

State of Maine
Cumberland, ss

Superior Court
Civil Action
Docket No. _____

Peter and Kathy Masucci, of Wells, ME,)
Robert Morse, of Waldoboro, ME,)
George Seaver, of Waldoboro, ME,)
Greg Tobey, of Woolwich, ME)
Bonnie Tobey, of Bath, ME)
Hale W. Miller, of Tenants Harbor, ME,)
John W. Grotton, of Augusts, ME,)
LeRoy Gilbert, of Waldoboro, ME,)
Jake Wilson, of Cushing, ME,)
Dan Harrington, of Woolwich, ME)
Orlando and Judith Delogu, of Portland, ME,)
William Connerney, of Needham, MA,)
William M. Griffiths and Sheila A. Jones, of Old Orchard Beach, ME)
Susan Domizi, of Guilford, CT)
Dr. Brian Beal, of Machiasport, ME)
Charles and Sandra Radis, of Peaks Island, ME)
Amanda Moeser, of West Bath, ME)
Chad Coffin, of Freeport, ME)
Lori and Tom Howell, of Eliot, ME)

Plaintiffs

v.

Judy's Moody LLC, of Wells, ME)
OA2012 Trust, of Wells, ME)
Ocean 503 LLC, of Wells, ME)
Edward and Christine Page, of Harpswell, ME)
Jeffery and Margaret Parent, of Waldoboro, ME)
James Li and Kim Newby (Spotted Duck Revocable Living Trust), of Friendship, ME)
Robin Hadlock Seeley, of Pembroke, ME)

Defendants

and

Aaron Frey in his capacity as the Attorney General for the State of Maine)

Party in interest

COMPLAINT

FOR DECLARATORY
JUDGMENT AFFIRMING
MAINE'S TITLE TO ITS
INTERTIDAL LANDS IN TRUST
FOR THE PUBLIC EXCEPT FOR
DISCRETE PARCELS
ALIENATED TO FACILITATE
MARINE COMMERCE
(Title to Real Estate Involved)

Plaintiffs, (more fully described below) by and through their undersigned counsel, complain and allege against the above-named Defendants as follows:

INTRODUCTION

Fifteen hundred years ago, the Emperor Justinian decreed that certain property was inalienable by the state and was to be held by the sovereign in trust for the benefit of all the people. Along with air, water, and wild animals, the so-called *jus publicum*, included the sea and all the land over which the tide flows. Such has been the law through the rise and fall of empires, kingdoms and colonies. It was the law in Maine's first European settlements. It was the law at the founding of Maine's early townships where the title to private land ran to the "seawall" or "shore," or "highwater mark." It was the law when the original states ratified the U.S. Constitution, and their people claimed the sovereign right and title to all intertidal lands. It was the law in 1820 when Maine entered the Union, on an equal footing with all other states, and no longer subject to arcane Massachusetts colonial law. It was the law in 1981 when the Maine legislature codified what everyone already knew at the time: that intertidal land was public land, held by the state in trust for all its people. It was the law until 1986 when the Maine Supreme Judicial Court, through an act of "judicial legislation"¹ stripped the people of Maine of their right to access and use land that does now, and always has, belonged to them.

The effects of this judicial legislation were initially limited. However, as coastal properties changed hands and as people who made their fortunes outside of Maine began to concentrate on the shoreline, minor conflicts from the 1980's have become threats to livelihoods for thousands of Mainers who for generations have relied on access to the bounty of the Maine coast.

¹ *Bell v. Town of Wells*, 510 A.2d 509, 514 (Me. 1986)(quoting *Barrows v. McDermott*, 73 Me. 441 (1882).

This modern form of enclosure has effects beyond simply ruining a day at the beach. Maine's economy is water-based. These enclosures threaten Maine's ability to manage and preserve the critical natural resources in the intertidal zone and secure those resources for the benefit of all Mainers. Rising sea levels threaten everyone, not just those living on the shoreline. As global warming threatens our coasts and our way of life, the Maine people must be able to respond collectively with comprehensive mitigation strategies. The people of Maine cannot do this if they must first obtain easements from each and every person erroneously claiming title to land they simply do not own.

For the last three decades, walls have been built, signs have been posted, and the people of Maine have been threatened, harassed, and chased off land that belongs to them. This case seeks to correct that 30 year old mistake and in so doing, restore to the people of Maine rights they have held for more than a millennia.

PARTIES

Plaintiffs

1. Orlando and Judith Delogu are individuals residing in Portland, Maine. For 55 years, the Delogu family has enjoyed the natural beauty of Maine's beaches and coastlines. In recent years, their enjoyment has been curtailed by threatening and intimidating "no trespassing" and "private beach" signs posted by Defendants incorrectly claiming dominion over the intertidal portion of several beaches. The Delogus intend to continue enjoying Maine's beaches, but the signs and other barriers prevent the Delogus from using beaches they are rightfully entitled to use.

2. Robert Morse is an individual residing in Waldoboro, Maine and the founder and president of Atlantic Laboratories, Inc d/b/a North Atlantic Kelp, a kelp processing facility in Waldoboro, Maine. North American Kelp processes sustainably harvested seaweed from the

coast of Maine and works with harvesters who are licensed from the State of Maine Department of Marine Resources. North American Kelp had been in the business of producing quality kelp and seaweed products for the agricultural and horticultural industries for more than 50 years and employs between 20 and 35 people in full time, well-paying jobs. Mr. Morse's livelihood is threatened by Defendants' unlawful claims to title over Maine's intertidal land.

3. George Seaver is an individual residing in Waldoboro, Maine. Mr. Seaver is part owner of Ocean Organics Corporation and has been processing seaweed since 1977. Ocean Organics products, derived from Maine seaweed, work as a natural growth stimulant and can increase crop yields without increasing the use of dangerous fertilizers and toxic chemicals. Mr. Seaver's livelihood is threatened by Defendants' unlawful claims to title over Maine's intertidal land.

4. John Grotton is an individual residing in Augusta, Maine. Mr. Grotton is a licensed seaweed harvester and a full-time employee of North American Kelp. His income is totally derived from the sustainable harvesting and processing of marine organisms found in the intertidal zone. In recent years, Mr. Grotton has seen threats to his job as a result of upland landowners' wrongful claim of title to intertidal land and attempt to remove people lawfully and sustainably harvesting this critical resource.

5. Hale W. Miller is an individual residing in Tenant's Harbor, Maine and is a licensed seaweed harvester. Mr. Miller has lived on the coast of Maine his entire life. He owns and operates two boats engaged in the sustainable harvest of Maine seaweed. The income he derives from intertidal resources sustains him and is helping put his son through college. In recent years, Mr. Miller has experienced increasing harassment from landowners who wrongfully claim to own all the marine organisms in the intertidal areas adjacent to their property.

6. Leroy W. Gilbert is an individual residing in Waldoboro, Maine and is a licensed seaweed harvester. He has made a living from coastal resources for his entire life. Like all licensed seaweed harvesters, Mr. Gilbert understands that sustainable harvesting practices are the only way to ensure that Maine's coastal resources will be available for future generations. Unfortunately, Mr. Gilbert is also cognizant of the emerging threat of landowners claiming private ownership over public resources, namely the seaweed growing in Maine's intertidal areas.

7. Jake Wilson is an individual residing in Cushing, Maine and is a licensed seaweed and clam harvester. He has made a living as a commercial lobsterman and clammer. Today he works at North American Kelp and helps produce organic fertilizers, and growth stimulants from sustainably harvested Maine seaweed. Mr. Wilson's job is threatened by upland owners unlawfully claiming title to the intertidal land and therefore ownership and absolute dominion over the seaweed growing therein.

8. Dan Harrington is an individual residing in Woolwich, Maine. Mr. Harrington is a licensed worm and seaweed harvester. Mr. Harrington's father started worming in 1965 and opened a wholesale shop in 1990. Since then, nearly his entire family has worked in the industry and derived their livelihood from Maine's intertidal resources. Now that livelihood is threatened by upland owners who are harassing people harvesting resources already found to be protected under the public trust. Nevertheless, these upland owners persist in their harassment, acting out of the confusion over the law that has been sown by Defendants.

9. Peter and Kathy Masucci are individuals residing in Wells, Maine. Ms. Masucci's family has owned property in the Moody Beach area since 1918. For over 100 years, the Masucci family had enjoyed free and unfettered access to Moody Beach, until 1989 when beach front owners began to restrict and eventually forbid access to the beach. Now to access the beach

across the street from their residence, they must obtain the permission of landowners who can revoke that permission at any time. The Masuccis intend to continue using Moody Beach, but that use is now unlawfully curtailed by Defendants.

10. William Connerney is an individual residing in Needham, Massachusetts and is the owner of property near, but not on Moody Beach in Wells, Maine. Since 1972, the Connerney family has enjoyed Moody Beach. Then beginning in 1989, the beachfront owners on Moody Beach began restricting and then forbidding access by posting signs that read “private beach,” “no loitering,” and “no trespassing.” An upland owner has approached and called the police on Mr. Connerney’s son and grandson for simply attempting to enjoy a day at the beach.

11. Susan Domizi resides in Guilford, Connecticut. She is the founder and CEO of Source, Inc. Her company has operated a subsidiary, (Source Maine) for the last 40 years. Source was founded to provide superior nutritional products for animals and people utilizing the unique micronutrients found in seaweeds. Initially Source used seaweeds from other countries, but eventually it was found that Maine seaweeds were superior. Ms. Domizi’s concern for the future of this incredible Maine resource led her and her plant manager to establish the Maine Seaweed Council. This organization is active today and consists of harvesters, processors, and scientists concerned about the future of seaweeds in Maine. Ms. Domizi’s business and livelihood is threatened by Defendants’ unlawful claims to title over Maine’s intertidal land.

12. Greg Tobey is a resident of Woolwich. The Tobey family has lived in Maine since 1859. For 160 years, the Tobey family has made a living from the bounty found on the Coast of Maine. Mr. Tobey is the General Manager of Source Maine, a company dedicated to the sustainable harvest of Maine Seaweed and the development of organic and beneficial products derived from compounds not found in any other organism. Mr. Tobey’s livelihood is threatened by Defendants’ unlawful claims to title over Maine’s intertidal land.

13. Bonnie Tobey is a resident of Bath. Ms. Tobey runs the operations at the Source Maine plant in Brunswick. She earns a good living at her job and sees herself as a steward of Maine's most precious resource and is dedicated to preserving those resources for the benefit of future generations. Unfortunately, those future generations may not see the benefits of Ms. Tobey's work as upland owners continue to lock away the coastline. Ms. Tobey's livelihood is threatened by Defendants' unlawful claims to title over Maine's intertidal land.

14. William Griffiths and Sheila Jones own the Crow's Nest Resort in Old Orchard Beach. Their guests come from as far away as Eastern Canada, drawn by the surf, the pier, and beaches and shops all along Route 1 and coastal Maine. Customers of the Crow's Nest come, expecting to find Maine's beaches open to everyone wanting to enjoy a day at the beach. Those customers are disappointed to find invisible lines in the sand and hostile signs telling them and their children to "keep out." Mr. Griffith's and Ms. Jones business and livelihood is threatened by Defendants' unlawful claim of title over Maine's intertidal land.

15. Brian Beal is a marine biologist at the University of Maine at Machias. Dr. Beal's work focuses on organisms that live in the intertidal land. Maine's treasured shellfish is under threat from stressors such as ocean acidification and invasive predators. One of those predators, the green crab has decimated the clam populations in the middle and lower regions of the intertidal land. Dr. Beal has developed processes that promise to mitigate this damage but to continue his research, he must first obtain the permission of the upland owners. Several owners have denied Dr. Beal permission and access to intertidal land they wrongfully claim.

16. Charles and Sandra Radis own shorefront property on Peaks Island in Casco Bay. The Radis' are regularly asked by people for permission to access intertidal land adjacent to their property. The Radis' do not believe they own the intertidal land and such permission is not

necessary. The Radis would like everyone who lives on or visits Peaks Island, including themselves, to be able to walk along the shore without threat or harassment.

17. Amanda Moeser is the owner and operator of Lanes Island Shellfish, L3C. Ms. Moeser currently farms oysters in Casco Bay and is hoping to diversify and sustain her business by expanding farming operations to additional species and locations in Mid-coast Maine. Climate change-related increases in severe rainfall events and prolonged harmful algae blooms affect her ability to harvest and sell her shellfish products. Her business is dependent upon the ability to pass over intertidal lands, in addition to access to shallow submerged lands and submerged land that was once intertidal for farming purposes. She is worried about the expanding interpretations of ownership of intertidal lands and existing permission requirements which can be withdrawn at any point. Ms. Moeser seeks clarity and predictability in the law so that she can make informed and strategic decisions on how and where to grow her business.

18. Chad Coffin is a lifelong fisherman and the President of the Maine Clammers Association. Mr. Coffin harvests clams on intertidal land. Despite clams being defined as “fish” and therefore within the public trust, Mr. Coffin and his associates are regularly harassed by upland owners who claim he is trespassing. These upland owners threaten clammers and often call the police who must then respond. More importantly, Maine clams are threatened by invasive species but upland owners are blocking the ability to research techniques to mitigate the damage and save this precious resource.

19. Lori and Tom Howell are the owners of Spinney Creek Shellfish. In addition to other shell fishing activities, Spinney Creek operates an oyster farming site in Eliot, Maine. Spinney Creek’s farming operations are licensed by the Maine Department of Marine Resources. As oyster farmers, the Howells depend on regular access and use of the intertidal land adjacent to the farm. The Howells, their employees, and associates have been harassed by upland owners

wrongfully claiming ownership of the intertidal land and who call law enforcement and local officials who must then respond. The Howells, their employees, and associates have been blocked from use of the intertidal land that is so critical to their business.

Littoral Upland Defendants

20. OA 2012 is a Maine trust with a trustee, John Howe, residing in Kennebunk, Maine. OA 2012 owns property in Wells, Maine and claims title to intertidal land abutting its property in the same town. OA 2012 makes this claim by posting signs that say “Private Beach, No Loitering.”

21. Judy’s Moody, LLC is a Maine corporation with a location in Wells, Maine and claims title to intertidal land abutting its property in the same town.

22. Personnel associated with Judy’s Moody, LLC approach members of the public standing on intertidal land adjacent to the property owned by Judy’s Moody, LLC and falsely claim that they own the intertidal land, and then demand that they leave.

23. Ocean 503, LLC is a Maine corporation with a location in Wells, Maine and claims title to intertidal land abutting its property in the same town. Ocean 503, LLC makes this claim by posting signs on its property that say “Moody Beach is a Private Beach to the low water mark. No Loitering.”

24. Ocean 503, LLC posts signs to create an intimidating environment and to unlawfully prohibit the public from enjoying a public beach.

25. Edward and Christine Page are individuals residing in Columbia, Illinois. Mr. and Mrs. Page wrongfully claim title to intertidal land that abuts property owned by them in Harpswell, Maine.

26. Upon information and belief, Edward and/or Christine Page have called law enforcement to have seaweed harvesters, who are duly licensed by the State of Maine, removed from the intertidal land they unlawfully claim.

27. Jeffery and Margaret Parent are individuals residing in Waldoboro, Maine and wrongfully claim title to intertidal land that abuts their property in the same town.

28. Upon information and belief, Jeffery and Margaret Parent have called law enforcement to remove people lawfully harvesting seaweed on land they wrongfully claim is theirs.

29. James and Kim Newby are individuals residing in Friendship, Maine and wrongfully claim title to intertidal land abutting them in the same town.

30. Mr. and Mrs. Newby make this claim by harassing seaweed harvesters and calling law enforcement to remove seaweed harvesters who are lawfully harvesting seaweed on intertidal land they wrongfully claim to own.

31. Robin Seeley is an individual residing in Pembroke Maine and wrongfully claims title to the intertidal land abutting her property in the same town.

32. Ms. Seeley has published websites and other media falsely suggesting that upland owners may deny permission for harvesters to cut rockweed on intertidal land abutting their property without showing that they hold title to the intertidal land abutting their upland property.

33. Ms. Seeley's activities include encouraging landowners to sign up for a so called "Rockweed Registry" where, Ms. Seeley wrongfully claims, the landowner may deny permission for harvesters to cut rockweed on intertidal land abutting their property.

34. This so-called "registry" deceptively suggests that the landowner is somehow registering their denial of permission with an entity empowered to enforce their wishes.

35. Ms. Seely's activities create confusion about the legal rights of landowners and seaweed harvesters. This activity wastes law enforcement resources by falsely suggesting that landowners dispatch wardens to stop people who are lawfully harvesting seaweed.

36. In 2019, Ms. Seely recorded an amended deed to claim she owned the intertidal land adjacent to her upland property even though she was never conveyed title to the intertidal land which was never conveyed to the original title holder of her property.

Party In Interest

37. Aaron Frey is the Attorney General for the State of Maine, which holds title to all of Maine's intertidal land by virtue of the Equal Footing Doctrine, the invalidity of the Colonial Ordinance, and all the other arguments articulated by Plaintiffs in this matter.

JURISDICTION AND VENUE

38. This Court has jurisdiction over this action pursuant to 4 MRS §105, Maine's Declaratory Judgment Act, 14 MRS §§ 5953, 5954, and 5957, and The Maine Rules of Civil Procedure, Rules 57 and 80B. Venue is proper in Cumberland County pursuant to 14 MRS §§ 501, 507, and 508 because the site is centrally located thereby serving the largest number of plaintiff and defendant parties.

FACTS

Plaintiffs who own back lots are being denied beach access

39. Peter and Kathy Masucci own a home directly across the street from the beach in Wells, Maine. For more than 60 years, the Masuccis have enjoyed unfettered access to the section of the beach seaward of the mean high-water mark.

40. In recent years, owners of houses fronting the beach have posted signs reading "no trespassing," "private beach," and "no loitering." One such sign includes the picture of a Rottweiler and the words: "Private Beach, Beware of Dog."

41. One such house displaying a sign is owned by Defendant Judy's Moody, LLC.

42. The posting of such signs demonstrates that the owners of the houses claim a right to exclusive access to the intertidal zone abutting their property.

43. The signs also create a hostile and intimidating environment thereby reducing the enjoyment of a public beach, even if the public could access it.

44. Historic pathways that once gave the public access to the beach have been narrowed or closed altogether.

45. William Connerney's family has enjoyed Moody's Beach and has owned a house there since 1979. The Connerney's house is located near Right of Way #2, a public access point.

46. Over the last few years, homeowners abutting the intertidal zone on Moody Beach have repeatedly let it be known that the Connerneys, along with other members of the public, are to remain in the narrow public access portion of the beach or risk having the police called to arrest them for trespass.

47. In one such incident, a beachfront owner called the police when he/she saw the Connerney's son and four-year-old grandson playing on what that owner claimed was their own beach. The police responded and told the Connerneys to leave the beach or risk being arrested.

Individuals and business owners are being harmed by erroneous claims of title

48. Orlando and Judy Delogu have lived in Portland, Maine for 55 years.

49. Since moving to Maine in the 1960's the Delogu family has enjoyed the peace and serenity of Maine's beaches, especially those near Portland.

50. Beginning in 1989 landowners have begun to restrict access to intertidal land erroneously claiming that the beach is now private property.

51. As a result, the number of beaches that the Delogus and the public can access has been reduced and members of the public have been funneled into smaller and more crowded sections of the beaches and designated parks.

52. These unlawful restrictions have also hurt businesses reliant upon tourism.

(Rockweed Harvesters Claims)

53. Rockweed is a marine organism and a critical natural resource in Maine.

54. Maine rockweed contains natural compounds that are very valuable for use as nutritional supplements, fertilizers, and natural agricultural growth stimulants. Products made from Maine rockweed are sold in markets around the world.

55. The Maine Department of Marine Resources estimates that the coast of Maine supports 2.2 billion pounds of rockweed and estimates that up to 17 percent of the biomass can be sustainably harvested.

56. The current annual rockweed harvest consists of less than 2 percent of the biomass.

57. For that 2 percent harvest Maine sees tens of millions in economic benefit supporting hundreds of families with well-paying jobs.

58. Rockweed has been commercially harvested on the coast of Maine for well over a century.

59. Rockweed harvesting is a heavily regulated activity. Harvesting areas, quantities, and methods are strictly controlled by the Maine Department of Marine Resources. Each harvester must be licensed, and each harvest is subject to inspection by the Marine Patrol.

60. Despite these strict controls, Defendants continue to harass harvesters by yelling at them, and by calling the wardens to have them removed from intertidal land they unlawfully claim to own.

61. The continued harassment by Defendants affects the seaweed processing companies interrupting the steady supply of clean and fresh rockweed. Which, in turn affects the ability of seaweed companies to provide a reliable source of Maine seaweed products to their customers.

62. Furthermore, some Defendants are actively promoting the harassment of rockweed harvesters by falsely claiming landowners have a right to deny them access to the intertidal land abutting their property.

Maine's Intertidal Land is Public Property

63. In Maine, intertidal land is all land intermittently flooded by action of the tides lying between the mean high watermark and the mean low watermark, or 100 rods from mean high water, whichever is shorter.

64. Submerged land in Maine is land lying seaward of the mean low watermark or 100 rods from the mean high watermark. It also includes land lying beneath navigable rivers, streams, and lakes/ponds in excess of 20 acres.

65. Title to submerged land is held by the state, except for discrete parcels alienated to facilitate "wharfing out," i.e., marine commerce. This Complaint does not challenge titles to these parcels.

Historical Title to Intertidal Land Was Held By The Public

66. Prior to the American Revolution, title to all intertidal land was held by the English sovereign in trust for the public. Certain parcels of intertidal land could be alienated by Parliament for the purposes of building wharfs and commerce, but the whole of the empire's intertidal land was considered inalienable by the King and thus remained forever in trust for all British subjects.

67. In the early colonial period before the development of reliable inland roads, beaches and shorelines were critical to support the land-based transportation of goods between villages, for the transport of livestock between grazing fields, and for the harvest of food and other resources from the ocean and rivers.

68. Title to land granted to individual settlers consistently ran from mean high water mark (or the seawall) landward.

69. In 17th century Boston, the need to build wharfs and other marine-related infrastructure created a conflict between upland owners and those reliant upon intertidal land for sustenance and economic benefit.

70. In 1647, the so called “Colonial Ordinance” was passed, not to grant title, but rather to grant a license to the adjacent upland owners for the purposes of supporting commercial development of the shorefront.

71. The Colonial Ordinance was careful to preserve a trust for the people that encompassed all the other economic uses of intertidal land, which in 1647 including lateral passage, fishing, fowling, and navigation.

72. Indeed, the idea of spending a day on the beach would be a foreign concept to early colonialists. But the idea of preserving the economic benefit from the coastline was just as pressing a concern 400 years ago as it is today.

73. Subsequent courts erroneously interpreted the terms “fishing fowling, and navigation” as a limitation of the public trust.

74. The public trust extends beyond fishing, fowling, and navigation and includes all activities and uses a state would normally allow and regulate on any other public land and waterway.

**Maine’s Title to Its Intertidal Land
Was Confirmed Upon Statehood**

75. After the revolution, the people of the United States inherited the rights formerly held by the English King, including the title to all intertidal land to be held in trust for the public.

76. Upon the founding of a new nation by thirteen colonies, now states, English common law principles with respect to intertidal and submerged lands were adopted by the new nation and by the individual states.

77. To facilitate marine commerce, discrete parcels of intertidal land were legislatively alienated, i.e., a license was granted to an adjacent upland owner to build wharves, warehouses, and transportation linkages. But the whole of a harbor, much less all intertidal land in an entire state, could not be alienated.

78. As the nation grew 37 new states were admitted into the Union on the basis that they would be equal with one another and with the 13 original states; this principle of complete equality was embodied in Art. IV §§ 1-3 of the Federal Constitution and is referred to as the “Equal Footing Doctrine.”

79. Maine, by an Act of Congress, was admitted into the Union in 1820 as the 23rd state. The concluding line in Maine’s Statehood Act proclaims: “...the state of Maine is hereby declared to be one of the United States of America and admitted into the Union on an equal footing with the original states, in all respect whatever.”

80. Applying the Equal Footing Doctrine to claims of title to intertidal lands the United States Supreme Court has consistently held that upon statehood, the state gains title within its borders to the beds of waters then navigable, or tidally influenced and that title to intertidal land never used for commercial wharfing out purposes either remains in the hands of the state or is subject to the state’s right of re-entry to reclaim its unrelinquished title.

81. To the extent any legal title was conveyed by operation of the Colonial Ordinance, such legal title was extinguished upon Maine's entry into the Union on an equal footing with all other states.

**Judicial Legislation Cannot Alienate an Entire State From Its Intertidal Land,
Especially When the Legislature Has Spoken On The Issue**

82. Maine's Constitution, Art. III, §§ 1 and 2, delineates the separation of powers and precludes the alienation of all intertidal land in the state by the Judicial branch of government.

83. The Maine Supreme Judicial Court in 1831, 1910, and again in 1989, lacking any constitutional or statutory authority, proclaimed the legal efficacy of the Colonial Ordinance as a form of "judicial legislation."

84. The Maine Court's acceptance of Massachusetts case law said to alienate all intertidal land in the state pursuant to a "judicial legislation" is error.

85. The Maine Legislature's 1975 Submerged Lands Act and the 1981 amendment thereto allowed discreet parcels of intertidal land actually filled for marine commerce to be alienated to an adjacent upland owner.

86. In passing legislation that alienated specific parcels of intertidal land, the Maine Legislature acknowledged what everyone knew to be true at the time, that the state held title to all intertidal land and land not alienated by the Submerged Lands Act would remain in the hands of the state in trust for the public.

87. Judicial rulings that such legislation would serve as an unconstitutional "taking" are in error because the littoral landowners never held title in the first place and could never have been granted title to the intertidal land by a court declaring it, "judicial legislation."

**Any Remaining Common Law Claims to Private Dominion over Intertidal Land Were
Extinguished by the Maine Legislature in 1985**

88. To the extent any Defendant claims a common law right to “own” adjacent intertidal land, such common law rights are subject to legislative action.

89. In passing the Public Trust in Intertidal Land Act, the Maine Legislature clarified what everyone knew at the time to be true, that intertidal land was held by the State in trust for the public and that the public trust is an evolving doctrine reflective of the needs, customs, traditions, heritage, and habits of the Maine people.

90. Subsequent holdings by the Maine Supreme Judicial Court that the Public Trust in Intertidal Land Act was an unconstitutional “taking” were in error and contrary to long held police power principles defining legislative authority to regulate all property, public and private.

COUNT I
Declaratory Judgment, 14 MRS §5951 et seq.

91. Plaintiff’s repeat and reallege allegations in the preceding paragraphs as if stated fully herein.

92. The facts alleged present an actual and justiciable controversy concerning the ownership of Maine’s intertidal lands capable of resolution pursuant to 14 M.R.S.A. §§ 5953-5957.

93. The court has jurisdiction to resolve intertidal land ownership issues pursuant to 4 M.R.S.A. § 105, 14 M.R.S.A. §§ 5953-5957, and Maine Rules of Civil Procedure, Rule 57.

94. The court’s resolution of intertidal land ownership issues in favor of the Plaintiffs on the grounds raised in this Complaint have statewide effect insofar as the property interests of upland owners not party to these proceedings are identical with the property interests of the Defendants in this case.

COUNT II
The alienation of all Maine intertidal land violates Article IV, §§ 1-3 of the United States Constitution - The Equal Footing Doctrine.

95. Plaintiffs repeat and reallege allegations in the preceding paragraphs as if fully stated herein.

96. After the Revolution, and upon the founding of the Union, common law principles, holding that intertidal lands were held by the State in trust for the public, were recognized and adopted by the majority of the 13 original states (which states were co-equal with one another) and that all states subsequently admitted in the union were to be on an “equal footing” with one another and the original states.

97. “Equal footing” principles are rooted in Art. IV, §§ 1-3 of the United States Constitution, and have been sustained (with respect to intertidal lands) by an unbroken line of U.S. Supreme Court cases the most recent of which held that: “Upon statehood, the state gains title within its borders to the beds of waters then navigable, or tidally influenced.”

98. Maine case law has erroneously failed to recognize what the Statehood Act (1820) made clear, i.e., that Maine was “... admitted into the Union on an equal footing with the original States in all respects whatever”.

99. Maine then, not upland owners, holds title to its intertidal lands, except for discreet parcels alienated to facilitate marine commerce.

COUNT III

The alienation of all Maine intertidal land by the Judicial Branch of government violates the Maine Constitution

100. Plaintiffs repeat and reallege allegations in the preceding paragraphs as if fully stated herein.

101. The Maine Constitution, Art. 3, §§ 1 and 2, provides that “[th]e powers of this government shall be divided into 3 distinct departments, the legislative, executive and judicial” and that “[n]o person or persons, belonging to one of these departments, shall exercise any of the

powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.”

102. The Maine Constitution, Art. 4, Pt. 3, § 1, provides that “[t]he Legislature, with the exceptions hereinafter stated, shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States.”

103. Both the 1959 Sovereignty and Jurisdiction Act asserting Maine’s jurisdiction and ownership of offshore waters and bed areas, and the 1975 Submerged Lands Act (as amended in 1981) clarifying and establishing the Maine Legislature’s right to lease and/or alienate discrete parcels of intertidal and submerged to facilitate marine commerce evidence the Legislature’s understanding that Maine holds title to all unfilled bed areas in trust for the public.

104. In the context of deciding cases, or by acquiescence to a pre-statehood “judicial legislation” said to have alienated all intertidal land in Massachusetts, the judicial branch of government may not alienate all intertidal land in Maine to upland owners. No provision of the Maine Constitution gives the judicial branch of government this power. The constitutional separation of powers precludes this judicial conduct.

COUNT IV

The “Public Trust” extends beyond fishing, fowling, and navigation

105. To the extent the Colonial Ordinance has any legal effect in Maine, the original drafters did not intend to forever limit the description of the public trust contained therein to fishing, fowling, and navigation.

106. Rather, the public trust extends to whatever the state sees fit to allow and regulate exercising its sovereign police power and through its own legislative and regulatory processes.

COUNT V

The Defendants Do Not Hold Title to the Intertidal Land

107. In 2019, the Maine Supreme Judicial Court held that the owners of upland ocean front property only presumptively owns to the low water mark by operation of the Colonial Ordinance and that an owner only benefits from this presumption where the original grant of property specifically includes a call to the water.

108. The Court held that terms such as “Atlantic Ocean,” “ocean,” “cove,” “sea,” or “river” triggered the presumption while language such as “to” or “by” the shore, beach, bank, sea wall, or seashore may defeat the presumption.

109. Defendants each hold title to certain parcels of land in a chain of title dating back to an original conveyance from the 17th Century.

110. The original conveyances do not, and never did make reference to the ocean, cove, sea, or river.

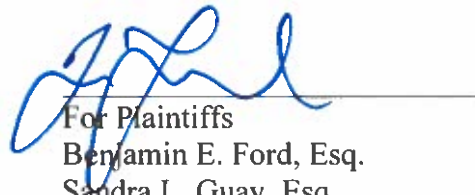
111. Accordingly, Defendants do not benefit from the presumption created by operation of the Colonial Ordinance and, in fact, do not hold title to the intertidal lands adjacent to their property.

WHEREFORE, pursuant to the Maine Declaratory Judgment Act, Plaintiffs respectfully request the court to grant judgment in their favor and declare that:

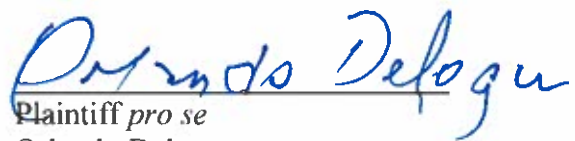
- a. The State of Maine holds title to all intertidal land, in trust for the public, without limitation to fishing, fowling, and navigation, and with the exception of land previously alienated pursuant to the Submerged Land Act and for the purposes of promoting commerce.
- b. Pursuant to the Maine Statehood Act, Maine entered the Union on an equal footing with all other states, and consequently holds title to its intertidal land, except for discrete parcels alienated to facilitate marine commerce.

- c. Pursuant to the Maine Constitution, only the Maine Legislature has the authority to alienate state intertidal land; the Maine Legislature has never alienated, is constitutionally barred from alienating all of the state's intertidal land; consequently, the state holds title to this land except for discrete parcels alienated to facilitate marine commerce.
- d. The alienation of all intertidal land in Maine may not be accomplished by a "judicial legislation," or by adhering to pre-statehood Massachusetts case law.
- e. Such further relief as the Court deems necessary and just.

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