, on April 15, 2022, Virginia Parker contacted IFW, the state agency tasked with implementing Maine's hunting laws and regulations and issuing hunting permits.[8] Ms. Parker requested a permit for herself and her husband to hunt on Sundays.[9] IFW stated that it could not issue such a permit because Maine, by statute, prohibits hunting on Sundays, and denied Ms. Parker's request.[10]

IFW relied upon 12 M.R.S. § 11205, which makes it a crime for any person to "[h]unt wild animals or wild birds on Sunday[.]" With the Sunday hunting ban in effect, the Parkers are effectively limited to hunting only on Saturdays, one day a week, as their work and school schedules prevent them from hunting on weekdays.[11] This significantly reduces the time they are able to spend hunting, their ability to hunt as a family, and their ability to travel to more remote areas of the state to hunt.[12]

The Parkers initiated this action in the Kennebec County Superior Court, seeking a declaratory judgment that the Right to Food Amendment invalidates Maine's Sunday Hunting ban. The Superior Court dismissed the action and the Parkers timely appealed.

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[7] Appendix p. 8.
[8] Appendix p. 8.
[9] Appendix p. 8.
[10] Appendix p. 8.
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STATEMENT OF ISSUE PRESENTED

Does Article I, Sec. 25 of the Maine Constitution, which guarantees all persons "a natural, inherent, and unalienable right to food, including . . . the right to grow, raise, harvest, produce, and consume the food of their own choosing[,]" supersede and render unconstitutional Maine's statutory ban on Sunday hunting?

SUMMARY OF ARGUMENT

The Maine Right to Food Amendment expanded the rights guaranteed under the Maine Constitution, and enshrined the right to food, as defined by the language of the Amendment, as a fundamental right. The facts, as alleged by Plaintiffs, demonstrate that Maine's statutory ban on Sunday hunting, 12 M.R.S. § 11205 (the "Sunday hunting ban"), which predates the Right to Food Amendment, infringes on this fundamental right as applied to those individuals who wish to hunt for food. Appellants are entitled to a declaratory judgment to that effect, and the Superior Court erred in dismissing this action. The Sunday hunting ban cannot withstand strict scrutiny: the ban infringes on a fundamental right, and it is neither justified by a compelling state interest nor narrowly tailored to meet that aim. At minimum, the Sunday hunting ban must be analyzed under a heightened standard, and it is nonetheless unconstitutional under such a framework.

STANDARD OF REVIEW

An appeal from a dismissal pursuant to M.R. Civ. P. 12(b)(6) accepts allegations in the Complaint as true and construes all facts in the light most favorable to the Plaintiff. *See In re Wage Payment Litigation*, 2000 ME 162, ¶ 3, 759 A.2d 217. "Dismissal of a complaint for failure to state a claim is in order only when it appears beyond doubt that a plaintiff is entitled to no relief under any set of facts that he might prove in support of his claim." *Hall v. Bd. of Envtl. Protection*, 498 A.2d 260, 266 (Me. 1985).

Questions of law, including review of the constitutionality of a statute, are subject to *de novo* review on appeal. *State v. Letalien*, 2009 ME 130, ¶ 15, 985 A.2d 4; *Rideout v. Riendeau*, 2000 ME 198, ¶ 14, 761 A.2d 291. To interpret the Maine Constitution, Maine courts "'look primarily to the language used.'" *Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, ¶ 14, 237 A.3d 882 (quoting *Voorhees v. Sagadahoc County*, 2006 ME 79, ¶ 6, 900 A.2d 733). "Constitutional provisions are accorded a liberal interpretation in order to carry out their broad purpose, because they are expected to last over time and are cumbersome to amend." *Allen v. Quinn*, 459 A.2d 1098, 1102 (Me. 1983). Ultimately, "[w]hen a statute—including one enacted by citizen initiative—conflicts with a constitutional provision, the Constitution prevails." *Opinion of the Justices of the Supreme Judicial Court Given Under the Provisions of Article VI, Section 3*, 2017 ME 100, ¶ 8, 162 A.3d 188

(citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177-80, 2 L.Ed. 60 (1803)). "It is 'supposed to be essential to all written constitutions, that a law repugnant to the constitution is void.'" *Id.* (quoting *Marbury*, 5 U.S. (1 Cranch) at 180; citing *League of Women Voters v. Sec'y of State*, 683 A.2d 769, 771-72 (Me. 1996); *Allen v. Inhabitants of Jay*, 60 Me. 124, 138 (1872)).

ARGUMENT

I. The Right to Food Amendment guarantees the right to hunt for food, and the Sunday hunting ban infringes on this right.

The Right to Food Amendment, now Art. I, § 25 of the Maine Constitution, reads as follows:

> **Section 25. Right to food.** All individuals have a natural, inherent and unalienable right to food, including the right to save and exchange seeds and the right to grow, raise, harvest, produce and consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being, as long as an individual does not commit trespassing, theft, poaching or other abuses of private property rights, public lands or natural resources in the harvesting, production or acquisition of food.

Courts "construe constitutional provisions by using the same principles of construction that we apply in cases of statutory interpretation. Thus, we will apply the plain language of the constitutional provision if the language is unambiguous[.]" *Avangrid*, 2020 ME 109, ¶ 14, 237 A.3d 882 (internal citations and punctuation omitted). A straightforward reading of the Right to Food Amendment's language defines the scope of intended protections in two ways. First, the Amendment lays

out the rights guaranteed therein, including the right of all persons to "save and exchange seeds" and the right to "grow, raise, harvest, produce, and consume the food of their own choosing[.]" Me. Const. art. I, § 25. The second half of the Amendment then articulates those activities that fall outside the scope of the Amendment's protections: trespassing, theft, poaching, and abuses of private property rights, public lands, or natural resources.

Maine's prohibition on Sunday hunting conflicts with the Right to Food Amendment. The right to hunt for food falls squarely within the scope of conduct that is protected by this Amendment. And the Amendment's explicit limiting provisions do not justify the Sunday hunting ban. Appellants, who allege that they wish to hunt for food on Sundays and cannot, have therefore sufficiently alleged an infringement on their Constitutional rights.

A. The Right to Food Amendment protects the right to hunt for food.

By its plain language, the Right to Food Amendment protects the right of Mainers to obtain food through hunting. Hunting is one of the oldest and most traditional methods for obtaining food, and thousands of Mainers each year use hunting as a way to feed themselves and their families.[13] These Mainers hunt as a way to obtain, in the words of the Amendment, "food of their own choosing," consuming hunted animals such as deer, wild turkey, and more. Nothing in the

[13] Appendix p. 1, 3.

Amendment's broad protections suggests that it is limited to only certain types of food, or to food harvested through certain methods. Rather, the Amendment's text, taken as a whole, supports the conclusion that the Amendment encompasses all types of foods, and all usual methods of obtaining food, including activities such as gardening, farming, hunting, raising livestock, fishing, and foraging, and others.

The specific language of the Amendment further indicates that it encompasses hunting as a means of obtaining food. Courts "assume that the voters intended to adopt the constitutional amendment on the terms in which it was presented to them." *State v. Brown*, 571 A.2d 816, 818 (Me. 1990). And when determining the plain meaning of a text for statutory interpretation purposes, Maine courts look to the ordinary meaning of a word as people of common intelligence would understand it. *See, e.g.*, *Butterfield v. Norfolk & Dedham Ins. Co.*, 2004 ME 124, ¶ 4, 860 A.2d 861 ("Unless the statute itself discloses a contrary intent, words in a statute must be given their plain, common, and ordinary meaning, such as people of common intelligence would usually ascribe them." (quoting *State v. Vainio*, 466 A.2d 471, 474 (Me. 1983) (internal punctuation omitted)). *See also Dickau v. Vermont Mut. Ins. Co.*, 2014 ME 158, ¶ 22, 107 A.3d 621 ("In the absence of legislative definitions, we afford terms their plain, common, and ordinary meaning, such as people of common intelligence would usually ascribe to them . . . ." (internal punctuation and citations omitted)).

Here, the term "harvest" or "harvesting," which appears in the text of the Amendment, is used throughout Maine statutes, regulations, and agency documents to reference hunting.[14] "Harvest" also carries this same meaning in common speech, and has been used to refer to hunting in public statements by IFW and IFW officials,[15] IFW's public-facing materials,[16] by the media and the press,[17] and even by courts.[18] Thus, because "harvest" is understood by Mainers of common intelligence to include hunting, clamming, fishing, and foraging along with

[14] *E.g.*, 12 M.R.S. § 11153 (stating that "[t]he [IFW] commissioner may implement a permit system to regulate hunter participation . . . and the number, sex, and age of deer harvested."); 12 M.R.S. § 11154(15) (providing for the transfer of a moose hunting permit "if a moose has not yet been harvested under that permit"); 12 M.R.S. § 11404(2) ("The commissioner's authority to regulate the harvest of antlerless deer under section 11152 is applicable during the muzzle-loading hunting season."); 12 M.R.S. § 11701 (pertaining to wild turkey hunting and authorizing the IFW commissioner to "determine the number and sex of the birds to be harvested"); 12 M.R.S. § 11952 (titled "Unlawful harvest of wild rabbits or hares," and providing that "[a] person may not . . . hunt wild hares or rabbits in any manner except by the ordinary method . . . .").

[15] *An Act to Promote Deer Hunting: Hearing on L.D. 341 Before the J. Standing Comm. on Inland Fisheries and Wildlife*, 128th Legisl. 1 (2017) (testimony from Commissioner Camuso, then in her capacity as Wildlife Division Director at IFW regarding a proposal limiting the hunting of antlered deer, which repeatedly uses the term "harvest" to refer to hunting). Available at https://legislature.maine.gov/bills/getTestimonyDoc.asp?id=41852. In sum, the term "harvest," or grammatical derivations thereof, is used 15 times throughout the testimony in reference to hunting, specifically deer hunting. For example, Commissioner Camuso, on behalf of IFW, stated that the bill in question, if passed, "would significantly decrease the opportunity for hunters to successfully harvest deer. In fact, we estimate that the annual buck harvest would decline by about 50% if this bill is passed." *Id.*

[16] The Maine Department of Inland Fisheries and Wildlife website publishes data on annual animal kills via hunting. The website itself as well as the reports contained therein are titled "Harvest Information"' and "Harvest Report," respectively. Maine Department of Inland Fisheries and Wildlife Harvest Information: Big Game Harvest Data Dashboard, at https://www.maine.gov/ifw/hunting-trapping/hunting/harvest-information.html

[17] Bob Humphrey, *Hunting: Make a plan for just what you hope to harvest this fall.* Portland Press Herald, September 19, 2021. Available at https://www.pressherald.com/2021/09/19/hunting-make-a-plan-for-just-what-you-hope-to-harvest-this-fall/. Maine's tourism website, VisitMaine.org, also uses the term "harvest" to refer to a successful hunt.Visit Maine Things to Do: Hunting in Maine. 2022 Maine Office of Tourism. Available at https://visitmaine.com/things-to-do/hunting).

[18] *State v. Norton*, 335 A. 2d 607, 610 (Me. 1975) ("Our first Legislature placed the regulation of local clam harvesting"); *Medeiros v. Vincent*, 431 F. 3d 25, 28 (1st Cir. 2005) (noting the locations where "Atlantic lobsters are harvested . . . ."); *Japan Whaling Assn. v. American Cetacean Soc.*, 478 U.S. 221, 224 (1986) (using both the terms hunt and harvest in reference to whales).

gardening and farming, it must be understood to have that meaning in the context of the Right to Food Amendment as well.

Accordingly, the Amendment encompasses hunting for food as a protected activity, and Maine's ban on Sunday hunting infringes on this right. Plaintiffs seek to hunt for food as a way to feed themselves and their family. But the Sunday hunting ban prohibits Plaintiffs, as well as many other Mainers, from hunting for food during what is effectively half the time they have available to do so. The Sunday hunting ban also makes it difficult for Plaintiffs to travel longer distances to hunt in more remote areas of the state, or to hunt as a family. Taken together, the reality is that the Sunday hunting ban reduces the chances that Plaintiffs will have a successful harvest from their hunting efforts, and thus infringes on Plaintiffs' right to food. It also infringes on the Department's ability to manage the harvest for reasons that would be constitutional such as balancing herd sizes.

B. The Sunday hunting ban does not fall within any of the Amendment's specific exceptions.

The Right to Food Amendment identifies within its text certain activities that are unprotected, *i.e.*, those areas where the State retains the right to legislate and regulate as it sees fit. These activities are: (1) trespassing; (2) theft; (3) poaching; (4) abuses of private property rights, public lands, or natural resources. As the Amendment's protections do not extend to these specifically delineated activities,

the state retains the power to legislate and to enforce existing legislation to protect private property, prevent poaching, and protect natural resources.

The Sunday hunting ban is none of these. The language of the law itself is brief and does not speak to any specific reasoning or justification. Historically, its origins are indisputably religious.[19] Maine's broad, blanket prohibition on Sunday hunting traces its origins from the "Sunday Laws" or "Blue Laws" that incentivized participation in Christian religious services and traditions by banning virtually all economic, commercial, and recreational activities on Sundays.[20] These bans included Sunday hunting bans.[21] While many states have repealed or relaxed these laws over time, Maine has not; in fact, Maine's complete ban is considered one of the most strict.[22]

During its nearly 140-year history, the reasoning behind Main's Sunday hunting ban has shifted little. No natural resources justification exists—nor has one been offered—as to why a blanket, statewide, Sunday hunting ban is necessary. To the contrary, IFW has publicly stated that there is no need to ban Sunday hunting for

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[19] Seamus Ovitt, *Contemporary Sunday Hunting Laws: Unnecessary Economic Roadblocks, Ripe for Repeal*, 43 Wm. & Mary Envtl. L. & Pol'y Rev. 271, 272-73 (2018) (noting that "[t]he first colonial laws that restricted what one may or may not do on Sunday were generally justified in explicitly religious language.").

[20] Mike Balestra, *Thou Shall Not Hunt: A Historical Introduction to and Discussion of the Modern Debate Over Sunday Hunting Laws*, 96 Ky. L. J. 447, 447-48 (2008). *See also* Elina Tetelbaum, *A Sobering Look at Why Sunday Liquor Laws Violate the Sherman Act*, 2011 Utah L.R. 625, 626-28 (2011) (discussing the broad reach of "Blue Laws" in prohibiting commercial and recreational activities).

[21] Allie Humphreys, *Has Blue Overshadowed Green?: The Ecological Need to Eradicate Hunting Blue Laws*. 40 Wm. & Mary Envt'l L. & Pol'y Rev. 623, 624 (2016).

[22] Balestra at 452 ("Maine has perhaps the most stringent Sunday hunting law, providing no exceptions to the ban.").

the biological needs of any animal population or for wildlife management purposes, instead characterizing the Sunday hunting ban as "a social issue [and] not a biological decision."[23]

Moreover, the Sunday hunting ban, particularly in its current form, is not a mechanism that protects against theft or trespass, nor does it secure private property rights. Theft and trespass remain conduct that can be considered tortious, or even punishable under criminal law, regardless of the day of the week. And private landowners may restrict the use of their own lands as they see fit and would retain that right regardless of the Sunday hunting ban's existence.

Finally, the mere inclusion of the term "poaching" among the exceptions does not save the Sunday hunting ban. The plain meaning of "to commit poaching" in this Amendment is to illegally take fish and game. But if the simple inclusion of the term "poaching" allows for any and all restrictions on hunting, no matter the reasoning or justification, then the Amendment leaves unchanged the power of the state and grants the people of Maine no additional rights that they did not already possess

[23] *An Act To Allow Sunday Hunting on Private Property with the Written Permission of the Landowner: Hearing on L.D. 1033 Before the J. Standing Comm. On Inland Fisheries and Wildlife*, 130th Legis. 1 (2021) (testimony of Jim Connolly, Resource Management Director, Department of Inland Fisheries and Wildlife). Available at https://mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=154372. The exception to this are migratory bird species, for which the Department of Inland Fisheries and Wildlife must coordinate with the U.S. Fish and Wildlife Service on any restrictions, and for which a change to the number of hunting days in a season might impact season length and geographic scope. *Id*. In fact, while IFW has not taken this position, some academics have argued that there would be positive impacts from lifting restrictions or prohibitions on Sunday hunting, at least for certain species. *See* Allie Humphreys, *Has Blue Overshadowed Green?: The Ecological Need to Eradicate Hunting Blue Laws*, 40 Wm. & Mary Envtl. L. & Pol'y Rev. 623, 626 (2016) (arguing that eliminating Sunday hunting bans has ecological benefits due to reduction of deer population).

before its passage. Such a broad reading of "poaching" renders the Amendment meaningless. The correct interpretation of the inclusion of the word "poaching" is that its presence signifies as an acknowledgement that the State has not lost all ability to regulate hunting and fishing but must do so in a way that can withstand Constitutional scrutiny. *See Dickau*, 2014 ME 158, ¶ 20, 107 A.3d 621.

II. The Right to Food Amendment renders Maine's Sunday hunting ban unconstitutional.

A. The Sunday hunting ban must be analyzed under a strict scrutiny framework, which it cannot survive.

Because the Right to Food Amendment established a new, specifically enumerated right for the people of Maine, a statute such as the Sunday hunting ban that conflicts with or infringes on that Amendment must be analyzed under strict scrutiny. *See Pitts v. Moore*, 2014 ME 59, ¶ 12, 90 A.3d 1169 (stating that where the State interferes with a fundamental right, that interference must be evaluated with strict scrutiny); *Hart v. Sec'y of State*, 1998 ME 189, ¶ 9, 715 A.2d 165; *School Adm. Dist. No. 1 v. Com'r Educ.*, 659 A.2d 854, 857 (Me. 1995) ("If a challenged statute infringes a fundamental constitutional right . . . it is subject to analysis under the strict scrutiny standard.") (internal citations omitted). The plain language of the Amendment supports this position. The Right to Food Amendment is part of the Declaration of Rights in the Maine Constitution, states that the right to food is a "natural, inherent, and unalienable" right, and guarantees all persons "the right to

grow, raise, harvest, produce and consume the food of their own choosing[.]" Me. Const., art. 1, § 25. By choosing to place this right within the Declaration of Rights, the people left no doubt that this right was "fundamental to the protection of individual liberty. As originally adopted, the Maine Constitution declares the rights of individuals in an article expressly designated for that purpose." *State v. Letalien*, 2009 ME 130, ¶ 24, 985 A.2d 4 (addressing the history and function of the Declaration of Rights section). Such a declaration of a right is not mere surplusage or an abstract principle. *Dickau*, 2014 ME 158, ¶ 22, 107 A.2d 621 (noting that in the statutory interpretation context, courts give "due weight to design, structure, and purpose as well as to aggregate language" and "reject interpretations that render some language mere surplusage"). The Amendment is a tangible guarantee that the people of Maine can provide for themselves, underscoring the importance of individual autonomy and self-sufficiency in a free society. Any statute that conflicts with the guarantees of the Amendment should therefore be held against the most rigorous standard.

The Sunday hunting ban does not survive under this framework. Strict scrutiny "requires that the State's action be narrowly tailored to serve a compelling state interest." *Pitts*, 2014 ME 59, ¶ 12, 90 A.3d 1169 (quoting *Rideout v. Riendeau*, 2000 ME 198, ¶ 19, 761 A.2d 291. The Sunday hunting ban is neither. As explained above, the Sunday hunting ban is a historical anachronism rooted in religious beliefs.

The state has articulated no compelling interest that would justify retaining the ban. *Cf. Pitts*, 2014 ME 59, ¶ 12, 90 A.3d 1169 (characterizing a compelling interest as an "urgent reason" or "exceptional circumstances" that would justify intrusion into the fundamental right to parent); *Rideout*, 2000 ME 198, ¶ 23, 761 A.2d 291 (noting that while a "threat of harm to a child" is a compelling interest, that "something more than the best interest of the child must be at stake in order to establish a compelling state interest"); *Hart*, 1998 ME 189, ¶ 9, 715 A.2d 165 (finding that the State has a compelling interest in "preserving the integrity of the law-making process"); *Blount v. Dept. of Educ. & Cultural Serv.*, 551 A.2d 1377, 1381-82 (Me. 1988) (finding, in the context of a free exercise challenge, a compelling state interest in all citizens being adequately educated).

And the ban is certainly not narrowly tailored. A narrowly tailored restriction, under the strict scrutiny framework, must not "unnecessarily circumscribe" protected activities. *In re Dunleavy*, 2003 ME 124, ¶ 30, 838 A.2d 338 (citations omitted). It should, instead, apply "only to conduct which presents the greatest risk to [the compelling state] interest." *Id.* ¶ 30; *see also Dotter v. Maine Unemployment Sec. Commission*, 435 A.2d 1368, 1374 (Me. 1981) (holding that, in the free exercise context, "[e]ven compelling state interests must be achieved by means that cause the least possible intrusion upon constitutionally protected interests."). Maine's Sunday hunting ban, in its current form, cuts a broad swath. It does not discern between

different areas of land, land ownership, public versus private land, regions of the state, methods of hunting, or even different seasons or types of wild game. Instead, it provides a blanket, statewide prohibition on any and all hunting, on any Sunday, in any context. It is no less arbitrary than a statutory ban on potato harvesting on Tuesdays.

Accordingly, the Right to Food Amendment renders the Sunday hunting ban unconstitutional. That Amendment elevated the right to food—which encompasses the right to hunt for food—as one of the fundamental, enumerated rights of the Maine people. The Sunday hunting ban conflicts with this right and cannot withstand strict scrutiny. It is unconstitutional.

B. At minimum, a heightened standard of review is the appropriate framework to analyze the Sunday hunting ban.

Even if this Court should hold that strict scrutiny is not appropriate, this Court should apply a heightened standard of review to those laws that conflict with this newly enshrined Constitutional right. First, the framework for analyzing statutes provided by the rational basis test would be inappropriate here. The underpinnings of rational basis analysis rely on the accepted proposition that the legislature, when creating laws, has knowledge of Constitutional limitations of its power and acts in accordance with those limits. Statutes are not presumed to be Constitutional based on their own intrinsic nature. This presumption is instead based on the logic that "the Legislature acted with full knowledge of all constitutional restrictions and

intelligently, honestly and discriminatingly decided that they were acting within their constitutional limits and powers." *Laughlin v. City of Portland*, 111 Me. 486, 489 (1914). Where, as here, the statute in question long predates the Constitutional provision at issue, that presumption becomes illogical.

Instead, the assumption should be that by enacting the Right to Food Amendment, the people of Maine sought to elevate certain rights over existing restrictions. The Right to Food Amendment was passed as part of a ballot initiative, and represents the direct will of the people of Maine. The Amendment thus supersedes the Sunday hunting ban: where the people speak directly to the contents of the Maine Constitution, they necessarily limit the powers of the legislature. To apply the deferential rational basis standard to a pre-existing religious restriction on harvesting would defy the subsequent will of the people. If the legislature revisited the issue, only then could it receive deference because of the assumption that it was acting within the Constitutional scope on behalf of the people it represents.

Moreover, there is no need for this Court to resort to a rational basis analysis should it hold that strict scrutiny is inapplicable. The Right to Food Amendment is brand-new and is the first of its kind in the country. Although the contours of its protections are still being defined, this Court is empowered to define the appropriate heightened standard of review. *See Conlogue v. Conlogue*, 2006 ME 12, ¶ 13, 890

A.2d 691 (“To determine the proper level of scrutiny,” courts “must focus on the exact imposition on [the Appellant’s] rights that is at issue.”).

This Court can thus create the test that it deems appropriate for considering the constitutionality of laws, such as the Sunday hunting ban, that conflict with this newly enumerated right. First Amendment cases involving content neutral infringements, for example, apply an intermediate level of scrutiny. Under that standard, a law can survive if “it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.” *United States v. O’Brien*, 391 U. S. 367, 377 (1968). A blanket ban on Sunday hunting enacted for religious reasons, just like a Puritanical ban on public singing on Sundays, would not survive under this standard because it furthers no legitimate purpose and is arbitrarily broad even if you can sing or hunt on six other days. On the other hand, a ban on making noise above a certain decibel level in proximity to houses of worship when they were in service might survive, even though it would infringe on the ability to harvest food by rifle on Sundays or joyously sing, because the government has a substantial interest in protecting the religious practices from interruption and there are plenty of other places to sing and hunt. This analysis, while not as stringent as strict scrutiny, provides a more appropriate and workable framework for analyzing

laws that infringe on a specifically enumerated right than the highly deferential rational basis test.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the Superior Court and should hold that Appellants' claim survives because the facts, as pleaded, demonstrate that Article I, Section 25 of the Maine Constitution invalidates 12 M.R.S. § 11205, Maine's Sunday hunting ban.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on March 16, 2023, copies of this Appellants' Brief were served upon counsel at the address set forth below via email and via first class mail, postage-prepaid:

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