

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION

**NATHAN DESCHAINED, RHIANNON
DESCHAINED, FRANK ROMA, AND
FARM-TO-CONSUMER LEGAL
DEFENSE FUND**

Plaintiffs,

v.

**JEANNE LAMBREW, COMMISSIONER
OF THE STATE OF MAINE
DEPARTMENT OF HEALTH AND
HUMAN SERVICES,**

Defendant.

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs Nathan and Rhiannon Deschaine (the “Deschaines”), Frank Roma (“Mr. Roma”), and Farm-to-Consumer Legal Defense Fund (the “Fund”) (collectively, the “Plaintiffs”) hereby complain against Defendant Jeanne Lambrew, Commissioner of the State of Maine Department of Health and Human Services (“DHHS”), as follows:

INTRODUCTION

1. This case arises out of the unlawful actions taken by the DHHS Health Inspection Program, whose agents have ordered the closure of the Kenduskeag Kitchen—a small, home-based food producer business operated by the Deschaines that serves wholesome, locally produced meals to a largely food-insecure and rural population—and have threatened the Deschaines with judicial enforcement action for preparing and serving food without an eating establishment license pursuant to 22 M.R.S.A. § 2492 and the DHHS rules promulgated thereunder, including 10-144 C.M.R. Ch. 200, and 10-144 C.M.R. Ch. 201 (collectively, the “State Food Licensing Regime”).

2. Because all of the activities of the Kenduskeag Kitchen are “direct producer-to-consumer transactions” that are governed by the Kenduskeag Local Food and Community Self-Governance Ordinance (the “Kenduskeag Food Sovereignty Ordinance”), the Maine Food Sovereignty Act, 7 M.R.S.A. §§ 281, *et seq.*, relieves DHHS of its authority to enforce the State Food Licensing Regime with respect to Kenduskeag Kitchen’s transactions. Plaintiffs therefore seek an order from this Court declaring that the Deschaines’ operation of the Kenduskeag Kitchen constitutes direct producer-to-consumer transactions governed by the Kenduskeag Food Sovereignty Ordinance pursuant to the Maine Food Sovereignty Act, that any DHHS enforcement action against the Kenduskeag Kitchen concerning a violation of the State Food Licensing Regime exceeds the scope of DHHS’s statutory authority and is invalid, and that the Kenduskeag Kitchen may continue to operate in accordance with the Kenduskeag Food Sovereignty Ordinance without an eating establishment license. Plaintiffs further ask this Court to issue a permanent injunction prohibiting DHHS from taking any enforcement actions against the Kenduskeag Kitchen arising from any direct consumer-to-producer transactions governed by the Kenduskeag Food Sovereignty Ordinance.

3. Furthermore, because DHHS’s unlawful actions have had a chilling effect on the Kenduskeag Kitchen’s operations and, but for this Court’s intervention, would permanently shut down those operations, DHHS has violated and is likely to continue to violate the constitutional right of the Kenduskeag Kitchen’s loyal customers, including Mr. Roma, and they threaten to violate the constitutional right of other similarly situated individuals, including the 23 Maine consumer members of the Fund, to “consume the food of their own choosing for their own nourishment, sustenance, bodily health and well-being” Me. Const. Art II, § 25. Accordingly,

Plaintiffs also request that this Court declare the rights and obligations of the parties with respect to this fundamental constitutional right.

PARTIES

4. The Deschaines are individuals who reside in the Town of Kenduskeag, Penobscot County, Maine. The Deschaines jointly own the Kenduskeag Kitchen, an unincorporated home-based business that the Deschaines operate from their Kenduskeag home.

5. Defendant Jeanne Lambrew is the Commissioner of DHHS, an administrative division of the State of Maine.

6. Mr. Roma is an individual who resides in the Town of Glenburn, Penobscot County, Maine.

7. Mr. Roma is a repeat customer of the Kenduskeag Kitchen.

8. The Fund is a national membership-based nonprofit corporation, incorporated in the State of Ohio with a principal place of business in Falls Church, Virginia.

9. The Fund's mission is to organize, protect, defend, and broaden the rights and visibility of independent farmers, artisanal and local food producers, and their consumers.

10. The Fund's membership includes 25 independent farmers and food producers in Maine who are interested in selling and actually sell food in Maine directly to consumers, including within some of the approximately 86 Maine municipalities that have adopted food sovereignty ordinances pursuant to their home rule authority and the Maine Food Sovereignty Act.

11. The Fund's membership also includes 23 consumer members in Maine who are interested in consuming and actually consume food that is grown or produced by independent farmers and processed or prepared by local food producers, who support the right to access the foods of their choice from the source of their choice, who support production of local foods by

independent farms, and who support the legal work of the Fund in ensuring that independent farmers and artisanal and local food producers can sell their products directly to consumers.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this case pursuant to 14 M.R.S.A. §§ 6051, 5953, and 5301.

13. Venue is proper in Kennebec County pursuant to 4 M.R.S.A. § 501.

FACTUAL BACKGROUND

14. The Deschaines established the Kenduskeag Kitchen on or about April 30, 2022.

15. The business operation of the Kenduskeag Kitchen consists of the creation of food and food products in the form of home-cooked meals, which are processed and prepared by the Deschaines in the kitchen of their Kenduskeag residence and sold directly to individual customers for human consumption.

16. The ingredients used in the food and food products that are processed and prepared by the Deschaines include vegetables, herbs, berries, fruit, eggs, meats, dairy, and other ingredients grown or produced by neighboring farms and homesteads located between approximately 0.1 miles and approximately 17 miles from the Kenduskeag Kitchen and provided to or purchased by the Deschaines.

17. The ingredients used in the food and food products that are processed and prepared by the Deschaines also include vegetables, herbs, and eggs grown or produced by the Deschaines at their Kenduskeag residence.

18. The ingredients used in the food and food products that are processed and prepared by the Deschaines also include seasonings, flour, rice, dry pasta, and other ingredients purchased

by the Deschaines from retail markets, supermarkets, and other retail vendors that are located approximately 10-15 miles from the Kenduskeag Kitchen.

19. No meat or poultry products used in the food and food products that are processed and prepared by the Deschaines are grown or produced at their Kenduskeag residence.

20. The Deschaines combine the food and food products that are grown or produced at their Kenduskeag residence with food and food products that are procured from other local sources in order to process and prepare meals at the Kenduskeag Kitchen for direct sale to their customers for later consumption by their customers.

21. In the normal course of operation of the Kenduskeag Kitchen, once or twice a week, Rhiannon Deschaine (i) prepares a menu for a “community meal” generally consisting of a main dish, a side, and a dessert; (ii) advertises the community meal by posting the menu on Facebook for a set price and for carry out service; (iii) receives meal orders directly from customers via Facebook Messenger app, text message, or phone call and arranges for the ordered meals to be picked up directly by the customers at her Kenduskeag residence at a preset pick-up time; (iv) surveys local producers and growers for available local ingredients; (v) procures or purchases ingredients in an amount necessary to fulfill the orders received and to feed her family; (vi) processes and prepares the meals in the kitchen of her Kenduskeag residence in sufficient quantity to fulfill the orders received and to feed her family; (vii) places the ordered meals in to-go packages; (viii) accepts payment and delivers the carry-out meals by hand directly to the customers, who are waiting in their vehicles in the driveway of her Kenduskeag residence, for their consumption off-premises.

22. Kenduskeag Kitchen has advertised its business primarily on Facebook and Instagram using the following language:

Community Dinner Nights

Put on by:

Kenduskeag Kitchen

Located at 3940 Broadway

Community Dinner Nights are proudly presented by Kenduskeag Kitchen.

Weekly community meals produced using local ingredients when possible.

Providing a curbside hot meal from a local moms uninspected kitchen.

or as follows:

Kenduskeag Kitchen

Located at 3940 Broadway

Local artisan food preparer. Unique gourmet handmade prepared food available as “curbside take-out” supper. From an un-inspected inhome kitchen – just like moms house.

23. A typical Kenduskeag Kitchen meal menu prepared by Rhiannon Deschaine and posted on social media lists the ingredients in each meal and, when known in advance, identifies the source of local ingredients contained in the meal.

24. Rhiannon Deschaine also regularly posts videos to social media recording herself processing and preparing the Kenduskeag Kitchen meals and demonstrating the ingredients, cooking techniques, and conditions present at the kitchen facility.

25. All meals provided to Kenduskeag Kitchen customers are processed and prepared at the Deschaines’ residence using the same kitchen facility used to process and prepare food for their family.

26. All sales of the Kenduskeag Kitchen’s meals occur at the location where the meals are processed and prepared—namely, at the Deschaines’ Kenduskeag residence.

27. Customers are free to inspect their pre-ordered meal at the site of the Deschaines’ residence prior to payment for or consumption of the meal.

28. The meals provided by and sold by the Kenduskeag Kitchen are not intended for resale.

29. The Deschaines, including their children, consume the same meals as are provided by the Kenduskeag Kitchen to its customers on any given day.

30. During its operation, the Kenduskeag Kitchen sold up to 30 meals per week at prices in the range of \$15 to \$20 per three-course meal, resulting in weekly proceeds of approximately \$200 to \$600.

31. Mr. Roma was made aware of the Kenduskeag Kitchen on or around August 22, 2022 by way of a Facebook advertisement.

32. Mr. Roma first became interested in purchasing a meal from the Kenduskeag Kitchen based on information he obtained about the Kenduskeag Kitchen from its advertisements Facebook—including, specifically, the location of the Kenduskeag Kitchen relative to Mr. Roma's residence; the identification of local growers and producers from which Kenduskeag Kitchen sources its ingredients, included individuals personally known to Mr. Roma; and the menus describing the meals themselves, which consists of fare that Mr. Roma does not believe is otherwise commercially available to him within reasonable driving distance of his residence.

33. Mr. Roma lives approximately three miles from the Deschaines' Kenduskeag residence.

34. Per the Kenduskeag Kitchen's pre-order instructions on Facebook, on or about August 22, 2022, Mr. Roma placed an order for a meal directly to Rhiannon Deschaine, via the Facebook Messenger app.

35. Mr. Roma was directed by Rhiannon Deschaine to arrive at the Kenduskeag Kitchen during a pre-arranged date and time to pick up the meal.

36. Mr. Roma drove to the Kenduskeag Kitchen, which he understood to be the Deschaines' residence, and parked in the driveway of the residence.

37. A member of the Deschaine family met Mr. Roma in the driveway and gave Mr. Roma a freshly-made, ready-to-eat meal in a to-go container.

38. Mr. Roma paid a pre-agreed amount of money for the meal, and, after inspecting the meal, departed from the Kenduskeag Kitchen to Mr. Roma's residence.

39. Mr. Roma consumed the meal at his residence.

40. Based on Mr. Roma's positive culinary experience, Mr. Roma patronized the Kenduskeag Kitchen a total of four times in 2022.

41. Each of Mr. Roma's four interactions with the Kenduskeag Kitchen resulted in positive customer experiences and the receipt of high-quality, good-tasting food.

42. On or around July 18, 2022, an inspector contracted by DHHS by the name of Jana Wood arrived unannounced at the Deschaines' residence.

43. Ms. Wood indicated to Rhiannon Deschaine during the unannounced inspection that, in her view, the Kenduskeag Kitchen was required to receive an eating establishment license from DHHS in order to operate.

44. Rhiannon Deschaines informed Ms. Wood that the Deschaines were operating the Kenduskeag Kitchen pursuant to the Kenduskeag Food Sovereignty Ordinance and are therefore not required to obtain an eating establishment license from DHHS.

45. On or around October 25, 2022, DHHS delivered an "Initial Letter of Enforcement" to the Deschaines (the "Letter").

46. The Letter states that DHHS had become aware that an eating establishment was being operated on property owned or controlled by the Deschaines without a valid eating place license, and demanded that the Deschaines immediately cease operation of the Kenduskeag Kitchen, warning the Deschaines that:

If you continue to operate your business without an eating establishment license, you may be subject to administrative fines and penalties, pursuant to 22 M.R.S. § 2498(C) and 10-144 CMR Ch. 201, Section 8(E)” and further warning that “[y]our case may be referred to the Office of the Attorney General, which may subject you to civil fines and court action, as well.

47. The Letter states DHHS’s position that:

Based on a review of [the Deschaines’] operations, Kenduskeag Kitchen does not meet [the] definition of direct producer-to-consumer transactions, because it is preparing and selling meals that contain food products and/or ingredients that are purchased from other sites (supermarkets, local businesses or other food stores). For example, Kenduskeag Kitchen’s social media posts indicate that the establishment is using other ingredients that are not locally grown, including Moe’s Original BBQ sauce, Cabot Creamery Cooperative cheese, and other ingredients not made on site or locally (e.g., macaroni, sugar, flour). In addition, Kenduskeag Kitchen appears to be preparing meals out of a home kitchen, which is not allowed per the Maine Food Code. Eating establishments must operate from a commercial kitchen that is in compliance with both the Maine Food Code at 10-144 CMR Ch. 200 . . . and the Administration and Enforcement of Establishments Regulated by the Health Inspection Program Rule at 10-144 CMR Ch. 201.

48. Having been made aware of the Letter, on or about November 20, 2022, Maine State Senator Craig Hickman, who represents Maine Senate District 14, sent an official letter to DHHS in reply (the “Legislative Letter”).

49. In the Legislative Letter, Senator Hickman, a principal drafter and supporter of the Maine Food Sovereignty Act, objects to and vehemently disagrees with DHHS’s interpretation of the Maine Food Sovereignty Act and enforcement action against the Kenduskeag Kitchen, stating that:

. . . “site of production” is a term of art that, when applied to food and food products, is generally understood to mean a site controlled by the producer or processor or prepare or food or food products, and where food or food products are produced, processed, or prepared, including, but not limited to, a farm, homestead, home kitchen, Grange kitchen, American Legion kitchen, commercial kitchen, church kitchen, school kitchen, garage

kitchen, food truck, backyard, deck, patio, clearing, parking lot, campground, tailgate, smoke pit, bon fire.

When we negotiated the 2017 version of the [Maine Food Sovereignty Act] . . . we chose this phrase specifically to ensure that provisions of the Act extend beyond food or food products prepared in farm kitchens and other farm-based facilities. . . .

Meals and baked goods prepared in noncommercial, non-farm-based kitchens were explicitly read into the record when I wrote and presented the first version of the Act to the Legislature back in 2013. My testimony references a woman who makes and sells coconut cake out of her home kitchen and another who receives cash contributions from community members for the gumbo she prepares in hers.

And so, if a meal (“food or food products”) is prepared in a home kitchen (“site of production”), sold on the premises of the home kitchen (“at the site of production”) directly to the consumer in a face-to-face transaction involving that meal (“of those food or food products”), and that the transaction is governed by the [Kenduskeag Food Sovereignty Ordinance], then, pursuant to the Act, *any* provision of Title 22 *to the contrary* that regulates food *does not apply* to Kenduskeag Kitchen. (7 MRS §282(1) and §284.) This includes, but is not limited to, provisions in 22 MRS §2492 and §2498(C), and the Maine Food Code, all referenced in your enforcement letter.

The [DHHS] has no authority to enforce any provision of law regulating food in Title 22 against the Deschaines or their business Kenduskeag Kitchen as it currently operates.

50. On December 12, 2022, Molly Bogart, Director of Government Relations at DHHS, emailed Senator Hickman in response to the Legislative Letter, summarily dismissing his concerns and objections, as follows:

We have reviewed your concerns and consulted with the Office of the Attorney General on the determination that Kenduskeag Kitchen is required to be licensed by the [DHHS] Health Inspection Program, and respectfully disagree with your analyses and conclusions. As such, HIP maintains that the establishment needs a license to operate. The reasons for this determination are outlined in the October 25 letter to Kenduskeag Kitchen.

51. On December 12, 2022, Jennifer McGill, Compliance Specialist with the DHHS Health Inspection Program, left a voice message for the Deschaines stating that “after receiving

some correspondence, that the Department is still standing with [the Letter] that you need to submit an application to us for your kitchen and that deadline has passed. So we need to receive that application by Friday December 16th.”

52. On December 19, 2022, undersigned counsel for the Deschaines emailed Ms. McGill stating that they had been recently retained by the Deschaines to represent them with respect to the Kenduskeag Kitchen licensing matter and requesting an extension to January 9, 2023, to allow time to review the matter and advise the Deschaines of their rights and obligations.

53. On December 22, 2022, Tera Pare, Policy and Compliance Manager and liaison to the Office of the Attorney General for DHHS, emailed counsel for the Deschaines stating that:

The [DHHS] Health Inspection Program is willing to refrain from pursuing enforcement action against Kenduskeag Kitchen for past operation before, including and after the December 16, 2022 deadline for license application, if the owners agree to cease operations at Kenduskeag Kitchen from today December 22, 2022 until January 9, 2023[3]. On January 10, 2023 and any day thereafter, if [DHHS] receives evidence of Kenduskeag Kitchen operation without a valid license from the Health Inspection Program, then [DHHS] may pursue further enforcement action.

54. On January 5, 2023, counsel for the Deschaines held a conference call with Assistant Attorney General Margaret Machaiek to discuss the Kenduskeag Kitchen matter.

55. On January 23, 2023, counsel for the Deschaines emailed Ms. Pare stating that, based on the conference call with Attorney Machaiek “we understand that [DHHS] is taking the position that Kenduskeag Kitchen’s meals fall outside of the statutory definition of ‘food products at the site of production’ (and thus are not exempt from licensing) because the ingredients that are used in the meals being offered for sale are not all grown or produced on site.”

56. In the January 23, 2023 email correspondence, counsel for the Deschaines also stated that:

It became apparent during our call that [DHHS] may not have an accurate understanding of the sources of all of the ingredients in the Kenduskeag Kitchen meals: Many of the ingredients used in these meals are grown on site, and Rhiannon’s intention is to expand over time the volume and variety of food ingredients grown on site. Those ingredients that are not grown or produced on site are all sourced locally—specifically, from neighboring farms and businesses.

57. As part of the January 23, 2023 email correspondence, counsel for the Deschaines attached a list of the ingredients used by Kenduskeag Kitchen, along with their sources (the “Source List”).

58. The Source List identifies all ingredients used by Kenduskeag Kitchen in growing, producing, processing and preparing food and food products, including the home-cooked meals, at the Kenduskeag Kitchen for direct sale to their customers, the sources of those ingredients, and the distance of the sources from Kenduskeag Kitchen, as follows:

INGREDIENTS	SOURCE	SOURCE ADDRESS (Distance from Kenduskeag Kitchen)
Vegetables, herbs, eggs	Kenduskeag Kitchen (on site)	3940 Broadway Kenduskeag, ME (0 mi)
Vegetables	Next door neighbor	3948 Broadway Kenduskeag, ME (0.1 mi)
Vegetables, sourdough starter	Raw Beets Homestead	510 Stetson Road Kenduskeag, ME (0.2 mi)
Vegetables, herbs	Callie’s Streamside Market	805 Kenduskeag Levant Road Kenduskeag (0.3 mi)
Strawberries, raspberries, blueberries, seasonal vegetables	Adam’s Strawberry Acres	1409 Main Street Corinth, ME (2.6 mi)
Apples, herbs, eggs	Legacy Acres Farmstead	533 Townhouse Road Kenduskeag, ME (3 mi)
Strawberries	RJ Hall’s Family Farm	136 Puddledock Road Corinth, ME (8 mi)
Eggs	Spring Ridge Farm	283 McCard Road Corinth, ME (11 mi)
Potatoes	Crane Brothers Farms	2 Mills Road Exeter, ME (9 mi)

Vegetables	Thomas Farms	Garland Road Corinth, ME (11 mi)
Meats (beef, pork, chicken)	Maple Lane Farms	222 Upper-Charleston Road Charleston, ME (15 mi)
Goat milk products	Abraham's Goat Farm & Creamery	1000 Elm Street Newport, ME (17 mi)
Seasonings, flour, rice, dry pasta	Shaw's, Hannaford, and Natural Living Center	Bangor (10-14 mi)

59. In the January 23, 2023 email correspondence, counsel for the Deschaines also stated that:

We have advised our client that she may continue to operate her business without an eating place license, and she intends to begin advertising the sale of meals from her home kitchen starting today. We would appreciate hearing from you whether this new information about Kenduskeag Kitchen's operations alters HIPs analysis and nullifies the initial enforcement letter.

60. On January 24, 2023, Ms. Pare emailed counsel for the Deschaines stating:

Thank you for your email below, regarding Kenduskeag Kitchen, where you inform us that you have advised your client to resume operations on January 23, 2023. I have shared your email below with the Health Inspection Program and others. The Department's position remains the same as its October 2022 Initial Letter of Enforcement: Kenduskeag Kitchen is required to receive an eating establishment license before it serves meals from its home kitchen.

As stated in its Letter of Enforcement and under its authority at 22 M.R.S. § 2498(1), the Health Inspection Program may assess administrative penalties/fines against Kenduskeag Kitchen for operating without a license, if Kenduskeag Kitchen continues to serve meals without an eating place license.

61. As a result of the Letter and because of DHHS's refusal to alter its position that the Kenduskeag Kitchen is required to receive an eating establishment license pursuant to the State Food Licensing Regime, although they vehemently disagree with DHHS's position, the Deschaines paused operation of the Kenduskeag Kitchen on or around December 19, 2022 and,

since then, have not sold any food or food products, including any home-cooked meals, from their Kenduskeag residence.

62. The substantial costs associated with securing an eating establishment license pursuant to the State Food Licensing Regime make it impracticable for the Kenduskeag Kitchen to operate in compliance with DHHS's directive to obtain such a license.

63. As a result of the Letter and because of DHHS's refusal to alter its position that the Kenduskeag Kitchen is required to receive an eating establishment license pursuant to the State Food Licensing Regime, the Deschaines have suffered the loss of business income.

64. As a result of the Letter and because of DHHS's refusal to alter its position that the Kenduskeag Kitchen is required to receive an eating establishment license, the Deschaines have been unable to provide wholesome, local, home-cooked meals to their customers.

65. As a result of the Letter and the cessation of operations of the Kenduskeag Kitchen, Mr. Roma is unable to purchase and consume food or food products from the Kenduskeag Kitchen and is thereby being deprived of his constitutional right to consume the food of his own choosing for his own nourishment, sustenance, bodily health, and well-being.

66. As a result of the Letter and the cessation of operations of the Kenduskeag Kitchen, the Fund's 23 Maine-based consumer members risk being deprived of their constitutional right to consume the food of their own choosing for their own nourishment, sustenance, bodily health, and well-being.

67. As a result of the Letter and the cessation of operations of the Kenduskeag Kitchen, the Fund's 25 Maine-based independent farms and food producers are at risk of not being able to grow, produce, process, or prepare and sell directly to consumers their food and food products

without a DHHS eating establishment license in municipalities that have adopted food sovereignty ordinances pursuant to their home rule authority and the Maine Food Sovereignty Act.

68. As a result of the Letter and the cessation of operations of the Kenduskeag Kitchen, the Fund's 25 Maine-based independent farms and food producers are at risk of not being able to provide their customers with the food of their own choosing for their own nourishment, sustenance, bodily health, and well-being.

69. Although the Deschaines desire to provide wholesome, local, home-cooked meals to their customers for their own nourishment, sustenance, bodily health, and well-being, the Letter and DHHS's refusal to alter its position that the Kenduskeag Kitchen is required to receive an eating establishment license pursuant to the State Food Licensing Regime prevents them from doing so.

LEGAL FRAMEWORK

70. The Maine Food Sovereignty Act was enacted and became public law effective November 1, 2017, and amended most recently in 2021 pursuant to Public Law PL 2021, c. 625, and Legislative Document L.D. 574, *An Act To Amend the Maine Food Sovereignty Act and To Recognize the Maine Food Sovereignty Act in Plantations and Unorganized Territories* (130th Legis. 2021).

71. In enacting the Maine Food Sovereignty Act, the Maine Legislature adopted the following statement of policy:

It is the policy of this State to encourage food self-sufficiency for its citizens. The department shall support policies that:

1. Local control. Through local control, preserve the ability of communities to produce, process, sell, purchase and consume locally produced foods;

2. Small-scale farming and food production. Ensure the preservation of family farms and traditional foodways through small-scale farming and food production;

3. Improved health and well-being. Improve the health and well-being of citizens of this State by reducing hunger and increasing food security

through improved access to wholesome, nutritious foods by supporting family farms and encouraging sustainable farming and fishing;

4. Self-reliance and personal responsibility. Promote self-reliance and personal responsibility by ensuring the ability of individuals, families and other entities to prepare, process, advertise and sell foods directly to customers intended solely for consumption by the customers or their families; and

5. Rural economic development. Enhance rural economic development and the environmental and social wealth of rural communities.

7 M.R.S.A. § 283.

72. The Maine Food Sovereignty Act provides, in relevant part:

Pursuant to the home rule authority granted to municipalities by Title 30-A, section 3001 and by the Constitution of Maine, Article VIII, Part Second . . . and notwithstanding any provision of law regulating foods in this Title or Title 22 to the contrary, except as contained in section 285, a municipality . . . may adopt ordinances regarding direct producer-to-consumer transactions and the State shall recognize such ordinances by not enforcing those laws or implementing rules with respect to those direct producer-to-consumer transactions that are governed by the ordinance.

7 M.R.S.A. § 284.

73. The Maine Food Sovereignty Act defines a “direct producer-to-consumer transaction” as “a face-to-face transaction involving food or food products at the site of production of those food or food products.” 7 M.R.S.A. § 282(1).

74. In 2021, the Maine Food Sovereignty Act was amended to, *inter alia*, clarify the definition of “food or food products” as follows:

Sec. 1. 7 MRSA § 282, sub-§2, as enacted by PL 2017, c. 314, § 1, is amended to read:

2. Food or food products. “Food or food products” means food or food products ~~intended that are~~ grown, produced, processed or prepared for human consumption, including, but not limited to, vegetables, fruit, milk or milk products, meat or meat products, poultry or poultry products, fish or

fish products, seafood or seafood products, cider or juice, acidified foods or canned fruits or vegetables.

P.L. 2021, c. 625, § 1 17 M.R.S.A. § 282(2).

75. When applicable, the State Food Licensing Regime provides that a person may not operate an eating establishment for compensation or indirect compensation without a license issued by DHHS. 22 M.R.S.A. § 2492(1); 10-144 C.M.R. Ch. 201 § 4(E)(1).

76. An eating establishment is defined State Food Licensing Regime as follows:

“Eating establishment” means any place where food or drink is prepared and served or served to the public for consumption on the premises or prepared and served or served ready to eat to the public for consumption off the premises. “Eating establishment” includes places in the entertainment, hospitality, recreation, restaurant and tourism industries; catering establishments; correctional facilities; hospital cafeterias; mobile eating places; public and private schools; retail frozen dairy product establishments; and workplace eating establishments and places where food is prepared for vending machines dispensing food other than in original sealed packages. "Eating establishment" does not include:

A. A place preparing and serving food that is licensed pursuant to state law by a state agency other than the department as long the licensing of the place includes regular food safety inspections;

B. A place serving food only to residents, such as a boarding home, a retirement home or an independent living place; and

C. A farm stand that offers only whole, uncut fresh fruits and vegetables.

22 M.R.S.A. § 2491(7); 10-144 C.M.R. Ch. 201 § 1(A)(29); 10-144 C.M.R. Ch. 200 § 2-102.12.

77. Among other requirements, in order to obtain and maintain an eating establishment license pursuant to the State Food Licensing Regime, a person or business must:

(a) Pay a license fee to DHHS in an amount of at least \$60, plus additional \$100 fees for additional DHHS inspections;

- (b) Submit a complete application that includes, *inter alia*, a water testing report, a written approval statement from the municipality's local plumbing inspector for applicants with private septic systems, an eating establishment business plan, and a kitchen or food preparation area plan;
- (c) Have at least one employee designated and trained as a certified food protection manager;
- (d) Install a subsurface wastewater disposal system that is sized for non-residential use; and
- (e) Comply with 159 pages of personnel management, employee health monitoring, food storage, food sanitation, food labeling, equipment design, equipment use, equipment sanitization, water supply, plumbing, wastewater disposal, facility design and construction, lighting, ventilation, and bathroom location rules set forth in the Maine Food Code.

10-144 C.M.R. Ch. 201 §§ 2(A), 4(A), 4(B)(5); 10-144 C.M.R. Ch. 200.

78. On November 2, 2021, the legislative body Town of Kenduskeag, at a duly called and held town meeting, adopted the Kenduskeag Food Sovereignty Ordinance.

79. Section 5.1 of the Kenduskeag Food Sovereignty Ordinance states, in relevant part:

Producers or processors of local foods in the Town of Kenduskeag are exempt from licensure and inspection provided that the transaction is only between the producer or processor and a patron when the food is sold for home consumption. This includes any producer or processor who . . . sells their products through farm or home based sales directly to a patron; or delivers their products directly to patrons.

80. Section 6.1 of the Kenduskeag Food Sovereignty Ordinance states, in relevant part:

“It shall be unlawful for any law or regulation adopted by the state or federal government to interfere with the rights recognized by this Ordinance.”

81. Me. Const. Art. I, § 25 (the “Right to Food Amendment”) was adopted by Maine voters in 2021 by a margin of 61 percent to 39 percent.

82. The Right to Food Amendment states:

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.

COUNT I
(Declaratory Judgment – Food Sovereignty Act)

83. Plaintiffs repeat and restate each of the allegations in Paragraphs 1 through 82 above as if fully set forth herein.

84. This Court has the power to issue a declaration in this case over this matter pursuant to the Uniform Declaratory Judgments Act, 14 M.R.S.A. § 5951 *et seq.*

85. Pursuant to 14 M.R.S.A. § 5954, this Court has the power to issue a declaration in this case in order to determine the parties’ legal rights and relations with respect to the Maine Food Sovereignty Act.

86. There exists a present, ongoing dispute between the parties as to whether the Kenduskeag Kitchen’s operations constitute “direct producer-to-consumer transactions” pursuant to the Maine Food Sovereignty Act and, consequently, whether the Deschaines are exempt from the eating establishment license requirements set forth in the State Food Licensing Regime.

87. Adjudication of the present dispute will serve a useful purpose in that it will clarify the legal framework applicable to the Kenduskeag Kitchen and will avoid further disputes.

88. Pursuant to the Maine Food Sovereignty Act, the activities undertaken by the Deschaines in their operation of the Kenduskeag Kitchen are direct producer-to-consumer transactions governed by the Kenduskeag Food Sovereignty Ordinance.

89. The direct producer-to-consumer transactions undertaken by the Deschaines with respect to their operation of the Kenduskeag Kitchen are governed by the Kenduskeag Food Sovereignty Ordinance and thus exempt from the eating establishment license requirements in the State Food Licensing Regime by operation of the Maine Food Sovereignty Act.

90. Section 284 of the Maine Food Sovereignty Act prohibits DHHS from enforcing the State Food Licensing Regime with respect to such direct producer-to-consumer transactions.

91. Therefore, the Plaintiffs seek an order from this Court declaring that: (i) the Deschaines' operation of the Kenduskeag Kitchen constitutes direct producer-to-consumer transactions governed by the Kenduskeag Food Sovereignty Ordinance pursuant to the Maine Food Sovereignty Act; (ii) any DHHS administrative or judicial enforcement action against the Kenduskeag Kitchen concerning a violation of the State Food Licensing Regime (including any related administrative directive to stop operating the Kenduskeag Kitchen) exceeds the scope of DHHS's statutory authority and is invalid; and (iii) the Kenduskeag Kitchen may continue to operate in accordance with the Kenduskeag Food Sovereignty Ordinance without an eating establishment license; and issuing a permanent injunction ordering DHHS to rescind the Letter and prohibiting DHHS from taking any administrative or judicial enforcement actions against the Deschaines and the Kenduskeag Kitchen arising from any of the Deschaines' direct consumer-to-producer transactions that are governed by the Kenduskeag Food Sovereignty Ordinance.

COUNT II
(Declaratory Judgment – Me. Const. Art. I, § 25)

92. Plaintiffs repeat and restate each of the allegations in Paragraphs 1 through 91 above as if fully set forth herein.

93. Pursuant to the Right to Food Amendment, Mr. Roma and the 23 Maine consumer members of the Fund are guaranteed a right to “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.”

94. DHHS’s ongoing and unlawful actions against the Kenduskeag Kitchen and the resulting subsequent cessation of the Kenduskeag Kitchen’s operation infringes on and violates the rights of Mr. Roma who desires to consume the food produced by the Kenduskeag Kitchen for his own nourishment.

95. DHHS’s ongoing and unlawful actions against the Kenduskeag Kitchen and the resulting subsequent cessation of the Kenduskeag Kitchen’s operation infringes on and violates the rights of the 23 Maine consumer members of the Fund, who desire to consume the food of their own choosing for their own nourishment, sustenance, bodily health and wellbeing, including food or food products produced by other similarly situated home-based food producers and processors in the approximately 86 Maine municipalities with duly enacted food sovereignty ordinances governing direct producer-to-consumer transactions.

96. This Court has the power to issue a declaration in this case over this matter pursuant to the Uniform Declaratory Judgments Act, 14 M.R.S. § 5951 *et seq.*

97. Pursuant to 14 M.R.S.A. § 5954, this Court has the power to issue a declaration in this case in order to determine the parties' legal rights and relations with the Maine Food Sovereignty Act.

98. There exists a present, ongoing dispute between the parties as to whether DHHS's interpretation of the Maine Food Sovereignty Act, as applied to the Kenduskeag Kitchen, violates the Right to Food Amendment and is in contravention of Mr. Roma's constitutional right to consume food of his own choosing.

99. There exists a present, ongoing dispute between the parties as to whether DHHS's interpretation of the Maine Food Sovereignty Act, as applied to the Kenduskeag Kitchen, violates the Right to Food Amendment and is in contravention of the Fund's 23 Maine consumer members' constitutional right to consume food of their own choosing.

100. Accordingly, Plaintiffs seek a declaration from this Court that DHHS's interpretation of the Maine Food Sovereignty Act with respect to the Kenduskeag Kitchen's operations violates the Right to Food Amendment and is unconstitutional as applied to Roma, who is being prevented from consuming food of his own choosing, which is being processed, produced and sold to him in a direct producer-to-consumer transaction governed by the Kenduskeag Food Sovereignty Ordinance, all pursuant to and in compliance with the Maine Food Sovereignty Act.

101. Plaintiffs further seek a declaration from this Court that that DHHS's interpretation of the Maine Food Sovereignty Act with respect to the Kenduskeag Kitchen's operations violates the Right to Food Amendment and is unconstitutional as applied to the 23 Maine consumer members of the Fund, who desire to consume the food of their own choosing for their own nourishment, sustenance, bodily health and wellbeing, including food or food products produced

by other similarly situated home-based food producers and processors in municipalities with duly enacted food sovereignty ordinances governing direct producer-to-consumer transactions.

WHEREFORE, the Plaintiffs respectfully request that this Court:

A. Issue an Order declaring that: (i) the Deschaines' operation of the Kenduskeag Kitchen constitutes direct producer-to-consumer transactions governed by the Kenduskeag Food Sovereignty Ordinance pursuant to the Maine Food Sovereignty Act; (ii) any DHHS administrative or judicial enforcement action against the Kenduskeag Kitchen concerning a violation of the State Food Licensing Regime (including any related administrative directive to stop operating the Kenduskeag Kitchen) exceeds the scope of DHHS's statutory authority and is invalid; and (iii) the Kenduskeag Kitchen may continue to operate in accordance with the Kenduskeag Food Sovereignty Ordinance without an eating establishment license;

B. Issue an Order declaring that DHHS's interpretation of the Maine Food Sovereignty Act with respect to the Kenduskeag Kitchen's operations violates the Right to Food Amendment and is unconstitutional as applied to Roma;

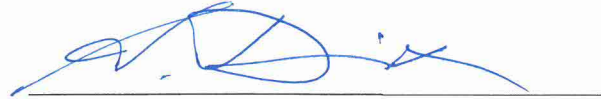
C. Issue an Order declaring that DHHS's interpretation of the Maine Food Sovereignty Act with respect to the Kenduskeag Kitchen's operations violates the Right to Food Amendment and is unconstitutional as applied to the 23 Maine consumer members of the Fund;

D. Issue a permanent injunction ordering DHHS to rescind the Letter and prohibiting DHHS from taking any administrative or judicial enforcement actions against the Deschaines and the Kenduskeag Kitchen arising from any of the Deschaines' direct consumer-to-producer transactions that are governed by the Kenduskeag Food Sovereignty Ordinance;

E. Award Plaintiffs their costs and attorney's fees; and

F. Grant such other relief as this Court deems just and proper.

Dated: March 24, 2023



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