

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

COMCAST OF MAINE/NEW HAMPSHIRE, INC.; A&E TELEVISION NETWORKS, LLC; C-SPAN; CBS CORP.; DISCOVERY, INC.; DISNEY ENTERPRISES, INC.; FOX CABLE NETWORK SERVICES, LLC; NBCUNIVERSAL MEDIA, LLC; NEW ENGLAND SPORTS NETWORK, LP; and VIACOM INC.,

Plaintiffs,

v.

JANET MILLS, in her official capacity as the Governor of Maine; AARON FREY, in his official capacity as the Attorney General of Maine; the CITY OF BATH, MAINE; the TOWN OF BERWICK, MAINE; the TOWN OF BOWDOIN, MAINE; the TOWN OF BOWDOINHAM, MAINE; the TOWN OF BRUNSWICK, MAINE; the TOWN OF DURHAM, MAINE; the TOWN OF ELIOT, MAINE; the TOWN OF FREEPORT, MAINE; the TOWN OF HARPSWELL, MAINE; the TOWN OF KITTERY, MAINE; the TOWN OF PHIPPSBURG, MAINE; the TOWN OF SOUTH BERWICK, MAINE; the TOWN OF TOPSHAM, MAINE; the TOWN OF WEST BATH, MAINE; and the TOWN OF WOOLWICH, MAINE;

Defendants.

Case No. 1:19-cv-00410-NT

**STIPULATED FINAL JUDGMENT AND
ORDER FOR DECLARATORY AND
PERMANENT INJUNCTIVE RELIEF**

Plaintiffs in this case are a cable operator and nine cable programmers. Plaintiffs filed a Complaint for declaratory and injunctive relief against Defendants, the Governor and Attorney General of Maine, along with numerous Maine municipalities, alleging that H.P. 606 – L.D. 832, 129th Leg., Pub. Law, ch. 308 (Me. 2019) (codified at Me. Stat. tit. 30-A, § 3008(3)(F) (2019)) (“Chapter 308”), titled “An Act to Expand Options for Consumers of Cable Television in Purchasing Individual Channels and Programs,” (1) is preempted by the Communications Act of 1934 (the “Communications Act”), as amended, and (2) violates the First Amendment to the U.S. Constitution. Plaintiffs sought declaratory and injunctive relief. Plaintiffs and the remaining Defendants—the Governor and Attorney General of Maine—stipulate to the entry of this Stipulated Final Judgment and Order for Declaratory and Permanent Injunctive Relief (“Order”).

FINDINGS

1. This Court has jurisdiction over this matter.
2. On June 3, 2019, the Maine Legislature passed Chapter 308, “An Act to Expand Options for Consumers of Cable Television in Purchasing Individual Channels and Programs.” Chapter 308 provides that “[n]otwithstanding any provision in a franchise, a cable system operator shall offer subscribers the option of purchasing access to cable channels, or programs on cable channels, individually.” Me. Stat. tit. 30-A, § 3008(3)(F). Chapter 308 was enacted on June 15, 2019, when the Governor permitted it to become law without signature.
3. Plaintiffs filed the Complaint in this case on September 6, 2019. The Complaint contains two claims for relief—Count I alleges that Chapter 308 is preempted by the Communications Act and Count II alleges that Chapter 308 violates the First Amendment to the U.S. Constitution.

4. Defendants neither admit nor deny any of the allegations in the Complaint, except as specifically stated in this Order. Defendants admit the facts necessary to establish jurisdiction.

5. On December 20, 2019, this Court granted Plaintiffs' motion for a preliminary injunction. *Comcast of Maine/New Hampshire, Inc. v. Mills*, 435 F. Supp. 3d 228 (D. Me. 2019), *aff'd*, 988 F.3d 607 (1st Cir. 2021). The Court held that "Plaintiffs are likely to succeed on their First Amendment claim." *Id.* at 249. The Court did not grant Plaintiffs' motion for a preliminary injunction as to the preemption claim, concluding that they had not demonstrated a likelihood of success under any provision of the Communications Act. *Id.* at 244.

6. On February 24, 2021, the First Circuit affirmed this Court's December 20, 2019 ruling on Plaintiffs' motion for a preliminary injunction. *Comcast of Maine/New Hampshire, Inc. v. Mills*, 988 F.3d 607 (1st Cir. 2021). The First Circuit held that "Chapter 308 triggers heightened First Amendment scrutiny" and explained that the "state has acknowledged that it cannot meet any heightened level of scrutiny on this record." *Id.* at 617. The First Circuit "d[id] not reach any preemption issues," instead stating that "the parties and the court are free to revisit the question of preemption on a more fully developed record, if they choose to do so." *Id.* at 612, 617.

7. As the First Circuit contemplated, Plaintiffs intended to more fully develop the record and revisit the question of preemption before this Court.

8. In light of the Parties' agreement regarding the entry of this Order, Plaintiffs agree to the dismissal without prejudice of their claim that Chapter 308 is preempted by federal law (Count I).

9. Plaintiffs and Defendants waive all rights to appeal or otherwise challenge or contest the validity of this Order.

10. Plaintiffs and Defendants agree to bear their own costs and attorneys' fees.

DECLARATORY JUDGMENT

IT IS HEREBY ORDERED that Chapter 308 violates the First Amendment to the U.S. Constitution and judgment is entered in Plaintiffs' favor on Count II.

PERMANENT INJUNCTION

IT IS FURTHER ORDERED that Defendants are permanently enjoined from enforcing or giving effect to Chapter 308.

DISMISSAL OF OTHER CLAIM

IT IS FURTHER ORDERED that Count I—alleging that Chapter 308 is preempted by federal law—is dismissed without prejudice.

IT IS SO ORDERED this ___ day of _____, 2021.

United States District Court Judge

IT IS SO STIPULATED this 23rd day of April, 2021.

/s/ Joshua A. Tardy
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IT IS SO STIPULATED this 23rd day of April, 2021.

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