Supreme Court

No. 2020-66-Appeal.
(PC 19-6761)

(Concurrence and Dissent begins on Page 26)

Michael Benson et al.	:
v.	:
Daniel McKee,[1] in his official capacity as Governor for the State of Rhode Island, et al.	:

Present: Suttell, C.J., Goldberg, and Robinson, JJ.

OPINION

(Filed May 4, 2022)

Justice Goldberg, for the Court. This case came before the Supreme Court on January 27, 2022, on appeal by the plaintiffs, Michael Benson; Nichole Leigh Rowley; Nichole Leigh Rowley, as parent and next friend of Baby Roe; Jane Doe; Jane Doe, as parent and next friend of Baby Mary Doe; and Catholics for Life, Inc., dba Servants of Christ for Life (collectively

[1] Consistent with Rule 25(d) of the Superior Court Rules of Civil Procedure, defendants Gina Raimondo and Nicholas A. Mattiello have been substituted with Governor Daniel McKee and Speaker of the House of Representatives Joseph Shekarchi, respectively, as their current successors in office.

plaintiffs).[2] The plaintiffs appeal from a Superior Court judgment following the grant of a motion to dismiss pursuant to Rule 12(b)(6) of the Superior Court Rules of Civil Procedure brought by the defendants—Daniel McKee, in his official capacity as Governor for the State of Rhode Island; Dominick J. Ruggerio, in his official capacity as President of the Rhode Island Senate; Joseph Shekarchi, in his official capacity as Speaker of the Rhode Island House of Representatives; Peter F. Neronha, in his official capacity as Attorney General for the State of Rhode Island; and Francis McCabe, in his official capacity as Clerk of the Rhode Island House of Representatives (collectively defendants).

The plaintiffs contend on appeal, essentially, that the trial justice committed reversible error by (1) dismissing their claims based on lack of standing; (2) reaching the merits of the case; and (3) shifting the burden of proof to plaintiffs.[3] For the reasons stated in this opinion, we affirm the judgment of the Superior Court in all respects.[4]

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[2] We divide the plaintiffs into three categories, in alignment with the types of claims they assert. First, Michael Benson, Nichole Leigh Rowley, and Jane Doe will be classified as "the adult plaintiffs"; second, Baby Roe and Baby Mary Doe will be identified as "the unborn plaintiffs," despite having been born since the commencement of this action; and, third, Catholics for Life, Inc., dba Servants of Christ for Life will be referred to as "SOCL."

[3] We have endeavored to articulate plaintiffs' arguments from their appellate briefs and to simplify the substance of their contentions.

[4] We gratefully acknowledge the amicus briefs submitted by the American Civil Liberties Union of Rhode Island in support of defendants, and the Thomas More Society in support of plaintiffs.

The case before us involves a monumentally controversial issue as reflected in a deep and enduring societal divide. This Court appreciates the sensitive nature of the controversy surrounding the issue of the right to abortion, and we acknowledge the genuine concerns of the parties and amici in this case.[5]

Facts and Travel

In *Roe v. Wade*, 410 U.S. 113 (1973), the United States Supreme Court recognized that "the right of personal privacy includes the abortion decision" and declared that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." *Roe*, 410 U.S. at 154, 158. Following *Roe*, the United States District Court for the District of Rhode Island declared unconstitutional Rhode Island's criminal-abortion statute that prohibited abortions, except when necessary to preserve the life of the mother. *See Women of Rhode Island v. Israel*, No. 4605, slip op. at 3, 4 (D.R.I. Feb. 7, 1973); *Rhode Island Abortion Counseling Service v. Israel*, No. 4586, slip op. at 3, 4 (D.R.I. Feb. 7, 1973); *see also Doe v. Israel*, 358 F. Supp. 1193, 1195-96

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[5] *See Planned Parenthood of Southeastern Pennsylvania v. Casey, Governor of Pennsylvania*, 505 U.S. 833, 850 (1992) ("Men and women of good conscience can disagree, and we suppose some always shall disagree, about the profound moral and spiritual implications of terminating a pregnancy, even in its earliest stage."); *see also Roe v. Wade*, 410 U.S. 113, 116 (1973) ("We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians, and of the deep and seemingly absolute convictions that the subject inspires.").

(D.R.I. 1973). *See generally* Compiler's Notes to G.L. 1956 §§ 11-3-1-11-3-5 (Reenactment of 2002). That statute, among other things, criminalized the acts of "[p]rocuring, counseling, or attempting miscarriage[,]" § 11-3-1, as enacted by G.L. 1872, ch. 228, § 23, as well as any "[a]dvertising or selling services or drugs to procure miscarriage."[6] Section 11-3-4, as enacted by P.L. 1915, ch. 1219, § 2.

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[6] This iteration of Rhode Island's criminal-abortion statute included five sections, all of which were declared unconstitutional, as discussed *supra*. Three of these sections were procedural in nature and expanded on the criminalizing sections. *See* G.L. 1956 §§ 11-3-2, 11-3-3, and 11-3-5, *all invalidated by Women of Rhode Island v. Israel*, No. 4605, slip op. at 3, 4 (D.R.I. Feb. 7, 1973); *Rhode Island Abortion Counseling Service v. Israel*, No. 4586, slip op. at 3, 4 (D.R.I. Feb. 7, 1973). The first and fourth sections, prior to invalidation as set forth herein, criminalized abortion by providing:

> "11-3-1. Procuring, counseling, or attempting miscarriage.—Every person who, with the intent to procure the miscarriage of any pregnant woman or woman supposed by such person to be pregnant, unless the same be necessary to preserve her life, shall administer to her or cause to be taken by her any poison or other noxious thing, or shall use any instrument or other means whatsoever or shall aid, assist or counsel any person so intending to procure a miscarriage, shall if the woman die in consequence thereof, be imprisoned not exceeding twenty (20) years nor less than five (5) years, and if she do not die in consequence thereof, shall be imprisoned not exceeding seven (7) years nor less than one (1) year: provided that the woman whose miscarriage shall have been caused or attempted shall not be liable to the penalties prescribed by this section." (Enacted by G.L. 1872, ch. 228, § 23.)

Soon after, the Rhode Island General Assembly hastily enacted another criminal-abortion statute set forth in the same chapter and title as the first version, designated as §§ 11-3-1 through 11-3-3, maintaining the same language, but inserting new language in §§ 11-3-4 and 11-3-5 (the criminal-abortion statute). *See* P.L. 1973, ch. 15, § 2. This version of § 11-3-4 declared that "human life commences at the instant of conception and that said human life * * * is a person within the * * * meaning of the fourteenth amendment of the constitution of the United States[.]"

"11-3-4. Advertising or selling services or drugs to procure miscarriage.—Every person who knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper, notice, advertisement or reference containing words or language giving or conveying any notice, hint or reference to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop or office where, any poison, drug, mixture, preparation, medicine, or noxious thing, or any instrument or means whatsoever, or any advice, direction, information or knowledge, may be obtained for the purpose of causing or procuring the miscarriage of a woman pregnant with child, or who knowingly exhibits, advertises or sells to be used for such purpose any poison, drug, mixture, preparation, medicine, noxious thing, instrument or means whatsoever, or who, with or without any charge therefor, gives to any person any advice, information, instruction or direction for the purpose of causing or assisting in any such miscarriage, shall be punished by imprisonment for not more than two (2) years, or by a fine of not more than one thousand dollars ($1,000), or by both." (Enacted by P.L. 1915, ch. 1219, § 2.)

Section 11-3-4, as enacted by P.L. 1973, ch. 15, § 2. The United States District Court again found these sections unconstitutional on their face, *see Doe*, 358 F. Supp. at 1199, and the United States Court of Appeals for the First Circuit agreed with that decision. *See Doe v. Israel*, 482 F.2d 156, 159 (1st Cir. 1973).

Undaunted, in 1975 the Legislature enacted another abortion-related statute, G.L. 1956 § 11-23-5, as enacted by P.L. 1975, ch. 231, § 1 (the quick child statute), criminalizing the willful killing of an unborn "quick child[,]" defined as "an unborn child whose heart is beating, who is experiencing electronically-measurable brain waves, who is discernibly moving, and who is so far developed and matured as to be capable of surviving the trauma of birth with the aid of usual medical care and facilities available in this state." Section 11-23-5(c), as enacted by P.L. 1975, ch. 231, § 1. After a successful challenge in federal court in which the statute was declared unconstitutional, the case ultimately was dismissed on appeal in the circuit court due to lack of standing. *See Rodos v. Michaelson*, 396 F. Supp. 768, 778 (D.R.I. 1975), *rev'd*, 527 F.2d 582, 584, 585 (1st Cir. 1975).[7]

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[7] It is noteworthy, however, that while declining to issue a substantive ruling, the First Circuit pointed to "[a]n alleged flaw [in] that the legislature provided an exception from the statutory restrictions only if an abortion [was] 'necessary to preserve the life of such mother,' when the Supreme Court had said the exception must apply to 'life and health [of the mother]' "—an obviously unconstitutional provision. *Rodos v. Michaelson*, 527 F.2d 582, 584 (1st Cir. 1975) (quoting *Roe*, 410 U.S. at 164-65).

Similarly, in 1997 the General Assembly enacted a new statute to prohibit partial birth abortion. *See* G.L. 1956 chapter 4.12 of title 23, as enacted by P.L. 1997, ch. 76, § 2. A year later, the United States District Court for the District of Rhode Island declared that statute unconstitutional, and the circuit court affirmed that decision. *See Rhode Island Medical Society v. Whitehouse*, 66 F. Supp. 2d 288, 294-95 (D.R.I. 1999), *aff'd*, 239 F.3d 104 (1st Cir. 2001).

In 2019 the General Assembly enacted the Reproductive Privacy Act, G.L. 1956 chapter 4.13 of title 23 (the RPA), effectively granting a right to abortion in line with *Roe*, and repealing certain statutes otherwise prohibiting abortion in this state that were flatly unconstitutional.[8] *See* P.L. 2019, ch. 27, §§ 1-2, 4-7. The plaintiffs initiated this action in the Superior Court on June 19, 2019, seeking to halt the passage of House Bill 5125 Substitute B, which later became the RPA; the trial justice denied plaintiffs' request for injunctive relief. Upon passage, plaintiffs filed an amended complaint seeking to challenge the General Assembly's authority to enact the RPA, and also seeking a declaration of their legal rights and status under certain

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[8] The statutes repealed by the RPA included the criminal-abortion statute and the quick child statute, as well as G.L. 1956 chapter 4.8 of title 23; chapter 4.12 of title 23; and G.L. 1956 chapter 18 of title 27. *See* P.L. 2019, ch. 27, §§ 2, 4-7. As discussed *supra*, the criminal-abortion statute and chapter 4.12 of title 23 had already been declared unconstitutional by the federal court. *See Rhode Island Medical Society v. Whitehouse*, 66 F. Supp. 2d 288, 294-95 (D.R.I. 1999), *aff'd*, 239 F.3d 104 (1st Cir. 2001); *see also Doe v. Israel*, 358 F. Supp. 1193, 1195-96 (D.R.I. 1973).

statutes that were repealed by the RPA. In response, defendants filed a motion to dismiss pursuant to Rule 12(b)(6), which the trial justice granted. The plaintiffs timely appealed.

Standard of Review

"The sole function of a motion to dismiss is to test the sufficiency of the complaint." *Gannon v. City of Pawtucket*, 200 A.3d 1074, 1077 (R.I. 2019) (quoting *Narragansett Electric Company v. Minardi*, 21 A.3d 274, 277 (R.I. 2011)). "When we review the grant of a motion to dismiss pursuant to Rule 12(b)(6), we apply the same standard as the hearing justice." *Chase v. Nationwide Mutual Fire Insurance Company*, 160 A.3d 970, 973 (R.I. 2017) (quoting *Tri-Town Construction Company, Inc. v. Commerce Park Associates 12, LLC*, 139 A.3d 467, 478 (R.I. 2016)). "A motion to dismiss may be granted only when it is established beyond a reasonable doubt that a party would not be entitled to relief from the defendant under any set of conceivable facts that could be proven in support of its claim." *Id.* (quoting *Tri-Town Construction Company, Inc.*, 139 A.3d at 478).

Under this standard, this Court confines its review "to the four corners of the complaint, assume[s] that the allegations set forth are true, and resolve[s] any doubts in favor of the [complainant]." *Chase*, 160 A.3d at 973 (quoting *Tri-Town Construction Company, Inc.*, 139 A.3d at 478). "There is, however, a narrow exception for documents the authenticity of which are

not disputed by the parties; for official public records; for documents central to plaintiffs' claim; or for documents sufficiently referred to in the complaint." *Id.* (quoting *Alternative Energy, Inc. v. St. Paul Fire and Marine Insurance Company*, 267 F.3d 30, 33 (1st Cir. 2001)).

Analysis

The plaintiffs allege that at this stage of litigation an "identifiable trifle is enough for standing," quoting Kenneth C. Davis, *Standing: Taxpayers and Others*, 35 U. Chi. L. Rev. 601, 613 (1968), and that all of these plaintiffs have claims of status and constitutional guarantees. The plaintiffs also claim that the trial justice erroneously reached the merits. In the alternative, they contend that the General Assembly did not have the constitutional authority to enact the RPA after (1) the repeal of the continuing powers clause in article 6, section 10 of the Rhode Island Constitution, which, they argue, stripped the General Assembly of its plenary powers,[9] and (2) based on the restrictive language concerning abortion set forth in article 1, section 2 of our constitution, which includes the state's constitutional guarantees of equal protection and due process, but provides that "[n]othing in this section shall be construed to grant or secure any right relating to

[9] Article 6, section 10 of our constitution, which was repealed in 2003, stated, "Continuation of previous powers. The general assembly shall continue to exercise the powers it has heretofore exercised, unless prohibited in this Constitution." R.I. Const., art. 6, § 10, *repealed by* 2003 R.I. Acts & Resolves 189-193.

abortion or the funding thereof." R.I. Const., art. 1, § 2; *see* R.I. Const., art. 6, § 10, *repealed by* 2003 R.I. Acts & Resolves 189-193.

The defendants argue that plaintiffs are without standing to bring these claims because they do not allege an injury-in-fact and have failed to present some legal hypothesis that would entitle them to real and articulable relief.[10] The defendants claim that the General Assembly had the authority to enact the RPA because the repeal of the continuing powers clause in the state constitution is of no moment to the Legislature's authority to enact law. They also contend that a careful reading of article 1, section 2 clearly reveals that the restrictive sentence upon which plaintiffs rely does not restrain the General Assembly from enacting the RPA because that sentence is confined to article 1, section 2.

In deciding whether a party has standing to maintain a claim, we "examine the complaint to determine if plaintiffs are entitled to relief under any conceivable set of facts. This analysis requires our resolution of the overarching issue in this case—whether the Court is confronted with a justiciable controversy." *McKenna v. Williams*, 874 A.2d 217, 225 (R.I. 2005). Thus, in order to obtain judicial review, "[t]he plaintiffs must have standing to bring this action[.]" *Id.* Nevertheless, we address the meaning of article 1, section 2 of our state

[10] Although Baby Doe and Baby Mary Roe have been born since initiation of this action, defendants have not argued that those plaintiffs' claims are moot, mainly because they argue that the case is not ripe.

constitution on a limited basis. In so doing, we are not concerned with the subject matter of the RPA—abortion—but are singularly confronted with the question of the General Assembly's constitutional authority to enact the RPA. "We shall undertake this analysis as the final interpreter of the Rhode Island Constitution and state law." *Id.* (citing *Wigginton v. Centracchio*, 787 A.2d 1151, 1154 (R.I. 2001)).

As a preliminary matter, we pause to address plaintiffs' contention that the trial justice improperly imposed upon them a higher burden of proof. We disagree. In her bench decision, the trial justice correctly articulated the proper burden of proof for a motion to dismiss pursuant to Rule 12(b)(6). We also note that plaintiffs' argument that the trial justice could not reach the merits in the context of this case is misplaced. *See Neitzke v. Williams*, 490 U.S. 319, 326 (1989) ("Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law.").[11] Lastly, plaintiffs suggest that the trial justice erroneously failed to consider or apply federal law; they are mistaken.

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[11] *See Gliottone v. Ethier*, 870 A.2d 1022, 1025 (R.I. 2005) ("[W]e have said many times that in situations in which our own case law is sparse in the area of civil procedure, we shall consult the precedents in the federal courts since our Superior Court Rules are patterned after the federal rules.") (quoting *Kelvey v. Coughlin*, 625 A.2d 775, 776 (R.I. 1993)).

A

Standing

A party who lacks standing to pursue a cause of action cannot prevail under any conceivable set of facts. *See Cruz v. Mortgage Electronic Registration Systems, Inc.*, 108 A.3d 992, 996 (R.I. 2015) ("Standing is a threshold inquiry into whether the party seeking relief is entitled to bring suit.") (quoting *Narragansett Indian Tribe v. State*, 81 A.3d 1106, 1110 (R.I. 2014)). In order for a case to be justiciable, a party must have "standing to bring suit" and present "some legal hypothesis which will entitle the plaintiff to real and articulable relief." *Key v. Brown University*, 163 A.3d 1162, 1168 (R.I. 2017) (second quote quoting *N & M Properties, LLC v. Town of West Warwick*, 964 A.2d 1141, 1145 (R.I. 2009)). Simply put, a plaintiff must have suffered injury-in-fact to have standing to commence a suit. *Id.* The plaintiff's injury must be "concrete and particularized[,] * * * not conjectural or hypothetical." *Id.* at 1169 (quoting *N & M Properties, LLC*, 964 A.2d at 1145).

In addressing the question of standing, "the court must focus on the party who is advancing the claim rather than on the issue the party seeks to have adjudicated." *Key*, 163 A.3d at 1168 (quoting *N & M Properties, LLC*, 964 A.2d at 1145). The plaintiff must "demonstrate a personalized injury distinct from that of the community as a whole." *Id.* at 1169 (quoting *N & M Properties, LLC*, 964 A.2d at 1145). Critically, "generalized claims alleging purely public harm are an

insufficient basis for sustaining a private lawsuit." *Watson v. Fox*, 44 A.3d 130, 136 (R.I. 2012). The parties bringing the action "must demonstrate that [they] ha[ve] a stake in the outcome that distinguishes [their] claims from the claims of the public at large." *In re 38 Studios Grand Jury*, 225 A.3d 224, 233 (R.I. 2020) (quoting *Watson*, 44 A.3d at 136); *see United States v. Hays*, 515 U.S. 737, 743 (1995) ("The rule against generalized grievances applies with as much force in the equal protection context as in any other."). "[S]tanding is generally limited to those plaintiffs asserting their own rights, not the rights of others." *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 535 (R.I. 2013).

The Uniform Declaratory Judgments Act, G.L. 1956 chapter 30 of title 9 (the UDJA), "vests the Superior Court with the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Key*, 163 A.3d at 1168 (quoting *N & M Properties, LLC*, 964 A.2d at 1144); *see* § 9-30-1. "At the outset, when confronted with a UDJA claim, the inquiry is whether the Superior Court has been presented with 'an actual case or controversy.'" *Key*, 163 A.3d at 1168 (quoting *N & M Properties, LLC*, 964 A.2d at 1144). "A declaratory-judgment action may not be used 'for the determination of abstract questions or the rendering of advisory opinions,'" *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997) (quoting *Lamb v. Perry*, 101 R.I. 538, 542, 225 A.2d 521, 523 (1967)), "nor does it 'license litigants to fish in judicial ponds for legal advice.'" *Sullivan*, 703 A.2d at 751 (quoting

Goodyear Loan Company v. Little, 107 R.I. 629, 631, 269 A.2d 542, 543 (1970)).

The three categories of plaintiffs before this Court have set forth individual claims. Additionally, each plaintiff seeks a declaration that the RPA is void under the Rhode Island Constitution, as well as an injunction to suspend the RPA's operation. Because plaintiffs' standing under the UDJA is dependent upon standing for the underlying claims, we limit our review to those underlying claims.

1

The Adult Plaintiffs

The adult plaintiffs' claims may be summarized as alleged voter suppression and deprivation of the right to vote. The adult plaintiffs argue that they have standing because they are "asserting a plain, direct and adequate interest in maintaining the effectiveness of their votes, * * * not merely a claim of the right, possessed by every citizen, to require that the Government be administered according to the law[,]" quoting *Baker v. Carr*, 369 U.S. 186, 208 (1962). (Internal quotation marks, citations, and emphasis omitted.)[12] These plaintiffs contend that they specifically pled that

[12] The plaintiffs cite to several federal cases to support their contentions; however, these cases are not applicable to the facts and allegations in plaintiffs' action. *See Gill v. Whitford*, 138 S. Ct. 1916, 1929-30 (2018) (vote dilution claim based on partisan gerrymandering); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (dilution claims based on legislative apportionment); *Baker v. Carr*, 369 U.S. 186, 187-88, 208 (1962) (same).

"Defendants wrongly 'suppressed' their negative vote against Defendants' passage and signing of the RPA." Viewing the allegations in their pleadings in the light most favorable to the adult plaintiffs, we are of the opinion that they lack standing to bring this action under any conceivable set of facts. The adult plaintiffs merely assert that they had the right to vote against passage of the RPA and were deprived of that right. However, no member of the public—other than elected legislators—was afforded an opportunity to vote for or against its enactment. We know of no authority to suggest that a general election or referendum was mandated in this instance, nor do the adult plaintiffs provide us with any authority.

In *Burns v. Sundlun*, 617 A.2d 114 (R.I. 1992), this Court was faced with a similar set of facts. In *Burns*, the plaintiff claimed that he had been denied the "right to vote on the establishment of off track betting and the extension of an existing gambling activity[,]" which he argued must have been decided by a public referendum, as required by G.L. 1956 § 41-10-2 (1990 Reenactment). *Burns*, 617 A.2d at 115, 116. We determined that this alleged injury was "shared by each and every registered voter in the State of Rhode Island" and that "[t]he plaintiff ha[d] failed to allege his own personal stake in the controversy that distinguishe[d] his claim from the claims of the public at large." *Id.* at 116. The same reasoning applies to the case at bar.

The adult plaintiffs do not assert a particular injury that distinguishes them from other voters, save for the purported deprivation of an opportunity to vote

against passage of the RPA, which they suggest, with no citation to authority, required voter approval. The adult plaintiffs have not been treated or placed in a different position, because no other registered voters were afforded the right to vote on the passage of the RPA. At best, this is a generalized grievance shared with the public at large, because there was no general election or referendum where anyone cast a vote. Indeed, in their prayer for relief, plaintiffs requested "[a] declaration that Plaintiffs, and *all* the citizens of Rhode Island, have a right to vote, for or against, the establishment of a new fundamental 'right' to abortion (and the funding thereof) in the State of Rhode Island." (Emphasis added.) The adult plaintiffs therefore acknowledge that their claims are identical to those of the voting public. Accordingly, the trial justice correctly found that the adult plaintiffs lacked standing in this case.[13]

2

The Unborn Plaintiffs

The unborn plaintiffs essentially claim that (when this action commenced) they were "persons" under the UDJA because they fall within the language of § 11-3-4 of the criminal-abortion statute, as enacted by P.L. 1973, ch. 15, § 2, declaring that "human life commences at the instant of conception and that said human life

[13] The plaintiffs also allege that the RPA amends the Rhode Island Constitution, and, thus, they were entitled to vote on that issue. We disagree and further address this argument *infra*.

* * * is a person * * * ." Additionally, Baby Mary Doe claims that she also falls within the definition of "quick child" under § 11-23-5(c), as enacted by P.L. 1975, ch. 231, § 1. The unborn plaintiffs argue that, when the General Assembly in 2019 repealed these statutes, upon which statutes they base their standing, they were stripped of their legal rights and status and suffered harm. *See* P.L. 2019, ch. 27, §§ 2, 4 (repealing the criminal-abortion statute and the quick child statute). They are mistaken.

The United States Supreme Court in *Roe* held that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." *See Roe*, 410 U.S. at 158. This Court has acknowledged that "state constitutional and statutory law is subordinate to * * * 'the [United States] Constitution[.]'" *McKenna*, 874 A.2d at 237 (quoting *Testa v. Katt*, 330 U.S. 386, 391 (1947)). Accordingly, the unborn plaintiffs fail to assert a legally cognizable and protected interest as persons pursuant to these repealed statutes, which are contrary to the United States Constitution as construed by the United States Supreme Court.

Furthermore, with regard to the unborn plaintiffs' standing as a "person" under § 11-3-4, before the RPA was enacted, the entirety of the criminal-abortion statute—which, in part, prohibited the "[p]rocuring, counseling, or attempting miscarriage"—was declared unconstitutional under the United States Constitution by the United States District Court for the District of Rhode Island. *Doe*, 358 F. Supp. at 1196; *see also* § 11-3-1, as enacted by P.L. 1973, ch. 15, § 2, and later

amended by P.L. 1974, ch. 118, § 3. Therefore, at the time the RPA was enacted, the unborn plaintiffs had no legal rights or status under chapter 3 of title 11. With respect to Baby Mary Doe's standing under the quick child statute—which criminalized the willful killing of an unborn "quick child"—this criminal statute did not afford private citizens any legal rights. *See* § 11-23-5, as enacted by P.L. 1975, ch. 231, § 1. Thus, this statute did not provide Baby Mary Doe with any "legally cognizable" claim. *See McKenna*, 874 A.2d at 226.

Lastly, the unborn plaintiffs failed to allege any concrete and actual (or imminent) injury at the time they sought judicial relief. *See Key*, 163 A.3d at 1169. There was no suggestion in their pleadings that the unborn plaintiffs were in danger or somehow threatened as potential crime victims. In fact, each was born during the pendency of this case. Accordingly, we conclude that, because the unborn plaintiffs lacked standing, their claims were properly dismissed.

3

The Servants of Christ for Life

The corporate plaintiff, the SOCL, alleges claims that are derivative from those of the unborn plaintiffs, as well as its own injury to "its 'legal relations' and 'status' as advocates for the unborn." With respect to the derivative claims, because we have determined that the unborn plaintiffs lack standing, these derivative claims similarly fail. Turning to the SOCL's

individual claim to its right to advocate for the unborn, this is a disqualifying abstract injury. *See Sullivan*, 703 A.2d at 751 ("A declaratory-judgment action may not be used 'for the determination of abstract questions[.]'") (quoting *Lamb*, 101 R.I. at 542, 225 A.2d at 523). The SOCL has failed to show that it has suffered any injury or is in imminent danger of harm. *See Key*, 163 A.3d at 1169. Without question, the SOCL may continue to advocate for the unborn, but not in the context of this case. Because plaintiffs have not provided any authority supporting their contentions, the SOCL is without standing in this action.

4

Substantial Public Interest

The plaintiffs claim that, even if they cannot establish an injury-in-fact, the substantial-public-interest exception operates to confer standing. We disagree. Although plaintiffs' contentions implicate an important question as they challenge the Legislature's authority to enact laws, their substantive claims with respect to the constitutionality of the RPA itself are not a matter of substantial public interest because this question has been answered by the United States Supreme Court.

B

The General Assembly's Authority to Enact the RPA

Because we are mindful of the critical public importance that attaches to a direct challenge to the General Assembly's constitutional authority to enact legislation, we briefly turn to that specific issue. *Cf. McKenna*, 874 A.2d at 230 ("Although the foregoing holdings [based on standing] are determinative of the issues before this Court, we are mindful of the public importance that attaches to such a direct challenge to an official's title to office [in accordance with the state constitution].").

1

Repeal of Article 6, Section 10

"In November of 2004, the electorate of the State of Rhode Island approved the so-called separation of powers amendments. These amendments ushered in four fundamental changes to the Rhode Island Constitution and, for the first time in [the state's] history, clearly and explicitly established three separate and distinct departments of government." *In re Request for Advisory Opinion from House of Representatives (Coastal Resources Management Council)*, 961 A.2d 930, 933 (R.I. 2008). Relevant to the case at bar, "[a]rticle 6, section 10 [of the state's constitution], which had vested broad 'continuing powers' in the General Assembly, was repealed[.]" *Id.* However, "the separation of powers amendments did not, either

explicitly or implicitly, limit or abolish the power of the General Assembly in any other area where we have previously found its jurisdiction to be plenary." *Id.* at 935-36 (footnotes omitted). This is settled law.

"The General Assembly possesses the broad and plenary power to make and enact law, 'save for the textual limitations that are specified in the Federal or State Constitutions.'" *East Bay Community Development Corporation v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1150 (R.I. 2006) (alteration omitted) (quoting *Cherenzia v. Lynch*, 847 A.2d 818, 822 (R.I. 2004)). "In the areas where the General Assembly possesses plenary power, 'all * * * determinations are left to the General Assembly's broad discretion to adopt the means it deems "necessary and proper" in complying with the constitutional directive.'" *In re Request for Advisory Opinion from House of Representatives (Coastal Resources Management Council)*, 961 A.2d at 938 (brackets and emphasis omitted) (quoting *City of Pawtucket v. Sundlun*, 662 A.2d 40, 56 (R.I. 1995)).

Despite the repeal of article 6, section 10, the broad power and prerogative to enact and repeal law that pertains to the health and safety of its constituents remains with the General Assembly. *See generally* G.L. 1956 title 23, governing "Health and Safety." Next, we look to the question of whether a restraint of the Legislature's power to enact or repeal laws concerning abortion resides in article 1, section 2 of the Rhode Island Constitution.

2

Article 1, Section 2

In 1986 the Rhode Island Constitutional Convention, through Resolution 86-00032 (Sub. A), as amended, revised article 1, section 2 of the state's constitution to include the due process and equal protection language of the Fourteenth Amendment to the United States Constitution. *See* State of Rhode Island Constitutional Convention, *Report of the Citizens Rights Committee on Individual Rights*, Res. 86-00032, Jan. Sess., at 6 (1986) (unpublished). "The drafters' rationale for adding a parallel yet independent equal-protection clause was presumably to protect the citizens of this state should the federal judiciary adopt a more narrow interpretation of the Fourteenth Amendment." *Providence Teachers' Union Local 958, AFL-CIO, AFT v. City Council of City of Providence*, 888 A.2d 948, 956 (R.I. 2005) (citing *Report of the Citizens Rights Committee*, at 6). Significantly, however, the drafters inserted a sentence declaring that "[n]othing in this section shall be construed to grant or secure any right relating to abortion or the funding thereof." R.I. Const., art. 1, § 2.

"This Court has said that, in construing constitutional amendments, our chief function is to give effect to the intent of the framers." *In re Request for Advisory Opinion from House of Representatives (Coastal Resources Management Council)*, 961 A.2d at 935. When the language in a provision of the constitution is "free from ambiguity, the[ ] [words] are to be given their

plain, ordinary, and usually accepted meaning." *Id.* "The historical context of a constitutional provision also is important in ascertaining its meaning, scope and effect." *Viveiros v. Town of Middletown*, 973 A.2d 607, 611 (R.I. 2009). Importantly, "state constitutional and statutory law is subordinate to the constitutional powers of the federal government, and 'the Constitution and the laws passed pursuant to it are the supreme laws of the land, binding alike upon states, courts, and the people[.]'" *McKenna*, 874 A.2d at 237 (quoting *Testa*, 330 U.S. at 391).

A plain reading of article 1, section 2 reveals that the language in the last sentence is clear and unambiguous. First, it is confined to that section of the constitution; it reads, "[n]othing in this *section* shall be construed to grant or secure any right relating to abortion or the funding thereof." R.I. Const., art. 1, § 2 (emphasis added). Second, this sentence employs the term "construed[,]" which connotes a judicial function, defined by Black's Law Dictionary as "[t]o analyze and explain the meaning of (a sentence or passage) <the court construed the language of the statute>." Black's Law Dictionary 393 (11th ed. 2019); *see In re Request for Advisory Opinion from House of Representatives (Coastal Resources Management Council)*, 961 A.2d at 935. Construing provisions in the state's constitution is the function of this Court, and we have not been called upon to do so in the context of this case. But in no way has the General Assembly been prohibited from enacting the legislation at issue in the case at bar. The General Assembly enacts law; it does not interpret or

construe the constitution—that is the function of this Court. *See McKenna*, 874 A.2d at 225 (providing that this Court is "the final interpreter of the Rhode Island Constitution and state law").

We pause to note that at the close of the 1986 Constitutional Convention, the public voted to approve and ratify or reject fourteen proposed constitutional amendments by way of referendum. *See* Rhode Island Constitutional Convention 1986, *Voters' Guide to Fourteen Ballot Questions for Constitutional Revision*. Ballot Question No. 8,[14] the proposed amendment to article 1, section 2, was approved.[15] Notably, Ballot Question No. 14,[16] an amendment effectively banning

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[14] Ballot Question No. 8 stated,

> "Shall free speech, due process and equal protection clauses be added to the Constitution? Shall the state or those doing business with the state be prohibited from discriminating against persons solely on the basis of race, gender or handicap? Shall victims of crime have constitutionally endowed rights, including the right to compensation from perpetrators? Shall individual rights protected by the state constitution stand independent of the U.S. Constitution?" Rhode Island Constitutional Convention 1986, *Voters' Guide to Fourteen Ballot Questions for Constitutional Revision*, Ballot Question No. 8, "Rights of the People."

[15] The votes cast for the "Rights of the People" ballot question across the state resulted in 160,137 to approve this amendment and 115,731 to reject it. *See* Official Count of the Ballots Cast (Board of Elections, 1986).

[16] Ballot Question No. 14 stated,

> "To the extent permitted by the U.S. Constitution, shall all persons, including their unborn offspring, without regard to age, health, function or condition of

abortion in Rhode Island, was also on the ballot in 1986. The question failed.[17] The submission of these two distinct questions to the voters convinces us that article 1, section 2 prohibits the drawing of any inferences concerning the right to abortion or its funding arising from the due process and equal protection provisions of the state constitution. We are of the opinion that the enactment of the RPA did not amount to a constitutional amendment requiring a referendum. We also reiterate that, because plaintiffs do not show an actual and personal stake in the outcome, we make no substantive ruling relative to their claims.

Conclusion

For the reasons set forth in this opinion, we affirm the judgment of the Superior Court. The record in this case may be remanded to the Superior Court.

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dependency, be endowed with an inalienable and paramount right to life; and to the extent permitted by the U.S. Constitution, shall abortion be prohibited, except that justified medical procedures to prevent the death of a pregnant woman shall be permitted? Shall the use of government monies to fund abortions be prohibited by the Constitution?" Rhode Island Constitutional Convention 1986, *Voters' Guide to Fourteen Ballot Questions for Constitutional Revision*, Ballot Question No. 14, "Paramount Right to Life/Abortion."

[17] The votes cast for the "Paramount Right to Life/Abortion" ballot question across the state resulted in 102,633 to approve this amendment and 197,520 to reject it. *See* Official Count of the Ballots Cast (Board of Elections, 1986).

Justice Lynch Prata and Justice Long did not participate.

Justice Robinson, concurring in part and dissenting in part. I am able to concur in the portion of the majority's opinion which holds that the plaintiffs in this case lack standing.[1] However, in accordance with my long-held and emphatic belief that this Court should not opine on issues concerning which we need not opine, it is my opinion that our holding that the instant plaintiffs lack standing should be the end of the matter.[2] *See Grady v. Narragansett Electric Co.*, 962 A.2d 34, 42 n.4 (R.I. 2009) (Robinson, J.) (referencing "our usual policy of not opining with respect to issues about which we need not opine"); *see also Salvatore v. Palangio*, 247 A.3d 1250, 1258 n.7 (R.I. 2021) (Robinson, J.) (citing *Grady*); *IDC Clambakes, Inc. v. Carney as Trustee of Goat Island Realty Trust*, 246 A.3d 927, 935 n.6, 936 n.8 (R.I. 2021) (Robinson, J.) (same);

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[1] I agree with my respected colleagues that none of the named plaintiffs has standing to pursue this case. However, I do not subscribe to the entirety of the language in the majority's opinion that leads to that dispositive holding.

[2] I acknowledge that there are exceptional occasions when this Court may appropriately opt to overlook the standing requirement and that, due to the exigency of unusual circumstances, I have, on at least one instance in the past, advocated (unsuccessfully) in favor of invoking that exception. *See In re Review of Proposed Town of New Shoreham Project*, 19 A.3d 1226, 1229 (R.I. 2011) (mem.) (Flaherty, J., with whom Robinson, J. joins, dissenting). However, it is my decided opinion that the instant case is not an appropriate one for invoking that exception.

Mondoux v. Vanghel, 243 A.3d 1039, 1045 n.3 (R.I. 2021) (Robinson, J.) (same); *La Gondola, Inc. v. City of Providence, by and through Lombardi*, 210 A.3d 1205, 1221 (R.I. 2019) (Robinson, J.) (same); *Rhode Island Industrial-Recreational Building Authority v. Capco Endurance, LLC*, 203 A.3d 494, 507 n.5 (R.I. 2019) (Robinson, J.) (same); *North Kingstown School Committee v. Wagner*, 176 A.3d 1097, 1101 (R.I. 2018) (Robinson, J., dissenting) (same); *State v. Peltier*, 116 A.3d 150, 157 (R.I. 2015) (Robinson, J., concurring in part and dissenting in part) (same and contending that the majority "disregarded our strong and oft articulated policy favoring judicial restraint"); *State v. Rodriguez*, 996 A.2d 145, 153 (R.I. 2010) (Robinson, J., concurring) (citing *Grady*). Accordingly, I respectfully but most definitively dissent from any portion of the majority's opinion that addresses any issue other than the standing issue.[3] I see no reason in the instant case for addressing such important and controversial issues when there is no necessity to do so. *See*, *e.g.*, *Blackstone Valley Chamber of Commerce v. Public Utilities Commission*, 452 A.2d 931, 934 (R.I. 1982) ("As we conclude that [the petitioner] lacks standing to maintain this action, we do not reach any other questions raised by the petition.").

[3] I wish to be clear that by this dissent I express no view whatsoever as to the majority's substantive discussion of those other issues. I am vigorously dissenting from the fact that the majority has chosen to address those weighty issues.

STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE, SC.

Michael Benson, *et al.*,	:	
Plaintiffs	:	
	:	
v.	:	**C.A. No. 2019-6761**
	:	
Gina M. Raimondo,	:	
in her official capacity	:	
as Governor, *et al.*,	:	
Defendants	:	

JUDGMENT

(Filed Dec. 16, 2019)

The Court having granted State Defendants Gina M. Raimondo in her official capacity as Governor of the State of Rhode Island, Dominick J. Ruggerio in his official capacity as President of the Rhode Island Senate, Nicholas A. Mattiello in his official capacity as Speaker of the Rhode Island House of Representatives, Peter F. Neronha in his official capacity as Attorney General of the State of Rhode Island, Francis McCabe in his official capacity as Clerk of the Rhode Island House of Representatives, and Robert L. Ricci in his official capacity as Secretary of the Rhode Island Senate, (hereinafter "State Defendants"), Motion to Dismiss on November 27, 2019, it is hereby:

ADJUDGED

1. Judgment may enter for State Defendants.

ENTER:	PER ORDER:
/s/ Melissa E. Darigan Associate Justice	/s/ Alexa Goneconte Deputy Clerk December 16, 2019
JUSTICE	CLERK

STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE, SC.

Michael Benson, *et al.*,	:	
Plaintiffs	:	
	:	
v.	:	**C.A. No. 2019-6761**
	:	
Gina M. Raimondo,	:	
in her official capacity	:	
as Governor, *et al.*,	:	
Defendants	:	

ORDER

(Filed Dec. 16, 2019)

This matter came on for hearing on the 27th day of November, 2019, Judge Melissa E. Darigan presiding, on the Motion of State Defendants Gina M. Raimondo in her official capacity as Governor of the State of Rhode Island, Dominick J. Ruggerio in his official capacity as President of the Rhode Island Senate, Nicholas A. Mattiello in his official capacity as Speaker of the Rhode Island House of Representatives, Peter F. Neronha in his official capacity as Attorney General of the State of Rhode Island, Francis McCabe in his official capacity as Clerk of the Rhode Island House of Representatives, and Robert L. Ricci in his official capacity as Secretary of the Rhode Island Senate, (hereinafter "State Defendants"), to dismiss this action pursuant to Rule 12(b)(6) of the Superior Court Rules of Civil Procedure.

After hearing and due consideration, it is hereby:

ORDERED, ADJUDGED, and DECREED

The State's Motion to Dismiss is granted.

ENTERED:	PER ORDER:
/s/ Melissa E. Darigan Associate Justice	/s/ Alexa Goneconte Deputy Clerk December 16, 2019
Justice Melissa E. Darigan	Clerk

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, Sc.		**SUPERIOR COURT**
MICHAEL BENSON, et al	)	
VS.	)	**NO: PC-2019-6761**
GINA M. RAIMONDO, in her official capacity as Governor, et al	)	

HEARD BEFORE THE HONORABLE MS. MELISSA E. DARIGAN

NOVEMBER 27, 2019

APPEARANCES:

DIANE MESSERE MAGEE, ESQ.
FOR THE PLAINTIFFS

MICHAEL W. FIELD, ESQ.
FOR THE DEFENDANTS

JAMIE K. HALPIN
RPR, CSR

* * *

[49] is A.F. Lusi, again, Woonsocket School Committee and Bandoni, I will cite to the Defendants' reply brief at Pages 4 and 5, are all unique questions of standing. Two of them are about self-executing statutes that would be a precondition to coming to the court. The other is about immunity. This doesn't fall within that.

MR. FIELD: Bandoni had nothing to do with standing.

MS. MAGEE: In the interpretation of the underlying constitutional question, it was still about self-execution and the determination of a precondition. So, you can have standing and still be thrown out because there is a precondition, and that's what the court did.

THE COURT: Anything further as the moving party, Mr. Field?

MR. FIELD: Not unless your Honor has questions. Thank you.

THE COURT: This matter is before the Court on Defendants' motion to dismiss the Plaintiffs' amended complaint. This is a motion brought under Rule 12(b)(6), and the standard, as has been discussed, is that the complaint will be dismissed when it is clear beyond a reasonable doubt that the Plaintiffs will not be entitled to relief under any set of facts that could be proven. As we've also discussed today, the Court must assume that [50] all factual allegations in the complaint are true and statements that are in the nature of legal conclusions are not required to be presumed as true.

The standard is a little bit complicated here when you have a complaint as extensive as Plaintiffs have submitted along with some, at least in my experience on both sides of the bench, some unusual exhibits attached to the complaint, and I think that makes the

analysis a little more complicated because there is a lot in the complaint, the four corners of the complaint, encompassing the attachments. There is a lot there to be considered.

In addition to the scope of the complaint, both sides have attached as exhibits to the motion to dismiss papers, copies of pleadings or other sides' motions and documents that appear to me to be within the official public record along with case law and statutes.

Having looked at these extrinsic documents, I do think that they fall within the exception created by the Supreme Court for review of extrinsic documents without requiring a conversion to a Rule 56 because, for the most part, the documents are not contested and are again pleadings or official public records which are not contested, and I say that because I want to be clear that I have reviewed this matter on a Rule 12(b)(6) standard [51] and not on a Rule 56 standard despite the scope of the materials that are under review.

I do want to make a special remark about the affidavits that Plaintiffs submitted. They were submitted by the Former Speaker of the House and Former Legal Counsel to the Constitutional Convention in 1986, and I have not considered those affidavits to be facts, established facts. When we are dealing in this complaint with a question of constitutional interpretation, it is clear that affidavits and opinions and recollections do not trump the plain language that is used in the challenged provisions or the provisions that are being requested to be interpreted, and so, the focus of my

analysis anyway has been on really the traditional rule of construction of looking at the actual language that is at issue, and I don't find that those affidavits are competent evidence of either intent nor are they competent evidence relative to the statutory interpretation analysis.

I am granting the Defendants' motion to dismiss. I find that neither or I should say none of the categories of plaintiff have standing here. The unborn persons I find do not have rights as persons to make this challenge, and they rest their claims in large part on statutory provisions that have been repealed as [52] unconstitutional. I think that Mary Doe's quick child claim to standing is not persuasive, and The Servants of Christ for Life standing is derivative to the Baby Roe and Baby Doe claims and, therefore, fail.

As for the adult Plaintiffs, in my view these Plaintiffs clearly have not suffered a concrete and particularized harm as required by a long line of Supreme Court precedents on either their so-called voter suppression claims or their equal protection and due process claims.

As for whether standing can be conferred by the substantial public interest exception, I do not see it that way as has been argued. Finding standing on those grounds is reserved for truly rare and exceptional cases, and I don't think that that such truly rare or exceptional case is present here, and I think that Judge Stern's outline in the Harrop case on that point was right on point.

I do recognize the Plaintiffs have made a very strong argument that the Court should not go beyond the standing review, but I do think that on a constitutional or statutory interpretation case that is based on language that is black and white, I think that for rightly or for wrongly that it is in the province of this Court to look at the actual language that is being [53] addressed and endeavor to interpret it, so that's what I've done, and having done that, I disagree with Plaintiffs' position that Article I, Section 2 is ambiguous, and I don't think it is ambiguous. I also do not believe that Article I, Section 2 prohibits the General Assembly from having enacted the RPA. I don't think the RPA is void or lack of authority of the General Assembly, and I don't think that the RPA requires a vote of the citizens of Rhode Island.

In the same vein, I agree with the Department of Attorney General that the General Assembly's broad authority to enact laws and this RPA in particular has not been limited by Article, I Section 2 or any other provision that's been presented to the Court under the Rhode Island or United States Constitution. And, again, for better or for worse, rightly or wrongly, I think that my decision comports with the direction of the Rhode Island Supreme Court to presume that laws that are enacted by the General Assembly are valid and constitutional and that the Superior Court must exercise the greatest possible caution in reviewing a challenge to the constitutionality of a statute, and I understand that Plaintiffs argue and believe that the standards have been flipped here and that a greater

burden is being placed on Plaintiffs than is proper at this stage of the [54] proceeding. Nevertheless, I find that based on the standing issues and based on my interpretation of Article I, Section 2, that Plaintiffs would not be entitled to any relief under any set of facts that could be proven.

So, I'm granting the Defendants' motion to dismiss, and I ask counsel to work out the terms of an appropriate order.

MS. MAGEE: Your Honor, for the record, is it your Honor's decision today that you are ruling on both the federal question and the state question relying on both federal law and state law? Am I clear on my question to you?

THE COURT: No.

MS. MAGEE: Okay. It's important for the fact that this case raises a federal question which there is a possibility this could go to the Supreme Court. Your Honor has to be clear as to whether or not your decision today is based on Rhode Island law or Supreme Court law or both because a federal question has been raised which makes this case ripe for review by the U.S. Supreme Court.

MR. FIELD: Your Honor, may I?

THE COURT: Sure.

MS. MAGEE: I just would like an answer to my question first, if that's okay, please? I don't mean to [55] be rude. I think it's important.

MR. FIELD: Well, I think what I have to say may inform the Court's answer.

MS. MAGEE: Well, I think it's the Court's decision as to how she's ruling. You can't have counsel say how you're ruling.

THE COURT: I have a decision, but I'll hear Mr. Field.

MR. FIELD: Your Honor, the standing question is based on the state law, your Honor has made that clear, and the interpretation of Article I, Section 2 is a state law question.

THE COURT: Well, you said that very well. It's pretty much what I was going to say, although, I probably wasn't going to say it that articulately.

MS. MAGEE: Okay. So, to be specific, the standing question, you're relying on state law only?

THE COURT: Yes.

MS. MAGEE: Even though we raised a federal question that there is standing under the Fourteenth and Fifth Amendment to the United States Constitution; is that correct?

THE COURT: It is correct that I have relied upon Rhode Island law, and I have not really considered federal law.

[56] MS. MAGEE: And as to the constitutional construction that your Honor has undertaken, you are relying solely on Rhode Island law, correct?

THE COURT: That is correct.

MS. MAGEE: And, respectfully, your Honor, Plaintiffs may enter their exception to your decision?

THE COURT: Of course.

MS. MAGEE: Thank you so much.

MR. FIELD: May judgment enter also?

MS. MAGEE: Well, I don't think that's appropriate.

THE COURT: An order on a 12(b)(6) is a judgment on the merits. You're asking whether you should submit a separate judgment under Rule 58?

MR. FIELD: I'm asking since the Court has resolved all of the issues in the complaint and granted the motion to dismiss whether a final judgment may enter?

THE COURT: I see this as a final judgment. You don't, Ms. Magee?

MS. MAGEE: Well, it's a 12(b)(6) motion for failure to state a claim upon which relief can be granted. If the Court is taking the position that you have the authority to determine the underlying merits, then that just becomes part of the appeal. We object to an order that goes beyond the granting of the motion to [57] dismiss as filed, as filed, but –

THE COURT: Well, the motion to dismiss as filed argued both standing and that the statutory

construction being advanced by Plaintiffs was unavailing as a matter of law.

MS. MAGEE: Only in the context of the 12(b)(6), but I understand, so we will take exception. As your Honor orders, we will accept whatever the Court decides is appropriate.

THE COURT: I certainly think that on a 12(b)(6) motion that the order of the Court is a final order.

MS. MAGEE: I understand that, yes.

THE COURT: That is appealable as of right.

MS. MAGEE: Right.

THE COURT: Which I fully expected and I suppose a separate judgment – I know that the practice is a little wishy-washy whether an order simply enters on a 12(b)(6) or an order and a judgment. Since my intention is for this ruling to be the end of – the last stop in this court, I don't have an opposition if the State wishes to dot the i's and cross the t's or whatever the case may be. Perhaps it's actually required under Rule 58 and something that is observed more in the breach. Just submit an order and a judgment. That would [58] be fine. I am suggesting that you pass them before your sister before you send it in.

MS. MAGEE: I appreciate that.

MR. FIELD: Thank you, your Honor.

MS. MAGEE: Happy Thanksgiving.

THE COURT: Happy Thanksgiving.

A-D-J-O-U-R-N-E-D

Supreme Court

No. 2020-66-A.

Michael Benson et al. :

v. :

Daniel McKee, in his official capacity as Governor for the State of Rhode Island, et al. :

ORDER

The petition for reargument, as prayed, is denied.

Justice Lynch Prata and Justice Long did not participate.

Entered as an Order of this Court this ***3rd*** day of ***June 2022***.

By Order,

/s/ *Debra A. Saunders*
Clerk

Chapter 027 2019 –
H 5125 SUBSTITUTE B
Enacted 06/19/2019

AN ACT
RELATING TO HEALTH AND SAFETY –
THE REPRODUCTIVE PRIVACY ACT

Introduced By: Representatives Williams, Blazejewski, Alzate, Barros, and Shanley

Date Introduced: January 16, 2019

It is enacted by the General Assembly as follows:

SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby amended by adding thereto the following chapter:

CHAPTER 4.13

REPRODUCTIVE PRIVACY ACT

23-4.13-1. Short title.

This chapter shall be known and may be cited as the "Reproductive Privacy Act."

23-4.13-2. Noninterference in reproductive health care.

(a) Neither the state, nor any of its agencies, or political subdivisions shall:

(1) Restrict an individual person from preventing, commencing, continuing, or terminating that individual's pregnancy prior to fetal viability;

(2) Interfere with an individual person's decision to continue that individual's pregnancy after fetal viability;

(3) Restrict an individual person from terminating that individual's pregnancy after fetal viability when necessary to preserve the health or life of that individual;

(4) Restrict the use of evidence-based, medically recognized methods of contraception or abortion except in accordance with evidence-based medically appropriate standards that are in compliance with state and federal statutes enumerated in subsections (c)(1) and (c)(2), department of health regulations and standards referenced in subsection (c)(3), and subsection (d); or

(5) Restrict access to evidence-based, medically recognized methods of contraception or abortion or the provision of such contraception or abortion except in accordance with evidence-based medically appropriate standards that are in compliance with state and federal statutes enumerated in subsections (c)(1) and (c)(2), department of health regulations and standards referenced in subsection (c)(3), and subsection (d).

(b) For purposes of this section, "fetal viability" means that stage of gestation where the attending physician, taking into account the particular facts of the case, has determined that there is a reasonable likelihood of the fetus' sustained survival outside of the womb with or without artificial support.

(c) Notwithstanding the foregoing, this section shall not be construed to:

(1) Abrogate the provisions of §§ 11-9-18 titled "Care of babies born alive during attempted abortions", 11-54-1 titled "Experimentation on human fetuses", 23-4.6-1 titled "Consent to medical and surgical care", 23-4.7-1 through 23-4.7-8 titled "Informed consent for abortion", 23-13-21 titled "Comprehensive reproductive health services", 23-17-11 titled "Abortion and sterilization – Protection for nonparticipation – Procedure", or 42-157-3(d) of the section titled "Rhode Island Health Benefit Exchange – General requirements";

(2) Abrogate the provisions of 18 U.S. Code § 1531, titled "Partial-birth abortions prohibited" and cited as the "Partial-Birth Abortion Ban Act of 2003";

(3) Prevent the department of health from applying to licensed health care facilities that provide abortion any generally applicable regulations or standards that are in accordance with evidence-based, medically recognized standards for the provision of abortion in compliance with state and federal statutes enumerated in subsections (c)(1) and (c)(2) and with subsection (d), provided that such application, adoption or enforcement is not a pretext for violating subsection (a) of this section.

(d) The termination of an individual's pregnancy after fetal viability is expressly prohibited except when necessary, in the medical judgment of the physician, to preserve the life or health of that individual.

(1) Any physician who knowingly violates the provisions of this subsection shall be deemed to have engaged in "unprofessional conduct" for the purpose of § 5-37-5.1.

(2) A physician who performs a termination after fetal viability shall be required to record in the patient's medical records the basis for the physician's medical judgment that termination was necessary to preserve the ~~live~~ **life** or health of the patient and must comply with all other relevant requirements applicable to physicians in § 23-3-17.

(3) The director of the department of health is authorized to deny or revoke any license to practice allopathic or osteopathic medicine or otherwise discipline a licensee upon finding by the board that the person is guilty of unprofessional conduct under § 5-37-5.1(31).

SECTION 2. Chapter 11-3 of the General Laws entitled "Abortion" is hereby repealed in its entirety:

~~CHAPTER 3~~

~~Abortion~~

~~**11-3-1. Procuring, counseling or attempting miscarriage.**~~

~~Every person who, with the intent to procure the miscarriage of any pregnant woman or woman supposed by such person to be pregnant, unless the same~~

~~be necessary to preserve her life, shall administer to her or cause to be taken by her any poison or other noxious thing, or shall use any instrument or other means whatsoever or shall aid, assist or counsel any person so intending to procure a miscarriage, shall if the woman die in consequence thereof, be imprisoned not exceeding twenty (20) years nor less than five (5) years, and if she does not die in consequence thereof, shall be imprisoned not exceeding seven (7) years nor less than one (1) year; provided that the woman whose miscarriage shall have been caused or attempted shall not be liable to the penalties prescribed by this section.~~

~~11-3-2. Murder charged in same indictment or information.~~

~~Any person who shall be charged with the murder of any infant child, or of any pregnant woman, or of any woman supposed by such person to be or to have been pregnant, may also be charged in the same indictment or information with any or all the offenses mentioned in 11-3-1, and if the jury shall acquit such person on the charge of murder and find him guilty of the other offenses or either of them, judgment and sentence may be awarded against him accordingly.~~

~~11-3-3. Dying declarations admissible.~~

~~In prosecutions for any of the offenses described section 11-3-1, in which the death of a woman is alleged to have resulted from the means therein described, dying declarations of the deceased woman shall be admissible as evidence, as in homicide cases.~~

~~**11-3-4. Construction and application of section 11-3-1.**~~

~~It shall be conclusively presumed in any action concerning the construction, application or validity of section 11-3-1, that human life commences at the instant of conception and that said human life at said instant of conception is a person within the language and meaning of the fourteenth amendment of the constitution of the United States, and that miscarriage at any time after the instant of conception caused by the administration of any poison or other noxious thing or the use of any instrument or other means shall be a violation of said section 11-3-1, unless the same be necessary to preserve the life of a woman who is pregnant.~~

~~**11-3-5. Constitutionality.**~~

~~If any part, clause or section of this act shall be declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remaining provisions, parts or sections shall not be affected.~~

SECTION 3. Section 11-5-2 of the General Laws in Chapter 11-5 entitled "Assaults" is hereby amended to read as follows:

11-5-2. Felony assault.

(a) Every person who shall make an assault or battery, or both, upon the person of another, with a dangerous weapon, or with acid or other dangerous substance, or by fire, or an assault or battery that

results in serious bodily injury shall be guilty of a felony assault. If such assault results in serious bodily injury, it shall be punished by imprisonment for not more than twenty (20) years. Every other felony assault which results in bodily injury or no injury shall be punished by imprisonment for not more than six (6) years.

(b) Where the provisions of "The Domestic Violence Prevention Act", chapter 29 of title 12, are applicable, the penalties for violation of this section shall also include the penalties as provided in § 12-29-5.

(c) "Serious bodily injury" means physical injury that:

(1) Creates a substantial risk of death;

(2) Causes protracted loss or impairment of the function of any bodily part, member, or organ; ~~or~~

(3) Causes serious permanent disfigurement or circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of a person~~.~~; or

(4) Results in the termination of a pregnancy where the person making the assault or battery is someone other than the pregnant person and knows or has reason to know that the person upon whom the assault or battery is made is pregnant.

(d) This section shall not apply to acts committed by:

(1) Any person relating to the performance of an abortion pursuant to chapter 4.13 of title 23, the

Reproductive Privacy Act, for which the consent of the pregnant person, or a person authorized by law on her behalf, has been obtained or for which such consent is implied by law; or

(2) Any person for any medical treatment of the pregnant person or the fetus.

~~(d)~~(e) "Bodily injury" means physical injury that causes physical pain, illness, or any impairment of physical condition.

SECTION 4. Section 11-23-5 of the General Laws in Chapter 11-23 entitled "Homicide" is hereby repealed.

~~**11-23-5. Willful killing of unborn quick child.**~~

~~(a) The willful killing of an unborn quick child by any injury to the mother of the child, which would be murder if it resulted in the death of the mother; the administration to any woman pregnant with a quick child of any medication, drug, or substance or the use of any instrument or device or other means, with intent to destroy the child, unless it is necessary to preserve the life of the mother; in the event of the death of the child; shall be deemed manslaughter.~~

~~(b) In any prosecution under this section, it shall not be necessary for the prosecution to prove that any necessity existed.~~

~~(c) For the purposes of this section, "quick child" means an unborn child whose heart is beating, who is experiencing electronically measurable brain waves, who is discernibly moving, and who is so far developed and matured as to be capable of surviving the trauma of birth with the aid of usual medical care and facilities available in this state.~~

SECTION 5. Chapter 23-4.8 of the General Laws entitled "Spousal Notice for Abortion" is hereby repealed in its entirety.

~~CHAPTER 23-4.8~~

~~Spousal Notice for Abortion~~

~~**23-4.8-1. Declaration of purpose.**~~

~~The purpose of this chapter is to promote the state's interest in furthering the integrity of the institutions of marriage and the family.~~

~~**23-4.8-2. Spousal notice requirements.**~~

~~If a married woman consents to an abortion, as that consent is required by chapter 4.7 of this title, the physician who is to perform the abortion or his or her authorized agent shall, if reasonably possible, notify the husband of that woman of the proposed abortion before it is performed.~~

~~**23-4.8-3. Exceptions.**~~

~~The requirements of § 23-4.8-2 shall not apply if:~~

~~(1) The woman having the abortion furnishes to the physician who is to perform the abortion or the physician's authorized agent prior to the abortion being performed a written statement that she has given notice to her husband of the proposed abortion or a written statement that the fetus was not fathered by her husband;~~

~~(2) The woman and her husband are living separate and apart or either spouse has filed a petition or complaint for divorce in a court of competent jurisdiction;~~

~~(3) The physician who is to perform the abortion or his or her authorized agent receives the written affirmation of the husband that he has been notified of the proposed abortion; or~~

~~(4) There is an emergency requiring immediate action. In the case of an emergency, the woman's attending physician shall certify in writing on the patient's medical record that an emergency exists and the medical basis for his or her opinion.~~

~~**23-4.8-4. Penalties.**~~

~~In the event a physician performs an abortion, as defined by chapter 4.7 of this title, upon a woman who he or she knows is married and the physician knowingly and intentionally violates the requirements of~~

~~this chapter, he or she shall be guilty of "unprofessional conduct" for the purposes of § 5-37-5.1.~~

~~**23-4.8-5. Severability.**~~

~~If any section or provision of this chapter or the application of any section or provision is held invalid, that invalidity shall not affect other sections, provisions or applications, and to this end the sections and provisions of this chapter are declared severable.~~

SECTION 6. Chapter 23-4.12 of the General Laws entitled "Partial Birth Abortion" is hereby repealed in its entirety.

~~CHAPTER 23-4.12~~

~~Partial Birth Abortion~~

~~**23-4.12-1. Definitions.**~~

~~(a) For purposes of this chapter, "partial birth abortion" means an abortion in which the person performing the abortion vaginally delivers a living human fetus before killing the infant and completing the delivery.~~

~~(b) For purposes of this chapter, the terms "fetus" and "infant" are used interchangeably to refer to the biological offspring of human parents.~~

~~(c) As used in this section, "vaginally delivers a living fetus before killing the infant" means deliberately and intentionally delivers into the vagina a living~~

~~fetus, or a substantial portion of the fetus, for the purpose of performing a procedure the person performing the abortion knows will kill the infant, and kills the infant.~~

~~**23-4.12-2. Prohibition of partial birth abortions.**~~

~~No person shall knowingly perform a partial birth abortion.~~

~~**23-4.12-3. Life of the mother exception.**~~

~~Section 23-4.12-2 shall not apply to a partial birth abortion that is necessary to save the life of a mother because her life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering condition caused by or arising from the pregnancy itself; provided, that no other medical procedure would suffice for that purpose.~~

~~**23-4.12-4. Civil remedies.**~~

~~(a) The woman upon whom a partial birth abortion has been performed in violation of § 23-4.12-2, the father of the fetus or infant, and the maternal grandparents of the fetus or infant, and the maternal grandparents of the fetus or infant if the mother has not attained the age of eighteen (18) years at the time of the abortion, may obtain appropriate relief in a civil action, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.~~

~~(b) The relief shall include:~~

~~(1) Money damages for all injuries, psychological and physical, occasioned by the violation of this chapter; and~~

~~(2) Statutory damages equal to three (3) times the cost of the partial birth abortion.~~

~~(c) If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant. If the judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.~~

~~**23-4.12-5. Penalty.**~~

~~(a) Performance of a partial birth abortion deliberately and intentionally is a violation of this chapter and shall be a felony.~~

~~(b) A woman upon whom a partial birth abortion is performed may not be prosecuted under this chapter for violating this chapter or any provision this chapter, or for conspiracy to violate this chapter or any provision this chapter.~~

~~**23-4.12-6. Severability.**~~

~~(a) If any one or more provisions, clauses, phrases, or words of § 23-4.12-3 or the application of~~

~~that section to any person or circumstance is found to be unconstitutional, it is declared to be inseverable.~~

~~(b) If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of the remaining sections or the application of them to any person or circumstance is found to be unconstitutional, they are declared to be severable and the balance of the chapter shall remain effective notwithstanding the unconstitutionality. The legislature declares that it would have passed this chapter, and each provision, section, subsection, sentence, clause, phrase, or words, with the exception of § 23-4.12-3, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases, or words be declared unconstitutional.~~

SECTION 7. Section 27-18-28 of the General Laws in Chapter 27-18 entitled "Accident and Sickness Insurance Policies" is hereby repealed.

~~27-18-28. Health insurance contracts – Abortion.~~

~~(a) No health insurance contract, plan, or policy, delivered or issued for delivery in the state, shall provide coverage for induced abortions, except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy resulted from rape or incest, and except by an optional rider for which there must be paid an additional premium. This~~

~~section shall be applicable to all contracts, plans, or policies of:~~

~~(1) All health insurers subject to this title;~~

~~(2) All group and blanket health insurers subject to this title;~~

~~(3) All nonprofit hospital, medical, surgical, dental, and health service corporations; and~~

~~(4) All health maintenance organizations;~~

~~(5) Any provision of medical, hospital, surgical, and funeral benefits, and of coverage against accidental death or injury, when the benefits or coverage are incidental to or part of other insurance authorized by the statutes of this state.~~

~~(b) Nothing contained in this section shall be construed to pertain to insurance coverage for complications as the result of an abortion.~~

SECTION 8. Section 36-12-2.1 of the General Laws in Chapter 36-12 entitled "Insurance Benefits" is hereby amended to read as follows:

36-12-2.1. Health insurance benefits – Coverage for abortions excluded.

(a) The state of Rhode Island ~~or any city or town~~ shall not include in any health insurance contracts, plans, or policies covering employees, any provision which shall provide coverage for induced abortions

(except where the life of the mother would be endangered if the fetus were carried to term, or where the pregnancy resulted from rape or incest). This section shall be applicable to all contracts, plans or policies of:

(1) All health insurers subject to title 27;

(2) All group and blanket health insurers subject to title 27;

(3) All nonprofit hospital, medical, surgical, dental, and health service corporations;

(4) All health maintenance organizations; and

(5) Any provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury when the benefits or coverage are incidental to or part of other insurance authorized by the statutes of this state.

(b) Provided, however, that the provisions of this section shall not apply to benefits provided under existing collective bargaining agreements entered into prior to June 30, 1982.

(c) Nothing contained herein shall be construed to pertain to insurance coverage for complications as the result of an abortion.

SECTION 9. Section 42-12.3-3 of the General Laws in Chapter 42-12.3 entitled "Health Care for Children and Pregnant Women" is hereby amended to read as follows:

42-12.3-3. Medical assistance expansion for pregnant women/RIte Start.

(a) The director of the department of human services is authorized to amend its title XIX state plan pursuant to title XIX of the Social Security Act to provide Medicaid coverage and to amend its title XXI state plan pursuant to Title XXI of the Social Security Act to provide medical assistance coverage through expanded family income disregards for pregnant women whose family income levels are between one hundred eighty-five percent (185%) and two hundred fifty percent (250%) of the federal poverty level. The department is further authorized to promulgate any regulations necessary and in accord with title XIX [42 U.S.C. § 1396 et seq.] and title XXI [42 U.S.C. § 1397 et seq.] of the Social Security Act necessary in order to implement said state plan amendment. The services provided shall be in accord with title XIX [42 U.S.C. § 1396 et seq.] and title XXI [42 U.S.C. § 1397 et seq.] of the Social Security Act.

(b) The director of the department of human services is authorized and directed to establish a payor of last resort program to cover prenatal, delivery and postpartum care. The program shall cover the cost of maternity care for any woman who lacks health insurance coverage for maternity care and who is not

eligible for medical assistance under title XIX [42 U.S.C. § 1396 et seq.] and title XXI [42 U.S.C. § 1397 et seq.] of the Social Security Act including, but not limited to, a non-citizen pregnant woman lawfully admitted for permanent residence on or after August 22, 1996, without regard to the availability of federal financial participation, provided such pregnant woman satisfies all other eligibility requirements. The director shall promulgate regulations to implement this program. Such regulations shall include specific eligibility criteria; the scope of services to be covered; procedures for administration and service delivery; referrals for non-covered services; outreach; and public education. Excluded services under this paragraph will include, but not be limited to, induced abortion except ~~to prevent the death of the mother~~ in cases of rape or incest or to save the life of the pregnant individual.

(c) The department of human services may enter into cooperative agreements with the department of health and/or other state agencies to provide services to individuals eligible for services under subsections (a) and (b) above.

(d) The following services shall be provided through the program:

(1) Ante-partum and postpartum care;

(2) Delivery;

(3) Cesarean section;

(4) Newborn hospital care;

(5) Inpatient transportation from one hospital to another when authorized by a medical provider;

(6) Prescription medications and laboratory tests;

(e) The department of human services shall provide enhanced services, as appropriate, to pregnant women as defined in subsections (a) and (b), as well as to other pregnant women eligible for medical assistance. These services shall include: care coordination, nutrition and social service counseling, high risk obstetrical care, childbirth and parenting preparation programs, smoking cessation programs, outpatient counseling for drug-alcohol use, interpreter services, mental health services, and home visitation. The provision of enhanced services is subject to available appropriations. In the event that appropriations are not adequate for the provision of these services, the department has the authority to limit the amount, scope and duration of these enhanced services.

(f) The department of human services shall provide for extended family planning services for up to twenty-four (24) months postpartum. These services shall be available to women who have been determined eligible for RIte Start or for medical assistance under title XIX [42 U.S.C. § 1396 et seq.] or title XXI [42 U.S.C. § 1397 et seq.] of the Social Security Act.

SECTION 10. Section 5-37-5.1 of the General Laws in Chapter 5-37 entitled "Board of Medical Licensure and Discipline" is hereby amended to read as follows:

5-37-5.1. Unprofessional conduct.

The term "unprofessional conduct" as used in this chapter includes, but is not limited to, the following items or any combination of these items and may be further defined by regulations established by the board with the prior approval of the director:

(1) Fraudulent or deceptive procuring or use of a license or limited registration;

(2) All advertising of medical business, which is intended or has a tendency to deceive the public;

(3) Conviction of a crime involving moral turpitude; conviction of a felony; conviction of a crime arising out of the practice of medicine;

(4) Abandoning a patient;

(5) Dependence upon controlled substances, habitual drunkenness, or rendering professional services to a patient while the physician or limited registrant is intoxicated or incapacitated by the use of drugs;

(6) Promotion by a physician or limited registrant of the sale of drugs, devices, appliances, or goods or services provided for a patient in a manner as to exploit the patient for the financial gain of the physician or limited registrant;

(7) Immoral conduct of a physician or limited registrant in the practice of medicine;

(8) Willfully making and filing false reports or records in the practice of medicine;

(9) Willfully omitting to file or record, or willfully impeding or obstructing a filing or recording, or inducing another person to omit to file or record, medical or other reports as required by law;

(10) Failing to furnish details of a patient's medical record to succeeding physicians, health care facility, or other health care providers upon proper request pursuant to § 5-37.3-4;

(11) Soliciting professional patronage by agents or persons or profiting from acts of those representing themselves to be agents of the licensed physician or limited registrants;

(12) Dividing fees or agreeing to split or divide the fees received for professional services for any person for bringing to or referring a patient;

(13) Agreeing with clinical or bioanalytical laboratories to accept payments from these laboratories for individual tests or test series for patients;

(14) Making willful misrepresentations in treatments;

(15) Practicing medicine with an unlicensed physician except in an accredited preceptorship or residency training program, or aiding or abetting unlicensed persons in the practice of medicine;

(16) Gross and willful overcharging for professional services; including filing of false statements for collection of fees for which services are not rendered, or willfully making or assisting in making a false claim or deceptive claim or misrepresenting a material fact for use in determining rights to health care or other benefits;

(17) Offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment or medicine;

(18) Professional or mental incompetency;

(19) Incompetent, negligent, or willful misconduct in the practice of medicine which includes the rendering of medically unnecessary services, and any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing medical practice in his or her area of expertise as is determined by the board. The board does not need to establish actual injury to the patient in order to adjudge a physician or limited registrant guilty of the unacceptable medical practice in this subdivision;

(20) Failing to comply with the provisions of chapter 4.7 of title 23;

(21) Surrender, revocation, suspension, limitation of privilege based on quality of care provided, or any other disciplinary action against a license or authorization to practice medicine in another state or jurisdiction; or surrender, revocation, suspension, or any other disciplinary action relating to a membership on

any medical staff or in any medical or professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct which would constitute grounds for action as described in this chapter;

(22) Multiple adverse judgments, settlements or awards arising from medical liability claims related to acts or conduct which would constitute grounds for action as described in this chapter;

(23) Failing to furnish the board, its chief administrative officer, investigator or representatives, information legally requested by the board;

(24) Violating any provision or provisions of this chapter or the rules and regulations of the board or any rules or regulations promulgated by the director or of an action, stipulation, or agreement of the board;

(25) Cheating on or attempting to subvert the licensing examination;

(26) Violating any state or federal law or regulation relating to controlled substances;

(27) Failing to maintain standards established by peer review boards, including, but not limited to, standards related to proper utilization of services, use of nonaccepted procedure, and/or quality of care;

(28) A pattern of medical malpractice, or willful or gross malpractice on a particular occasion;

(29) Agreeing to treat a beneficiary of health insurance under title XVIII of the Social Security Act,

42 U.S.C. § 1395 et seq., "Medicare Act", and then charging or collecting from this beneficiary any amount in excess of the amount or amounts permitted pursuant to the Medicare Act; ~~or~~

(30) Sexual contact between a physician and patient during the existence of the physician/patient relationship; or

(31) Knowingly violating the provisions of subsection 23-4.13-2(d).

SECTION 11. This act shall take effect upon passage.

In the Supreme Court of Rhode Island

No. SU-2020-0066-A

MICHAEL BENSON, ET ALS,
PLAINTIFFS-APPELLANTS,

V.

DANIEL MCKEE, ET. ALS
DEFENDANTS-APPELLEES

ON APPEAL FROM A JUDGMENT ENTERED IN THE SUPERIOR COURT, PROVIDENCE COUNTY NO. PC-2019-6761 (MELISSA DARIGAN, J.)

PLAINTIFFS-APPELLANTS' PETITION FOR REARGUMENT

(Filed May 16, 2022)

Now come the Plaintiffs, by their Attorneys, within the time provided by law[1], and petition for reargument pursuant to R.I. S. Ct. R. App. P. 25. As

[1] This Court's decision was filed on May 4, 2022. R.I. S. Ct. R. App. P. 25 permits the filing of a petition for reargument within ten days of a decision's filing. The tenth day after May 4 would be Saturday, May 14, 2022. In this situation, Rule 20(a) provides that the filing period "runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday," in this case Monday, May 16, 2022.

required by said Rule, the grounds for this petition are set forth in an accompanying memorandum of law.

RESPECTFULLY SUBMITTED,
PLAINTIFFS-APPELLANTS,
BY THEIR ATTORNEYS:

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In the Supreme Court of Rhode Island

No. SU-2020-0066-A

MICHAEL BENSON, ET ALS,
PLAINTIFFS-APPELLANTS,

V.

DANIEL MCKEE, ET. ALS
DEFENDANTS-APPELLEES

ON APPEAL FROM A JUDGMENT ENTERED IN THE SUPERIOR COURT, PROVIDENCE COUNTY NO. PC-2019-6761 (MELISSA DARIGAN, J.)

PLAINTIFFS-APPELLANTS' MEMORANDUM IN SUPPORT OF THEIR PETITION FOR REARGUMENT

(Filed May 16, 2022)

Plaintiffs seek reargument of this case, decided by this Court on May 4, 2022. The circumstances underlying this request are, to say the least, somewhat unique.

In this Court's decision in this case, the Court determined that the Unborn Plaintiffs lacked standing because, after the United States Supreme Court's decision in *Roe v. Wade*, 410 U.S. 113 (1973), "the

word 'person,' as used in the Fourteenth Amendment, does not include the unborn." *Benson v. McKee*, No. SU-2020-0066-A, slip op. at 17 (R.I. filed May 4, 2022) (quoting *Roe v. Wade*, 4410 U.S. at 158). Based on *Roe*, this Court concluded that "the unborn persons fail to assert a legally cognizable and protected interest as persons . . . " *Benson*, slip op at 17. As the Court noted in *Benson*, state law is subordinate to the United States Constitution. Thus, the United States Supreme Court's holding in *Roe* was binding on this Court here.

But there is now good reason to question how much longer *Roe* – and its progeny, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) – remain binding on this Court. In December 2021 the United States Supreme Court heard oral argument in *Dobbs v. Jackson Womens' Health Organization*, No. 19-1392 (U.S. argued and submitted December 1, 2021). On May 2, 2022, the *Politico* website reported that it had obtained a "leaked" copy of a draft opinion for the Court in *Dobbs* overruling *Roe* and *Casey.*[1] The *Politico* article contained what appeared to be a draft opinion for the Court by Justice Alito, joined by at least four other Justices, squarely overruling *Roe.* Any doubts about the authenticity of the draft were resolved the following day, when Chief Justice Roberts issued a public statement identifying the leaked draft as "authentic," but noting that it is

[1] J. Gerstein & A. Ward, "Supreme Court has voted to overturn abortion rights, draft opinion shows," Politico (May 2, 2022) https://www.politico.com/news/2022/05/02/supreme-court-abortion-draft-opinion00029473?cid=apn.

still just a draft and "it does not represent a decision by the Court or the final position of any member on the issues in the case." Statement of Chief Justice Roberts, May 3, 2022.[2]

The Chief Justice's disclaimer notwithstanding, the question presented in *Dobbs* implicates the status of *Roe's* precedential force. *Dobbs*, having been argued in December 2021, will almost certainly be issued by late June or early July of this year, well in advance of this Court's 2022-23 Term. Because the significance of the leaked draft is nearly impossible to ignore, Plaintiffs-Appellants suggest that this Court should grant reargument in this case so that the parties and the Court can assess the eventual outcome of *Dobbs* and address its effect on *Roe* and, ultimately, this case.

This Court's opinion in this case also rejected the Unborn Plaintiffs' standing to challenge the repeal of R.I. Gen. L. sec. 11-3-4 (repealed, P.L. 2019, ch. 27, sec. 2). Sec. 11-3-4 had provided "that human life commences at the instant of conception and that said human life at said instant of conception is a person within the language and meaning of the fourteenth amendment of the constitution of the United States . . . " *Id.* Because sec. 11-3-4 had been declared unconstitutional by the United States District Court in *Doe v. Israel*, 482 F.2d 156 (D.R.I. 1973), this Court in this case opined that "at the time the RPA was enacted the unborn plaintiffs had no legal rights or status under

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[2] Available at https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_05-03-22

chapter 3 of title 11." *Benson*, slip op. at 17. But *Doe v. Israel* depended entirely on *Roe*. If, as appears likely, *Roe* is overruled, then the premise of *Doe v. Israel* evaporates and this Court's reliance upon it should be reconsidered. Under this Court's *de novo* standard of review for Rule 12 motions, these matters should be reconsidered in light of the potential overruling of *Roe*.

In addition, Plaintiffs-Appellants' complaint set forth claims sounding in the United States Constitution's Fifth and Fourteenth Amendments. To the extent that *Dobbs* evinces a change in the landscape – and the potential rights of unborn persons under those Amendments – this Court should reconsider the decision in this case.

Plaintiffs-Appellants recognize, as Chief Justice Roberts expressed it, that the "leak" of the draft opinion in *Dobbs* was an appalling betrayal of the confidences of the United States Supreme Court. But because this Court deemed *Roe* controlling on the issues in this case, and given *Roe*'s doubtful survival, Plaintiffs-Appellants are compelled to seek to address this changing landscape to present this Court with an opportunity to respond to it.

Plaintiffs-Appellants respectfully request that the Petition for Reargument be granted and the matter be set down for further briefing and argument after the United States Supreme Court releases the decision in *Dobbs*. Alternatively, this Court may wish to defer consideration of this Petition until the ruling in *Dobbs* comes down and if, as anticipated, the Court overrules

or greatly curtails *Roe*, the petition ought at that time to be granted.

RESPECTFULLY SUBMITTED,
PLAINTIFFS-APPELLANTS,
BY THEIR ATTORNEYS:

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STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C.	**SUPERIOR COURT**
Michael Benson, **Nichole Leigh Rowley,** **Nichole Leigh Rowley, as parent and next friend of Baby Roe,** **Jane Doe,** **Jane Doe, as parent and next friend of Baby Mary Doe,** **Catholics for Life, Inc., dba Servants of Christ for Life,** **PLAINTIFFS** **v.** **Gina M. Raimondo, in her official capacity as Governor for the State of Rhode Island and Providence Plantations,** **Dominick J. Ruggerio, in his official capacity as President of the Rhode Island Senate,** **Nicholas A. Mattiello, if his official capacity as Speaker of the Rhode Island House of Representatives,** **Peter F. Neronha, in his official capacity as Attorney General for the State of Rhode Island and Providence Plantations,** **Francis McCabe, in his official capacity as Clerk,**	**C.A. No. 2019-6761** **PLAINTIFFS' FIRST AMENDED COMPLAINT**

of the Rhode Island House	**:**
of Representatives	**:**
Representatives, John Doe	**:**
#1, in his official capacity	**:**
as a clerk/page, of the	**:**
Rhode Island House of	**:**
Representatives	**:**
Representatives,	**:**
Robert L. Ricci, in his	**:**
official capacity as Secretary	**:**
of the Rhode Island Senate,	**:**
JOHN DOE#2, in his official	**:**
capacity as a clerk/page of	**:**
the Rhode Island Senate	**:**
DEFENDANTS	**:**

Governor Raimondo signed H-5125B into Rhode Island law on June 19, 2019.

The allegations, sworn affidavits, and exhibits in this First Amended Complaint support that Article I, Section 2 must be read, as a matter of law, as a restraint on the legislative power of the Rhode Island General Assembly[2]. Further, the Rhode Island General Assembly was without proper constitutional authority when it passed H-5125B – without first putting the issue (the creation of a new fundamental right to abortion and the funding thereof) before the citizens of Rhode Island for a vote, in conformity with the procedures set forth in Article XIV Constitutional Amendments and Revisions, of the Rhode Island Constitution.

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[2] Comprised of two chambers: the Senate and the House of Representatives.

The Rhode Island General Assembly House Bill H-5125B[3], is facially unconstitutional under the Rhode Island Constitution and under the United States Constitution. Further, to the extent that the General Assembly exceeded its authority under the Rhode Island Constitution, in passing H-5125B, and, since under Article VI, Section 1 the Rhode Island Constitution is the "supreme law of the state," H-5125B is "inconsistent" with the mandates of the Rhode Island Constitution – and, therefore, the Rhode Island constitution declares that H-5125B "shall be void." Governor Raimondo signed H-5125B in to Rhode Island law on June 19, 2019. And, as such, she signed a facially void law.

* * *

PLAINTIFF – BABY ROE

31. The Uniform Declaratory Judgments Act states:

> "Any person interested in a deed, will, written contract, or other writings, **or whose rights, status, or other legal relations are affected by a statute**, municipal ordinance, contract, or franchise, **may have determined**

[3] H-5125B is titled "The Reproductive Privacy Act" and is the third version of the original bill. The Senate had its own similar version of the H-5125 Substitute A, called Senate 152 – Substitute A. This complaint is meant to encompass all of these bills and any bill introduced and/or passed by the House and Senate that purports to "codify *Roe v. Wade*" and/or "grant or secure a right to abortion or the funding thereof." The entire text and substance of H-5125B is attached hereto as Exhibit 4, and fully and completely incorporate by reference herein.

> **any question or construction of validity arising under the instrument, statute**, ordinance, contract, or franchise **and obtain a declaration of rights, status, or other legal relations thereunder**." *R.I. General Laws §9-30-2*. (emphasis supplied).

32. Rowley is approximately fifteen (15) weeks pregnant with Baby Roe.

33. Prior to enactment of H-5125B, Rhode Island General Laws §11-3-4. "Construction and application of section 11-3-1." provided in part, that

> "It shall be conclusively presumed in any action concerning the construction, application or validity of section 11-3-1, **that human life begins at the instant of conception** and that said human life at said instant of conception **is a person within the language and meaning of the fourteenth amendment of the constitution of the United States**. . . ."

34. R.I. Gen. Laws §11-3-4, conferred on Baby Roe certain legal rights of a "person," under Rhode Island law and the United States Constitution, Amendment XIV.

35. R.I. Gen. Laws §11-3-4, conferred on Baby Roe the privileged status of a "person," under Rhode Island law and the United States Constitution, Amendment XIV.

36. H-5125B immediately, irrevocably, and permanently deprived Baby Roe of his/her said legal right and privileged status of "personhood"

under R.I. Gen. Laws §11-3-1. et seq., the due process and equal protection clauses of the Rhode Island Constitution, and the United States Constitution, Amendment XIV.

37. Pursuant to R.I. Gen. Laws §9-30-2, Baby Roe has the statutory right as a "person" " . . . whose rights, status, or other legal relations are affected by a statute [H-5125B] * * * may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder."

38. Pursuant to R.I. Gen. Law §33-22-17, titled, "Representation of unborn, unascertained, and incompetent persons," Rowley has the statutory right to bring a cause of action against any perpetrator or assailant defined in R.I. Gen. Laws §11-3-1, as construed by R.I. Gen. Laws §11-3-4 and R.I. Gen. Laws §11-3-2, on behalf of Baby Roe, because Rowley (or a representative of her estate) could bring the same suit on her own behalf within the requirements of R.I. Gen. Laws §33-22-17.

39. Pursuant to R.I. Gen. Laws §11-3-1 and R.I. Gen. Laws §11-3-2 the death of Baby Roe would be an actionable crime.

40. H-5125B immediately, irrevocably, and permanently deprived Baby Roe of his/her legal rights and privileged status as a "person," the Rhode Island constitutional right to due process and equal protection, and the right to sue for his/her injury or death, pursuant to those R.I. Gen. Laws § 11-3-1 and R.I. Gen. Laws § 11-3-2.

41. H-5125B immediately, irrevocably, and permanently deprived Baby Roe of his/her legal rights and privileged status as " . . . a person within the language and meaning of the fourteenth amendment of the constitution of the United States." R.I. Gen. Laws § 11-3-4.

42. H-5125B changed the legal rights and status of Baby Roe within the meaning of R.I. Gen. Laws §9-30-2.

43. "But for" the enactment of H-5125B, Baby Roe would still have the legal right and privileged status as a "person" under Rhode Island law, and under the United States Constitution, Amendment XIV.

44. A determination by the Rhode Island Courts that H-5125B is unconstitutional, under the Rhode Island Constitution and the United States Constitution, will immediately restore Baby Roe's legal rights and privileged status of a "person."

PLAINTIFF – BABY DOE

45. The Uniform Declaratory Judgments Act states:

> "Any person interested in a deed, will, written contract, or other writings, **or whose rights, status, or other legal relations are affected by a statute**, municipal ordinance, contract, or franchise, **may have determined any question or construction of validity arising under the instrument, statute**, ordinance, contract, or franchise

> **and obtain a declaration of rights, status, or other legal relations thereunder**." *R.I. General Laws §9-30-2*. (emphasis supplied).

46. Jane Doe is approximately thirty-four (34) weeks pregnant with Baby Mary Doe.

47. Prior to enactment of H-5125B, Rhode Island General Laws § 11-3-4. "Construction and application of section 11-3-1." provided in part, that

> "It shall be conclusively presumed in any action concerning the construction, application or validity of section 11-3-1, **that human life begins at the instant of conception** and that said human life at said instant of conception **is a person within the language and meaning of the fourteenth amendment of the constitution of the United States**. . . ."

48. R.I. Gen. Laws § 11-3-4, conferred on Baby Mary Doe certain legal rights of a "person," under Rhode Island law and the United States Constitution, Amendment XIV.

49. R.I. Gen. Laws § 11-3-4, conferred on Baby Mary Doe the privileged status of a "person," under Rhode Island law and the United States Constitution, Amendment XIV.

50. H-5125B immediately, irrevocably, and permanently deprived Baby Mary Doe of her said legal rights and privileged status of "personhood" under R.I. Gen. Laws §11-3-1. et seq., the due process and equal protection clauses of the Rhode

Island Constitution, and the United States Constitution, Amendment XIV.

51. Pursuant to R.I. Gen. Laws §9-30-2, Baby Mary Doe has the statutory right as a "person" " . . . whose rights, status, or other legal relations are affected by a statute [H-5125B] * * * may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder."

52. Pursuant to R.I. Gen. Law §33-22-17, titled, "Representation of unborn, unascertained, and incompetent persons," Jane Doe has the statutory right to bring a cause of action against any perpetrator or assailant defined in R.I. Gen. Laws §11-3-1, as construed by R.I. Gen. Laws §11-3-4 and R.I. Gen. Laws §11-3-2, on behalf of Baby Mary Doe, because Jane Doe (or a representative of her estate) could bring the same suit on her own behalf within the requirements of R.I. Gen. Laws §33-22-17.

53. Pursuant to R.I. Gen. Laws §11-3-1 and R.I. Gen. Laws §11-3-2 the death of Baby Mary Doe would be an actionable crime.

54. H-5125B immediately, irrevocably, and permanently deprived Baby Mary Doe of her legal rights and privileged status as a "person," the Rhode Island constitutional right to due process and equal protection, and the right to sue for her injury or death, pursuant to those R.I. Gen. Laws § 11-3-1 and R.I. Gen. Laws § 11-3-2.

55. H-5125B immediately, irrevocably, and permanently deprived Baby Mary Doe of her legal rights and privileged status as " . . . a person within the language and meaning of the fourteenth amendment of the constitution of the United States." R.I. Gen. Laws § 11-3-4.

56. "But for" the enactment of H-5125B, Baby Mary Doe would still have the legal rights and privileged status as a "person" under Rhode Island law, and under the United States Constitution, Amendment XIV.

57. A determination by the Rhode Island Courts that H-5125B is unconstitutional, under the Rhode Island Constitution and the United States Constitution, will immediately restore Baby Mary Doe's legal rights and privileged status of a "person."

58. Baby Mary Doe is a "quick child" as defined in R.I. Gen. Laws §11-23-5, specifically, Baby Mary Doe is an "unborn child whose heart is beating, who is experiencing electronically measurable brain waves, who is discernibly moving, and who is so far developed and matured as to be capable of surviving the trauma of birth with the aid of usual medical care and facilities available within the state."

59. Pursuant to R.I. Gen. Laws §11-3-1, R.I. Gen. Laws §11-3-2, and R.I. Gen. Laws §11-23-5, the death of Baby Mary Doe would be an actionable crime.

60. H-5125B immediately, irrevocably, and permanently deprived Baby Mary Doe of her legal

rights and privileged status as a "quick child," Rhode Island constitutional right to due process and equal protection, and of the right to sue for her injury or death, pursuant to those R.I. Gen. Laws § 11-3-1, R.I. Gen. Laws § 11-3-2, R.I. Gen. Laws § 11-3-4, and R.I. .Gen. Laws §11-23-5.

61. H-5125B changed the legal rights and status of Baby Mary Doe within the meaning of R.I. Gen. Laws §9-30-2.

62. "But for" the enactment of H-5125B, Baby Mary Doe would still have the legal right and privileged status as a "quick child" under Rhode Island law.

63. A determination by the Rhode Island Courts that H-5125B is unconstitutional, under the Rhode Island Constitution and the United States Constitution, will immediately restore Baby Mary Doe's legal rights and privileged status of a "quick child."

PLAINTIFF – CATHOLICS FOR LIFE, INC.,
FICTITIOUS NAME,
"SERVANTS OF CHRIST FOR LIFE"

64. The Uniform Declaratory Judgments Act states:

> "Any person interested in a deed, will, written contract, or other writings, **or whose rights, status, or other legal relations are affected by a statute**, municipal ordinance, contract, or franchise, **may have determined any question or construction of validity arising under the instrument,**

> **statute**, ordinance, contract, or franchise **and obtain a declaration of rights, status, or other legal relations thereunder**." *R.I. General Laws §9-30-2*. (emphasis supplied).

65. Catholics For Life, Inc. is a domestic non-profit corporation, pursuant to R.I. Gen. Laws §7-6-1 et seq., duly registered in the Office of the Secretary of State for the State of Rhode Island and Providence Plantations, with its principle place of business located in the City of Providence, County of Providence, State of Rhode Island and Providence Plantations.

66. Catholics for Life, Inc., maintains the use of the fictitious name, "Servants of Christ for Life" ("SOCL").

67. Tyler Rowley is registered with the Rhode Island Secretary of State's office as President of SOCL.

68. The stated purpose of SOCL is "Giving witness of official Catholic teachings regarding issues of morality and the sanctity of life."

69. The Amended Statement of Purpose in the By-Laws of SOCL states, in sum, that SOCL's purpose is to advocate for, represent, and support the legal rights of those unborn, specifically, Baby Roe and Baby Mary Doe – and others similarly situated.

70. SOCL advocates, serves, and represents the interests of individual Rhode Island unborn children that fall within the definition of "person,"

under R.I. Gen. Laws §11-3-1 et seq., and "quick child," under R.I. Gen. Laws § 11-23-5.

71. Defendants' passage and signing of H-5125B, immediately, irrevocably, and permanently deprived SOCL of its right to sue on behalf of unborn "persons'" deprivation of due process and equal protection rights and their privileged status of "person" and/or "quick child," and of its right to fulfill a critical part of its stated purpose in protection of the unborn and promotion of the "sanctity of life."

72. H-5125B changed the "legal relations" of SOCL and Baby Roe and Baby Mary Doe, and others similarly situated, within the meaning of R.I. Gen. Laws §9-30-2.

73. "But for" the enactment of H-5125B, SOCL would still have the legal right to advocate for and represent Baby Roe and Baby Mary Doe, as having the legal rights and privileged status as a "person" under Rhode Island law, and under the United States Constitution, Amendment XIV, and/or as a "quick child," under Rhode Island law.

74. A determination by the Rhode Island Courts that H-5125B is unconstitutional, under the Rhode Island Constitution and the United States Constitution, will immediately restore SOCL's "legal relationship", within the meaning of R.I. Gen. Laws §9-30-2, and SOCL would still have the legal right to advocate for and represent Baby Roe and Baby Mary Doe as having the legal rights and privileged status as a "person" under Rhode Island law, and under the United

States Constitution, Amendment XIV, and/or as a "quick child," under Rhode Island law.

DEFENDANTS

75. Gina M. Raimondo ("Governor Raimondo") is the duly elected Governor for the State of Rhode Island and Providence Plantations, and as head of the Executive Branch of the Rhode Island Government, charged with the duty of signing in to law bills presented to her from the Rhode Island General Assembly.

76. Dominick J. Ruggerio ("Ruggerio") is the duly appointed President of the Rhode Island General Assembly's Senate.

77. Nicholas A. Mattiello (Mattiello), is the duly elected Speaker of the Rhode Island General Assembly's House of Representatives.

78. Peter F. Neronha is the duly elected Attorney General for the State of Rhode Island charged with enforcement of all Rhode Island laws.

79. Francis McCabe ("McCabe") is the duly appointed Clerk of the Rhode Island General Assembly's House of Representatives.

80. John Doe #1, is a clerk/page of the Rhode Island General Assembly's House of Representatives.

81. Robert L. Ricci ("Ricci"), is the duly appointed Secretary of the Rhode Island Senate.

82. John Doe #2 is a secretary/clerk/page in the Rhode Island Senate.

* * *

"residual power" in passing H-5125B, or similar bill, to "grant or secure a right to abortion or the funding thereof," in derogation of the specific prohibitions of Article I, Section 2, of the Rhode Island Constitution.

112. The Rhode Island General Assembly is attempting to exercise a "plenary power" or "residual power" in passing H-5125B, or similar bill, to "grant or secure" a right to abortion or the funding thereof," in derogation of the specific repeal, by the voters of the State of Rhode Island and Providence Plantations, of said "plenary powers" and/or "residual powers."

113. This Honorable Court, to date, has not interpreted the meaning of the repeal of Article VI, Section 10, of the Rhode Island Constitution.

114. Even if this Honorable Court determines that the Rhode Island General Assembly had the "plenary power" and/or "residual power," to "grant or secure any abortion right or the funding thereof" prior to 2005, outside the prohibitions in Article I, Section 2, as a result of the voter-approved repeal of Article VI, Section 10, Rhode Island General Assembly lacks the constitutional authority to do so in 2019.

2019 – H 5125 Substitute B
AN ACT
RELATING TO HEALTH AND SAFETY –
THE REPRODUCTIVE PRIVACY ACT

115. The stated purpose of H-5125B, "enacted by the General Assembly" reads:

> "This act would serve to codify the privacy rights guaranteed by the decision reached in the United States Supreme Court case of *Roe v. Wade*, 410 U.S. 113 (1973) and its progeny."
>
> * * *
>
> and who is so far developed and matured as to be capable of surviving the trauma of birth with the aid of usual medical care and facilities available in this state."

122. H-5125B repeals completely R..I. Gen. Laws Chapter 23 4.12, prohibiting partial birth abortions in the State of Rhode Island, except when it "is necessary to save the life of the mother because her life is endangered by a physical disorder, physical illness, or physical injury, including a life endangering condition caused by or arising from the pregnancy itself; provided, that no other medical procedure would suffice for that purpose."

123. H-5125B provides for the "funding" of abortion as defined in Article I, Section 2.

H-5125B as No Severability Clause

124. H-5125B repeals the following statutory severability clauses: R.I. Gen. Laws § 11-3-5, R.I. Gen. Laws §23-4.12-6, and R.I. Gen. Laws §23-4.8-5.

125. H-5125B has no severability clause.

126. There is, at least one section of H-5125B, that is unconstitutional, under the Rhode Island Constitution, therefore the entire bill is unconstitutional.

COUNT I

Violation of Article I, Section 2 of the Rhode Island Constitution Unconstitutional "Grant" of a "right" to abortion" – Denial of "legal rights" and privileged status" – Voter Suppression – Abuse of Legislative Power

127. Plaintiffs hereby incorporate paragraphs 1-126 of this First Amended Complaint into this Count I, as if originally and fully set forth herein.

128. Article I, Section 1 of the Rhode Island Constitution reads:

* * *

Rhode Island General Assembly lacked and abused its legislative powers, under the Rhode Island Constitution, in passing H-5125B.

Count V

Violation of U.S. Constitution, Amendment XIV

192. Plaintiffs hereby incorporate paragraphs 1-191 of this First Amended Complaint into this Count V, as if originally and fully set forth herein.

193. But for Defendants' passage and signing of H-5125B, Plaintiffs, Baby Roe and Baby Mary Doe, would not have been deprived of their legal rights and privileged status as a "person" under the meaning and language of the fourteenth amendment to the United States Constitution.

194. A determination that H-5125B is unconstitutional will restore Plaintiffs, Baby Roe and Baby Mary Doe, legal rights and privileged status as a "person" under the meaning and language of the fourteenth amendment to the United States Constitution.

Count VI
Declaratory Judgment – RIGL 9-30-1 et seq.

195. Plaintiffs hereby incorporate paragraphs 1-194 of this First Amended Complaint into this Count VI, as if originally and fully set forth herein.

196. Plaintiffs contend that H-5125B violates Article I, Section 1, Article I, Section 2, Article VI, Section 10, and Article XIV of the Rhode Island Constitution, by "granting' a "right relating to abortion."

* * *

5125B, or any similar bill, to Governor Raimondo for her signature – the transmittal and signing is imminent and this is one of the only ways this Honorable Court can preserve the status quo.

2. A grant of a preliminary injunction, enjoining and prohibiting Ruggerio, Mattiello, McCabe, Ricci, John Doe #1, and John Doe #2, from transmitting H-5125B, or any similar bill, to Governor Raimondo for her signature – the transmittal and signing is imminent and this is one of the only ways this Honorable Court can preserve the status quo.

3. A grant of a permanent injunction, enjoining and prohibiting Ruggerio, Mattiello, McCabe, Ricci, John Doe #1, and John Doe #2, from transmitting H-5125B, or any similar bill, to Governor Raimondo for her signature – the transmittal and signing is imminent and this is one of the only ways this Honorable Court can preserve the status quo.

4. A grant of a preliminary injunction, enjoining and prohibiting Defendants from enforcing H-5125B.

5. A grant of a permanent injunction, enjoining and prohibiting Defendants from enforcing H-5125B.

6. A declaration that H-5125B is unconstitutional pursuant to the Rhode Island Constitution.

7. A declaration that H-5125B is unconstitutional pursuant to the United States Constitution, Amendment XIV.

8. A declaration that H-5125B is "void" pursuant to the Rhode Island Constitution.

9. A declaration that Ruggerio, Mattiello, and the Rhode Island General Assembly (both Plaintiffs,

* * *

Plaintiffs,
By Their Attorney,

/s/ Diane Messere Magee

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