

United States Court of Appeals For the First Circuit

No. 18-2118

PORTLAND PIPE LINE CORPORATION;
THE AMERICAN WATERWAYS OPERATORS,

Plaintiffs, Appellants,

v.

CITY OF SOUTH PORTLAND;
MATTHEW LECONTE, in his official capacity as Code Enforcement Director of South
Portland,

Defendants, Appellees.

Before
Torruella, Thompson, and Barron,
Circuit Judges.

ORDER OF COURT AND CERTIFICATION OF QUESTIONS TO THE MAINE LAW COURT

Entered: January 10, 2020

This cause came on to be heard on appeal from the United States District Court for the District of Maine and was argued by counsel. For the reasons stated in our opinion in this case, submitted with this order, we certify the following three questions to the Maine Law Court:

- (1) Is PPLC's license an "order," as that term is used in Me. Rev. Stat. tit. 38, § 556?
- (2) If PPLC's license is an order, is the City of South Portland's Clear Skies Ordinance preempted by Me. Rev. Stat. tit. 38, § 556 of Maine's Coastal Conveyance Act?
- (3) Independent of Me. Rev. Stat. tit. 38, § 556, is there any basis for finding that Maine's Coastal Conveyance Act impliedly preempts the City of South Portland's Clear Skies Ordinance?

We would welcome further guidance from the Law Court on any other relevant aspect of Maine law that it believes would aid in the proper resolution of the issues before us.

The Clerk of this Court is directed to forward to the Maine Supreme Judicial Court, under the official seal of this Court, a copy of the certified questions, along with the merits briefs and appendices filed by the parties and the State of Maine as amici, as well as the supplemental briefs filed by the parties and the State of Maine pursuant to this Court's order dated September 23, 2019.

By the Court:

Maria R. Hamilton, Clerk

cc:

Hon. John A. Woodcock
Christa Berry, Clerk, United States District Court for the District of Maine
Matthew Pollack, Clerk, Maine Supreme Judicial Court
Catherine R. Connors
Matthew D. Manahan
Eric J. Wycoff
John J. Aromando
Nolan L. Reichl
Jonathan Mark Ettinger
Sally J. Daggett
Euripides Dalmanieras
Jesse Harlan Alderman
Twain Braden
Steven Paul Lehotsky
Patrick N. Strawbridge
Joshua H. Runyan
David H. Coburn
Sean Mahoney
Phelps T. Turner
Kenneth Rumelt
Kristen Lee Boyles
Jan Erik Hasselman
C. Dylan Sanders
Lisa C. Goodheart
William L. Boesch
Sarah J. Fox
Maura T. Healey
Seth Schofield

Turner Helen Smith
Xavier Becerra
William M. Tong
Kathleen Jennings
Aaron M. Frey
Laura Jensen
Brian E. Frosh
Keith Ellison
Letitia James
Ellen F. Rosenblum
Josh Shapiro
Peter F. Neronha
Thomas J. Donovan Jr.
Robert W. Ferguson
Karl A. Racine