STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. KEN-23-420

IN HER PRESENCE, AND MAINE EQUAL JUSTICE

Plaintiffs/Appellants

v.

COMMISSIONER, MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Defendant/Appellee

ON APPEAL FROM THE
KENNEBEC COUNTY SUPERIOR COURT

REPLY BRIEF OF PLAINTIFFS-APPELLANTS

Frank D'Alessandro, Esq.
Oriana Farnham, Esq.
MAINE EQUAL JUSTICE
126 Sewall Street
Augusta, ME 04330
(207) 626-7058

Ellen P. Masalsky, Esq.
MURRAY, PLUMB & MURRAY
75 Pearl Street, P.O. Box 9785
Portland, Maine 04104-5085
(207) 773-5651
Attorneys for Plaintiffs-Appellants

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In Her Presence and Maine Equal Justice have standing for the Court to decide the important question of statutory interpretation presented: does Maine law require the Department to provide transitional support services to noncitizens who qualify for the Temporary Assistance for Needy Families (TANF) program under 22 M.R.S. § 3762(3)(B)(2) on equal footing with all other TANF recipients? The Court should answer this question in the affirmative and reverse the Order of the Superior Court with respect to its decision that In Her Presence and Maine Equal Justice have failed to state a claim under M.R. Civ. P. 12(b)(6).

I. The Superior Court correctly determined that In Her Presence and Maine Equal Justice have standing.

The Department of Health and Human Services ("the Department") reasserts an argument that the Superior Court correctly rejected—that this case should be dismissed because In Her Presence and Maine Equal Justice lack standing. While the Law Court reviews the issue of a party's standing to sue *de novo*, *see Lowry v. KTI Specialty Waste Servs. Inc.*, 2002 ME 58, ¶ 4, 794 A.2d 80, the Court should follow the Superior Court's well-reasoned analysis finding at least one plaintiff has standing in this case. (App. 6-9.)

Unlike in federal court, where standing is constitutionally required by the constitutional "case or controversy" clause, standing is a prudential doctrine in Maine courts. *Roop v. City of Belfast*, 2007 ME 32, ¶ 7, 915 A.2d 966. Under Maine

law, standing "refers to the minimum interest or injury suffered that is likely to be redressed by judicial relief." *Bank of Am., N.A. v. Greenleaf*, 2014 ME 89, ¶ 7, 96 A.3d 700. Plaintiffs establish standing by alleging facts sufficient to demonstrate a "particularized injury" that is "fairly traceable to the challenged action and that is likely to be redressed by the judicial relief sought." *Collins v. State*, 2000 ME 85, ¶ 6, 750 A.2d 1257. The particularized injury required differs from case to case "based on the type of claims being alleged." *Greenleaf*, 2014 ME 89, ¶ 7, 96 A.3d 700.

As the Superior Court noted, the right to appeal from administrative action or inaction is governed by statute. *Nelson v. Bayroot, LLC,* 2008 ME 91, ¶ 9, 953 A.2d 378. "Whether a party has standing depends on the wording of the specific statute involved." *Id.* Here, the governing statutory provision is section 8058 of the Maine Administrative Procedure Act ("MAPA"), which states: "[j]udicial review of an agency rule, or of an agency's refusal or failure to adopt a rule where the adoption of a rule is required by law, may be had *by any person who is aggrieved* in an action for declaratory judgment . . . ." 5 M.R.S. § 8058(1) (emphasis added). "A person is aggrieved within the meaning of the MAPA if that person has suffered particularized injury—that is, if the agency action operated prejudicially and directly upon the party's property, pecuniary or personal rights." *Nelson*, 2008 ME 91, ¶ 10, 953 A.2d 378. "The injury suffered must be distinct from any

experienced by the public at large and must be more than an abstract injury," and the court examines standing "in context to determine whether the asserted effect on the party's rights genuinely flows from the challenged agency action" or inaction. *Id.* As with any issue of standing, the "gist" is whether the party seeking review has "sufficient personal stake in the controversy to obtain judicial resolution of that controversy to assure the existence of that concrete adverseness that facilitates diligent development of the legal issues presented." *Halfway House, Inc. v. City of Portland*, 670 A.2d 1377, 1379-80 (Me. 1996) (cleaned up).

Government regulations may injure a wide variety of groups, not limited to the population immediately subject to the regulation. *See, e.g.*, *id.* at 1381 (noting land use restrictions affect a variety of different groups). A non-profit organization may suffer a legally cognizable injury when government action or inaction impedes the organization's activities, requiring it to divert resources to counteract the alleged harm. *See Havens Realty Corp. v. Coleman,* 455 U.S. 363, 379 (1982); *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919-20 (D.C. Cir. 2015). Even under the more rigorous article III test, federal courts have found that legal aid organizations have standing to challenge administrative rules where the challenged rules "require the organizations to expend resources in representing clients they otherwise would spend in other ways." *El Rescate Legal Servs., Inc. v. Exec. Office of Imm. Review*, 959 F.2d 742, 748 (9th Cir. 1991); *see also Hooker v.*

Weathers, 990 F.2d 913, 915 (6th Cir. 1993) (finding that a single investigation by the organization was sufficient devotion of resources to establish standing); *Zynda v. Arwood*, 175 F. Supp. 3d 791, 805-06 (E.D. Mich. 2016) (same for dedication of staff time to respond to referrals from other agencies to assist low wage workers with unemployment hearings and appeals).

Both In Her Presence and Maine Equal Justice have had their rights and legal relations harmed by the Department's rules that unlawfully exclude noncitizens who qualify for TANF under 22 M.R.S. § 3762(3)(B)(2) from transitional support services, including under the recently amended TANF Rule #119.[1] Their injured rights and legal relations are "fairly traceable to" the Department's failure to act, *Collins*, 2000 ME 85, ¶ 6, 750 A.2d 1257, and can be redressed by the Court ordering the Department pursuant to 5 M.R.S. § 8058(1) to adopt a rule providing such transitional support services to noncitizens who qualify for TANF under 22 M.R.S. § 3763(3)(B)(2).

Maine Equal Justice, "the *only* civil legal services organization in Maine that provides legal advice and representation to immigrants who are not 'qualified aliens' under PRWORA" (App. 27 (emphasis added)) receives numerous requests for help

[1] In Her Presence and Maine Equal Justice's position is that both parties have standing, but as the Superior Court noted, if the Court finds that at least one plaintiff has standing, it need not determine the standing of all plaintiffs. (App. 9 (citing *Dubois v. U.S. Dep't of Agric.*, 102 F.3d 1273, 1282 (1st Cir. 1996).)

from both individual immigrants and community-based organizations regarding the TANF benefits available to immigrants in Maine (App. 28.) As such, "Maine Equal Justice expends significant staff resources providing advice, representation, and referrals" in those cases (App. 28) and responding to requests for help where noncitizens eligible for TANF under 22 M.R.S. § 3762(3)(B)(2) are denied benefits they are eligible for under Maine law (App. 28). This detracts from other civil legal services that Maine Equal Justice could provide to low-income Mainers and from its capacity to advocate for fair public policies in the legislature and with state agencies. (App. 29.)

Consider Maine Equal Justice's injuries compared to the plaintiff organization HOME in a landmark Supreme Court case on article III standing, *Havens Realty Corp. v. Coleman*. There, HOME alleged that the defendant's racial steering practices frustrated "its efforts to assist equal housing access through counseling and other referral services," because HOME "had to devote significant resources to identify and counteract the defendant's racially discriminatory steering practices." *Havens Realty*, 455 U.S. at 379. The Supreme Court found "there can be no question that the organization has suffered injury in fact." *Id.* Here, as recognized by the Superior Court, the Department's actions have likewise "perceptibly impaired" Maine Equal Justice's ability to provide other civil legal services to low-income individuals, with a "consequent drain on the organization's resources." *Havens*

Realty, 455 U.S. at 379. Such a harm "genuinely flows" from the Department's failure to follow Maine law and provide transitional support services for noncitizens who qualify for TANF. *Nelson,* 2008 ME 91, ¶ 10, 953 A.2d 378. Moreover, the relief sought would provide clarity and reduce the organizational resources Maine Equal Justice must expend on counseling individuals and organizations regarding alternative avenues of economic support for noncitizens. Under these circumstances, the Court should find that Maine Equal Justice is "aggrieved" by the Department's inaction and has standing to assert the claims set forth in the Amended Complaint.

Finally, prudential considerations weigh in favor of allowing the claims to proceed with In Her Presence and Maine Equal Justice as plaintiffs. Of course, an immigrant who the Department has denied transitional transportation and childcare services in violation of state law would have the most straightforward injury to bring this action for declaratory relief. However, Maine's standing doctrine does not require the court to bar access to all but those most severely harmed. *See, e.g.*, *Halfway House*, 670 A.2d at 1381 (noting zoning ordinances affect "a wide variety of different groups" and each of these groups may have standing in appropriate circumstances). Rather, it prudentially "limit[s] access to the courts to those best suited to assert a particular claim." *Black v. Bureau of Parks and Lands*, 2022 ME 58, ¶ 27, 288 A.3d 346 (quotation marks omitted). In this case, In Her Presence and

Maine Equal Justice are best suited to litigate the issue. By definition, noncitizens who receive state-funded TANF are politically vulnerable. Federal law excludes them from federally funded safety net programs due to their immigration status, and they are experiencing personal and/or economic hardship. By putting their names in the public record as plaintiffs in a lawsuit against the Department, they open themselves to public scrutiny and potential negative effects on their pathways to citizenship.[2]

Maine law permits any aggrieved person to seek declaratory relief against the Department around the question in this case: has the Department violated Maine law by excluding certain noncitizens from transitional support services in the TANF program? In Her Presence and Maine Equal Justice are non-profit organizations best suited to seek declaratory relief on behalf of such noncitizens. They have demonstrated "the existence of concrete adverseness that facilitates diligent development of the legal issues presented." *Halfway House*, 670 A.2d at 1380

[2] Using public benefits like TANF may be grounds to deny a legal permanent residence application because of the so-called public charge rule. *See* 8 U.S.C. § 1182(a)(4). This creates fear and risk in receiving public benefits for any immigrant. The risk depends on the federal administration in power because the public charge rule's reach can be expanded or contracted administratively. *Compare* "Inadmissibility on Public Charge Grounds," 84 Fed. Reg. 41292 (Aug. 14, 2019), as amended by "Inadmissibility on Public Charge Grounds; Correction," 84 Fed. Reg. 52357 (Oct. 2, 2019) (expanding the rule's reach) *with* "Public Charge Ground of Inadmissibility," 87 Fed. Reg. 55472 (Dec. 23, 2022) (contracting the reach); *see also Ariz. v. City and Cty. of San Francisco*, 142 S. Ct. 1926 (2022) (denying cert to recent litigation by 13 Republican-led states attempting to maintain the expanded public charge rule from the Trump administration). The Court should consider the significant barriers to an immigrant individually suing the Department to ensure they can receive transitional support services.

(cleaned up). The Court's resources would be better spent exercising jurisdiction over the instant matter for resolution rather than dismissing the case and requiring an immigrant parent to seek declaratory relief in their own name.[3]

II. The Department's TANF Rule #119A violates the plain language of sections 3762(3)(B)(2), 3762(8), and the TANF statutory scheme.

A. Transitional support services are part of the TANF program and accordingly must be provided to qualifying noncitizens.

The Court should reject the Department's repeated characterization that transitional support services are a non-TANF benefit for which the Legislature was required to, separately, affirmatively provide for noncitizen eligibility under 8 U.S.C. § 1621(d). The Department argues that the transitional support services provision in 22 M.R.S. § 3762(8) "makes no mention of eligibility for noncitizens." (Appellee's Br. 13.) For the reasons discussed in Appellants' Brief at 19-27, the Legislature was not required by federal law to do so to implement the affirmative provision of state-funded benefits for noncitizens in section 3762(3)(B)(2) throughout the TANF program, and the statute's text and structure support that transitional support services are part of the TANF program.

[3] If the Court were to find that neither appellant has standing to bring this case the appropriate remedy would be to remand for an entry of a dismissal without prejudice since the lack of standing would mean that the parties could not invoke the jurisdiction of the court to decide the merits of the case. *See Witham Family Ltd. Partnership*, 2015 ME 12, ¶ 7, 110 A.3d 642.

Attempting to distinguish transitional support services from other TANF benefits, the Department raises that if transitional support services were part of the TANF program it would be required to include receipt of transitional support services in the 60-month lifetime limit on TANF. This is not only patently false—this position ignores the plain language of the Department's regulations that govern the TANF program. In 22 M.R.S. § 3762(18), the Legislature authorized the Department to define, by rule, exemptions and exceptions to the lifetime limit for TANF eligibility. The Department regulations that implement this statute already exempt the months in which a person receives "non-cash assistance" from the 60-month limit and has provided a list of such assistance which includes transitional support services:

> The time limit shall **not** apply in the instances of . . . any month in which the family received only non-cash assistance such as:
> i. Alternative Aid,
> ii. Emergency Assistance,
> iii. ASPIRE-TANF Support Services,
> iv. Whole Family Services,
> v. Food assistance including Transitional Food Assistance and any TANF work supplement programs,
> vi. Transitional Services including child care and transportation, or
> vii. HOPE, 10-144 C.M.R. 330.

10-144 C.M.R. ch. 331 § I(J)(1)(e) (emphasis in original). The Department's exemption of transitional support services from the 60-month time limit supports In Her Presence and Maine Equal Justice's interpretation that these services are part of the TANF program. (Appellants' Br. 15-19.) If transitional support services were

not TANF benefits, but instead a separate program, there would be no need to include it in this list of exemptions. Moreover, finding that noncitizens are eligible for transitional support services would not change its character as "non-cash assistance." Despite the Department's claims, there is no reason that the Department could not continue to exempt transitional support services from the 60-month lifetime limit for TANF eligibility—as it currently does for U.S. citizens and "qualified aliens"—should In Her Presence and Maine Equal Justice prevail.

Finally, transitional support services are explicitly referred to as a TANF benefit in 22 M.R.S. § 3788 which sets forth the program requirements for the ASPIRE program. The Department argues that because section 3788(1) offsets the phrase "transitional support services and medical assistance" in commas, it must refer to programs outside of TANF because medical assistance, *i.e.*, Medicaid, is not a TANF program. (Appellee's Br. 21-22.) The Department's argument conflicts with the grammatical structure in section 3788(1) and legislative history. First, the commas around "transitional support service and medical assistance" offset an appositive, providing additional information for the preceding "support services":

> The department shall provide written notice to all applicants for and recipients of the Temporary Assistance for Needy Families program of the range of education, employment and training opportunities, and the types of support services, including transitional support services and medical assistance, available under the ASPIRE-TANF program, together with a statement that all participants may apply for those opportunities and services.

22 M.R.S. § 3788(1). Accordingly, transitional support services are plainly a "type[] of support service . . . available under the ASPIRE-TANF program." *Id.* Second, the reference to "medical assistance" refers not to Medicaid but to the transitional Medicaid program, which may be understood from the legislative history of transitional support services. When Maine's TANF program was created by the Legislature in 1997 following the enactment of PRWORA, transitional support services originally included "transitional Medicaid assistance" for families whose eligibility for TANF assistance terminated due to employment. P.L. 1997, c. 530 § A-16 (section 3762(8)(A)). Section 3762(8)(A), containing the transitional Medicaid assistance provisions, was later repealed by P.L. 2019, c. 485, § 4, wherein the Legislature moved the transitional Medicaid provisions to 22 M.R.S. § 3174-G(4), *see id.* § 2, but the reference to medical assistance in section 3788(1) was never removed to reflect this statutory change. Therefore, the Court should read 3788(1) as indication that the Legislature understood transitional support services (including transitional Medicaid) to be benefits in Maine's TANF program.[4]

[4] In Her Presence and Maine Equal Justice do not dispute that federal TANF block grant funds may not be used on medical assistance (Appellee's Br. 22) and assumes that the Department has since 1997 funded transitional Medicaid benefits with either federal Medicaid or state dollars. As evidenced by Maine's provision of state funds for TANF benefits for immigrants who are not "qualified aliens" under PRWORA, Maine is not limited to the use of federal TANF block grant funds in operating its TANF program. That is why in 22 M.R.S. § 3762(3)(B) the Legislature has authorized the Department to use federal funds, state funds, or a combination thereof to provide assistance to families in Maine's TANF program—a program designed to provide benefits and services beyond those that can be funded with federal TANF block grant dollars.

When the Court reviews "the whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved," *Urrutia v. Interstate Brands Int'l*, 2018 ME 24, ¶ 12, 179 A.3d 312, it should interpret transitional support services as a TANF benefit for which the Legislature affirmatively provided noncitizen eligibility through the language in section 3762(3)(B)(2).

B. In Her Presence and Maine Equal Justice's interpretation of the statute leads to the most logical and harmonious results.

In Her Presence and Maine Equal Justice's interpretation of the statute leads to the most logical and harmonious results for TANF participants and particularly noncitizen TANF participants. *See id.* The Department argues that because transitional support services are available "exclusively to employed individuals" (Appellee's Br. 16) and state-funded TANF is available to noncitizens who are unemployed or awaiting employment authorization, *see* 22 M.R.S. § 3762(3)(B)(2)(c)-(d), noncitizens cannot simultaneously meet the requirements of sections 3762(3)(B)(2) and 3762(8). The Department's argument fails for two reasons. First, the Department acknowledges that noncitizens need not be unemployed to qualify for state-funded TANF. (*See* Appellee's Br. 17, n. 8.) Noncitizens may also qualify because they are elderly or disabled or a victim of domestic violence—statuses which have no bearing on whether the noncitizen is working or unemployed. 22 M.R.S. § 3762(3)(B)(2)(a)-(b).

Take the example of a noncitizen mother of two who has reduced her hours at work because she has experienced domestic violence and seeks income support to meet her family's most basic needs. She could apply for TANF and meet the non-financial immigration status requirements as a survivor of domestic violence under 22 M.R.S. § 3762(3)(B)(2)(b) and the financial requirements because of her low wages from work. If she ultimately increases her work hours and starts earning above the financial requirements for TANF, her TANF would close due to "employment" and "increased earnings or an increase in the number of hours worked," *i.e.*, the eligibility criteria for transitional support services at section 3762(8). However, the Department would unlawfully deny her transitional transportation and childcare support services under the TANF rules at issue in this case solely because of her immigration status. *See* 10-144 C.M.R. ch. 331 § V(A)(2)(c)(ii) (transitional transportation services non-financial eligibility criteria); *id.* § V(B)(2)(a)(i)(c) (transitional childcare services non-financial eligibility criteria).

Second, the same logic applies to noncitizens who qualify for state-funded TANF while they are waiting to obtain proper work documentation or who have received that documentation but are unemployed. 22 M.R.S. § 3763(3)(B)(2)(c)-(d). Imagine the noncitizen mother of two who has no history of domestic violence but has applied for TANF because she cannot work to support her family while

subject to a 180-day waiting period to apply for work authorization after submitting her family's asylum application. *See* 8 C.F.R. § 208.7(a) (waiting periods for asylum seekers applying for employment authorization). She may meet the non-financial requirements for TANF while she is waiting for employment authorization under 22 M.R.S. § 3762(3)(B)(2)(c) and the financial requirements because she has no income. When she ultimately receives employment authorization and starts a job, her TANF would close due to "employment" and "increased earnings or an increase in the number of hours worked," but the Department would apply the same unlawful rules to deny her transitional support services.

In section 3762(8), the Legislature has unambiguously required that the Department shall make transitional support services available to families when they lose eligibility for TANF due to employment or increased earnings or an increase in the number of hours worked. These benefits are a critical part of the TANF program which is intended to "promote family economic self-support." 22 M.R.S. § 3762. They incentivize employment, help families avoid the cliff effect, and decrease the risk that a family will be so burdened by work-related costs that a parent leaves employment and reapplies for TANF. Because the Legislature has required the Department to use the same eligibility criteria for noncitizens and all other TANF recipients under 22 M.R.S. § 3762(3)(B)(2), noncitizens must have equal access to transitional support services.

III. There is no evidence that the Legislature has even considered the Department's unlawful exclusion of noncitizens from transitional support services.

The Court should not afford deference to the Department's interpretation of the statute based on legislative acquiescence where there is no evidence that the Department's interpretation has been "called to the attention of the Legislature." *Thompson v. Shaw' s Supermarkets, Inc.*, 2004 ME 63, ¶ 7, 847 A.2d 406. Even if the Department's interpretation of 22 M.R.S. § 3762(8) was reasonable and practical—which it certainly is not because it treats similarly situated parents differently based on their immigration status—the Department points to no evidence either in the case record, legislative history, or other public record to support its argument that its interpretation is entitled to deference under the legislative acquiescence doctrine.

The Department bases its argument on the mere fact that the Legislature has amended section 3762(8) since 1997 without addressing or correcting the Department's interpretation and that inaction is sufficient indication that the Legislature approves of the Department's decision to exclude noncitizens from transitional support services. (Appellee's Br. 22-23.) No case cited by the Department supports this argument. In *Thompson*, the Law Court relied not on repeated amendments to the statute but instead on significant record evidence that the regulatory interpretation at issue had been "called to the attention of the

Legislature" through "written correspondence between state representatives and [agency leadership]" and that the agency and Legislature had relied on written interpretation of the law from the Attorney General in its twelve statutory amendments "dealing specifically with the [provision in question]." 2004 ME 63, ¶ 7, 847 A.2d 406; *see also In re Spring Valley Dev.*, 300 A.2d 736, 743 (Me. 1973) (finding legislative acquiescence when "[t]he Legislature, with its attention *specifically directed* to the fact that the Commission was then construing the Act to give it authority over residential developments of over 20 acres, still refused two opportunities even to limit the Commission's power to exercise this authority." (emphasis added)). The Department also points to *Bocko v. University of Maine System*, in which the Court noted that the Legislature's amendment of a statute several times without amending a section to alter an agency's interpretation indicated acquiescence. 2024 ME 8, ¶ 8 n. 7, 308 A.3d 203. However, the Department neglects to mention that, importantly, the *Bocko* Court stated that whether the Legislature had acquiesced was "not conclusive without evidence that the Legislature is aware of the Department's rule." *Id.*

There is no evidence in the record demonstrating that the Legislature's attention has ever been *specifically directed* toward the Department's regulatory interpretation excluding noncitizens from transitional support services under section 3762(8), which is but one provision of the lengthy TANF statutory scheme the

Legislature has amended. The Department states that its "interpretation in this case was enshrined in the MAPA rule that it promulgated in 2020" and therefore "notice of the Department's interpretation was sent to the Legislature before it revisited section 3762 in years 2021 and 2023." (Appellee's Br. 23.) This alone is simply insufficient to satisfy the requirement under *Thompson* that the Department's interpretation be "called to the Legislature's attention" such that the Court can draw any inference from the Legislature's inaction.[5] 2004 ME 63, ¶ 7, 847 A.2d 406; *accord Spring Valley Dev.*, 300 A.2d at 743.

Without being adequately notified of the Department's unlawful and unreasonable interpretation of section 3762(8), the Legislature had no impetus to change the statute which already commands the Department to provide transitional benefits to noncitizens. This is precisely why it is important to show that the Legislature's attention was specifically directed to an agency's interpretation before the Court infers its acquiescence. Furthermore, the Court defers to a state agency's reasonable interpretation of a statute only when legislative intent is *not* clear. *See Narowetz v. Bd. of Dental Prac.*, 2021 ME 46, ¶ 33 n. 12, 259 A.3d 771. Here,

[5] While the Court has adopted a different standard for legislative acquiescence to decisions from the Law Court affecting interpretation of a statute, holding that "[t]he Legislature is presumed to have in mind previous decisions of [the Law Court] when enacting statutes," *see Finks v. Maine State Highway Comm.*, 328 A.2d 791, 797 (Me. 1974), even in that context this Court has stated that significance should not be attached to legislative inaction, *Mahaney v. Miller's, Inc.*, 669 A.2d 165, 169 (Me. 1995). And the Court has required actual knowledge of an agency's interpretation of a statute under the doctrine in the *Thompson* line of cases.

legislative intent is clear—the Legislature provided that "[e]ligibility for the TANF program for these categories of noncitizens must be determined using the criteria applicable to other recipients of assistance from the TANF program," 22 M.R.S. § 3762(3)(B)(2), and directed the Department to provide transitional support services to TANF recipients who lose eligibility due to employment or increased earnings, 22 M.R.S. § 3762(8)(B)-(C). The Legislature clearly intended to treat noncitizens the same as all other TANF participants regardless of immigration status with respect to the receipt of transitional support services. There is no reason the Legislature would alter statutory language that plainly reflects its intent to provide transitional benefits to all participants—including noncitizens—who lose eligibility for TANF due to employment. The Department's argument that the Legislature acquiesced to the Department's interpretation of the statute by declining to change this statutory language is unpersuasive and the Court should reject it.

CONCLUSION

For the foregoing reasons, In Her Presence and Maine Equal Justice respectfully request that the Court affirm the Order of the Superior Court with respect to the 12(b)(1) decision that they have standing to bring this case and reverse the Order with respect to the 12(b)(6) decision that they have failed to state a claim upon which relief may be granted.

Respectfully submitted,

Date: April 1, 2024

Ellen Masalsky, Bar No. 10307
Murray Plumb & Murray
75 Pearl Street, P.O. Box 9785
Portland, ME 04104-5085
(207) 699-3140
emasalsky@mpmlaw.com

Frank D'Alessandro, Bar No. 3243
Maine Equal Justice
126 Sewall Street
Augusta, ME 04330
(207) 626-7058 ext. 202
frank@mejp.org

Oriana Farnham, Bar No. 6770
Maine Equal Justice
126 Sewall Street
Augusta, ME 04330
(207) 800-4586
ofarnham@mejp.org

CERTIFICATE OF SERVICE

I, Ellen Masalsky, hereby certify that I have caused two copies of Plaintiff-Appellants' Reply Brief to be served on Brendan D. Kreckel, Esq. and Margaret Machaiek, Esq., counsel for Defendant, by depositing conformed copies thereof in the U.S. mail, first class and postage prepaid, to the following address:

Brendan D. Kreckel, Esq.
Margaret Machaiek, Esq.
Office of the Attorney General
6 State House Station
Augusta, ME 04333

Dated: April 1, 2024

_____

Ellen Masalsky, Bar No. 10307
Attorney for Plaintiff-Appellants
Murray Plumb & Murray
75 Pearl Street, P.O. Box 9785
Portland, ME 04104-5085
(207) 699-3140
emasalsky@mpmlaw.com