In the Supreme Court of Rhode Island

NO. SU-2020-0066-A

MICHAEL BENSON, ET ALS., PLAINTIFFS-APPELLANTS
V.
DANIEL MCKEE[1], ET ALS., DEFENDANTS-APPELLEES

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

BRIEF OF PLAINTIFFS-APPELLANTS
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[1] Speaker Shekarchi succeeded Speaker Matiello on January 5, 2021, and Governor McKee succeeded Governor Raimondo on March 2, 2021. They are therefore substituted as defendants in the caption of this case, consistent with this Court's practice under R.I. Super. R. Civ. P. 25(d). *See Retired Adjunct Professors v. Almond*, 690 A.2d 1342 n.1 (R.I. 1997).

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I. STATEMENT OF FACTS AND PRIOR PROCEEDINGS

A. INTRODUCTION / STANDARD OF REVIEW

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury v. Madison*, 1 Cranch 137, 163 (1803). "Chief Justice Earl Warren of the United States Supreme Court noted that standing is one of the 'most amorphous [concepts] in the entire domain of public law' and is 'surrounded by the same complexities and vagaries that inhere to justiciability.'" *Key v. Brown University*, 163 A.3d (2017) (quoting, *Flast v. Cohen*, 392 U.S. 83, 98-99 (1968)). "All have recognized, as must we, that the states are bound by the decisions of the United States Supreme Court." *Sweeney v. Notte*, 183 A.2d 286, 300 (R.I. 1962); *See also, Cooper v. Aaron*, 358 U.S. 1 (1958).

This case is here on appeal from a judgment of the Superior Court granting dismissal of all Plaintiffs'[2] claims under R.I. Super. R. Civ. P. 12(b)(6).[3] This

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[2] Plaintiffs collectively include: 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 ("SOCL").

[3] Baby Mary Doe and Baby Roe have been born since the inception of this case. Nevertheless, the doctrine of mootness poses no obstacle here because, as it presents similar procedural facts, relative to fetuses, as set forth first in *Roe v. Wade*, Plaintiffs, Baby Mary Doe and Baby Roe's, claims are "capable of

case arises out of Defendants' promulgation of the so-called Reproductive Privacy Act ("RPA"),[4] and the contemporaneous repeal of other relevant sections of the Rhode Island General Laws.

The issues before this Court are:[5]

1. Plaintiff, post-viability fetus, Baby Mary Doe, seeks the relief of a determination of her rights and obligations under the Uniform Declaratory Judgments Act ("UDJA"). *R.I. Gen. Laws§ 9-30-2.* The Rhode Island Supreme Court has held that an "unborn" post-viability fetus is a "person" entitled to seek relief from the courts. Prior to the RPA, Baby Mary Doe had the additional privileged legal status, rights and protections of a statutory "quick child." *R.I. Gen. Laws. § 11-23-5.* Prior to the RPA, Baby Mary Doe also had the legal status of a "person," under *R.I. Gen. Laws. §11-3-1, et seq.*, notwithstanding legislative dicta claiming the statute "unconstitutional." The RPA immediately and irrevocably stripped Baby Mary Doe's privileged legal statuses, rights and protections. The Trial Justice decided that Baby Mary Doe lacked standing and dismissed all her claims. Plaintiffs submit that was error.

2. Plaintiff, pre-viability fetus, Baby Roe, seeks the relief of a determination of her rights and obligations under the UDJA. Prior to the RPA, Baby Roe had the legal status of a "person," under *R.I. Gen. Laws. § 11-3-1, et seq.*, notwithstanding legislative dicta claiming the statute "unconstitutional." This

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repetition yet evading review." *See, Roe v. Wade*, 410 U.S. 113 (1973). And, Defendants have not raised the defense of mootness here.

[4] R.I. Gen. Laws, Title 23, Chapter 4.3.

[5] All issues are questions of law and this Court therefore applies the *de novo* standard of review.

Court has held that the "unborn" have legal rights in numerous circumstances. The RPA immediately and irrevocably stripped Baby Roe's privileged legal status, rights and protections. The Trial Justice denied Baby Roe's standing - - using legislative commentary to negate then existing Rhode Island law and Rhode Island Supreme Court precedent - - and dismissed all her claims. Plaintiffs submit that was error.

3. The United States Supreme Court has held that a claim of violation of the equal protection clause, relating to voter suppression/dilution is sufficient to confer standing. This Court is bound by United States Supreme Court precedent. Plaintiffs alleged equal protection violations resulting from promulgation of the RPA. The Trial Justice dismissed all of Plaintiffs BRD's claims. Plaintiffs submit that was error.

4. In dismissing all of Plaintiffs' claims, the Trial Justice ignored relevant federal precedent, went outside the complaint, and shifted the burden of proof - - at the mere pleading stage of litigation - - from Defendants to Plaintiffs. Plaintiffs submit that was error.

5. The Rhode Island Supreme Court "confers standing liberally in matters involving substantial public interest," and conferred standing when the "plaintiff raise[d] a question of statutory interpretation of great importance to citizens." This case not only raises a question of statutory interpretation - - but, also of first-impression interpretation of specific provisions of the Rhode Island Constitution. The Trial Justice did not apply the "substantial public interest" exception, to the standing requirement, to Plaintiffs' claims here. Plaintiffs submit that was error.

This Court has emphatically held that, "'[i]n reviewing the grant of a motion to dismiss pursuant to Rule 12(b)(6), this Court applies the same standard as the

hearing justice.'" *Woonsocket School Committee et al. v. The Honorable Lincoln Chaffee in his official capacity as the Governor or the State of Rhode Island, et al.*, 89 A.3d 778, 787 (R.I. 2014) (quoting, *Mendes v. Factor*, 41 A.3d 994, 1000 (R.I. 2012) (citation omitted)). The "'sole function of a motion to dismiss is to test the sufficiency of the complaint.' *Laurence v. Sollitto*, 788 A.2d 455, 456 (R.I. 2002) (quoting *Rhode Island Affiliate, ACLU, Inc. v. Bernasconi*, 557 A.2d.1232, 1232 (R.I. 1989)." *Multi-State Restoration, Inc. v. DWS Properties, LLC*, 61 A.3d 414, 416 (R.I. 2013). When ruling on a Rule 12(b)(6) motion to dismiss, this Court has restricted the trial justice to, "'look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in plaintiff's favor.'" *Id*. (quoting, *Laurence*, 788 A.2d at 456 (quoting, *Bernasconi*, 557 A.2d at 1232)). This Court further mandates that, when plaintiff's "standing" is challenged, the trial justice must apply all reasonable inferences in plaintiff's favor. *See, Rhode Island Ophthalmological Society v. Cannon*, 317 A.2d 124, 130 (R.I. 1974). Ultimately, this Court heralded its "guiding light [to be] the principle that a motion to dismiss should not be granted unless it appears beyond a reasonable doubt that the plaintiff would not be entitled to any relief no matter what state of facts could be proved in support of plaintiff's claim." *Goldstein v. Rhode Island Hosp. Trust Nat'l Bank*, 296 A.2d 112, 115 (1972).

Further, "[i]n determining whether there is such a doubt or lack of certainty as will justify a termination of litigation at this stage of pleadings, we follow the federal rule as stated by the [then] present Chief Justice when he sat as a federal district judge before coming to the bench in this state, and we construe the complaint 'in the light most favorable to the plaintiff with all doubts resolved in his favor and the allegations accepted as true.'" *Bragg v. Warwick Shopper's World, Inc.*, 227 A.2d 582, 584 (R.I. 1967) (quoting, *Garcia v. Hilton Hotels International, Inc.*, D.C., 97 F.Supp. 5, 8 (citations omitted)); *See also*, *Rosen v. Restrepo*, 380 A.2d 960, 962 (1977); *Forecaster of Boston, Inc. v. Woonsocket Sponging Co.,* 505 A.2d 1379, 1380 (R.I. 1986) ("[n]o complaint will be deemed insufficient unless it is clear beyond a reasonable doubt that the plaintiff will be unable to prove his, her, or its right to relief, that is to say, unless it appears to a certainty that he, she, or it will not be entitled to relief under any set of facts that might be proved in support of the plaintiff's claims.").

Moreover, this Court has held that, "vagueness, lack of detail, conclusory statements, or failure to state facts or ultimate facts, or facts sufficient to constitute a cause of action are no longer in and of themselves fatal defects." *Id*. (citations omitted)*; See also, Forecaster of Boston, Inc. v. Woonsocket Sponging Co.*, 505 A.2d 1379, 1380 (R.I. 1986). Plaintiffs bear only a slight burden of production

here, as supported by the allegations in their pleading. *See, Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130, 2137 (1992).

"The requirement that Plaintiffs adequately allege an injury-in-fact 'serves to distinguish a person with a direct stake in the outcome of a litigation - - even though small - - from a person with a mere interest in the problem.' *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 690 n.14 (1973) (citing, inter alia, Kenneth C. Davis, *Standing: Taxpayers and Others*, 35 U. Chi. L. Rev. 601, 613 (1968) ('[A]n identifiable trifle is enough for standing to fight out a question of principle.'))." *Citizens for Responsibility and Ethics in Washington, et al. v. Trump*, United States Court of Appeals, Case No. 18-474 (2d Cir. Sept. 13, 2019) at p.16. To the point, "[b]ecause this [case] arises at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss [as here], we 'presume that general allegations embrace those specific facts that are necessary to support the claim.'" *Id*. at 16-17 (quoting, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130, 2137 (1992) (citing *Lujan v. National Wildlife Federation*, 497 U.S. 871, 889 (1990)). The Trial Justice was obligated, but erroneously failed, to follow United States Supreme Court precedent. *Sweeney v. Notte*, 183 A.2d 286, 300 (R.I. 1962); *See also, Cooper v. Aaron*, 358 U.S. 1 (1958).

Precisely to the UDJA, this Court has held that it is not necessary for the court to determine whether a statute (like the RPA) is unconstitutional in order to determine the parties' rights and obligations under the UDJA, and, has long held held that the UDJA is to be "liberally construed and administered." *Taylor v. Marshall*, 376 A.2d 712, 717 (R.I. 1977). The UDJA "vests the Superior Court" with the "'power to declare [a "person's"'] rights, status, and other legal relations whether or not further relief is or could be claimed.' *N & M Properties, LLC v. Town of West Warwick*, 964 A.2d 1141, 1144 (R.I. 2009) (quoting, [R.I. Gen. Laws] §9-30-1)." *Key v. Brown University*, 163 A.3d 1162 (2017). "Where the trial court granted a subdivision (b)(6) motion to dismiss a declaratory judgment action, exercising its discretion under § 9-30-6 to hold that the matter was not ripe for determination, the subdivision (b)(6) dismissal was reversed on appeal, both because it found a substantial controversy to exist, and because the trial judge failed to apply the proper test under subdivision (b)(6), that is, whether it was clear beyond a reasonable doubt that plaintiff was not entitled to relief under any set of facts that might be proved*." See, Redmond v. Rhode Island Hosp. Trust Nat'l Bank*, 386 A.2d 1090 (1978).

The discretionary nature of a declaratory judgment action "rests in the area of whether relief will be granted, not whether the court will entertain the motion,"

and, where "the trial justice erred in not affording the plaintiffs a full opportunity to be heard on the merits of their requests," "... the dismissal of the declaratory judgment count was erroneous." *Perron v. Treasurer of the City of Woonsocket*, 403 A.2d 252, 255 (1979) (citations omitted).

B. TRAVEL OF THE CASE

On June 19, 2019, Plaintiffs filed their Complaint, seeking, generally, (1) a declaration of status, rights and obligations of the parties under Rhode Island General Laws § 9-30-1 *et seq.*, Uniform Declaratory Judgments Act ("UDJA"), and (2) a determination of the constitutionality of the RPA, under the Rhode Island Constitution and under the United States Constitution.[6] (APP.2; APP.69-120).

On June 19, 2019, Plaintiffs additionally filed motions for a Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and For A Special Assignment of the case. (APP.2). After a full hearing on Plaintiffs' temporary restraining order, heard by then-Associate Superior Court Justice Melissa A. Long, Justice Long denied Plaintiffs' temporary restraining order motion. (APP.2-4; APP.121-153).

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[6] Plaintiffs attach their Appendix as a separate volume and reference same herein as (APP.page number in the appendix).

On June 25, 2019, Plaintiffs filed their First Amended Complaint to reflect passage of the RPA. (APP.2). On August 27, 2019, in lieu of a responsive Answer, Defendants filed a Rule 12(b)(6) Motion To Dismiss. (APP.2-3).

On September 29, 2019, Plaintiffs filed their Objection to Defendants' Motion To Dismiss, along with their supporting memorandum of law. (APP.3). On November 27, 2019, Defendants' Rule 12(b)(6) Motion To Dismiss, and Plaintiffs' Objection thereto, was heard by Associate Superior Court Justice Melissa Darigan, after which Justice Darigan immediately ruled, from the bench, to grant Defendants' Rule 12(b)(6) motion to dismiss and also ordered entry of judgment, on the merits, for Defendants. (APP.4-7; APP.9-68). Justice Darigan's order entered on December 16, 2019. (APP.3). Plaintiffs timely filed their appeal to this Court. (APP.3).

The appeal was duly docketed in this Court, and, after a Rule 12A Conference with Justice Goldberg, the appeal was assigned to the full briefing and argument calendar. (APP.4).

C. FACTS - PLAINTIFFS' FIRST AMENDED COMPLAINT[7]

A. Plaintiffs' First Amended Complaint claims the guarantees and protections provided for in the UDJA, and the state and federal "due process" and "equal protection" clauses of the Rhode Island and United States Constitutions, respectively.

Plaintiffs' First Amended Complaint raises both state and federal questions of law. First, each plaintiff here alleges that Defendants' conduct/State action changed his/her Plaintiffs' "rights" and "status," under the UDJA, "within the meaning of R.I. Gen. Laws § 9-30-2." (APP.69-120. ¶¶ 7, 8, 17, 18, 27, 28, 31, 37, 43, 45, 46, 51, 58-63). Second, Plaintiffs' allegations and claims for relief are rooted in the "due process" and "equal protection" clauses of the Rhode Island Constitution and the United States Constitution. (i.e. APP.69-120. ¶¶ 96, 98, 101, 104, 129, 131, 134, 139, 153, 155, 163, 183, 194, 193, 194, 207, 208, 209). Third, each plaintiff seeks the relief of a "declaration of [his/her] rights and status," relative to the RPA, " within the meaning of R.I. Gen. Laws § 9-30-2." (APP.69-120. ¶¶ 7, 8, 17, 18, 27, 28, 145, 169, 171, 192, 210). Fourth, Plaintiffs allege their pleading sufficiently sets forth a "real and actual controversy" under the UDJA - - *R.I. Gen. Laws §9-30-1 et seq.* - - "to allow this Honorable Court to

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[7] Plaintiffs' First Amended Complaint, without exhibits, appears in their Appendix and is cited herein as, (APP.page number.¶ paragraph number). Said exhibits are part of the official record on appeal and are incorporated by reference herein as if originally set forth in Plaintiffs' Appendix volume.

decide." (APP.116. ¶ 210).

Alternatively, Plaintiffs claim, and seek relief, for denial of their general constitutional "right to vote." (APP.106-113. ¶¶ 141, 165, 183, 184, 185, 186, 187); (APP.118. ¶¶ 10, 11). Plaintiffs' First Amended Complaint does not raise any claims based on Plaintiffs' individual taxpayer status, nor are Plaintiffs seeking the non-specific relief that their Government generally abide by the law.

1. Baby Mary Doe claims statutory standing, under Rhode Island's UDJA and "Quick Child" statutes; and, as a post-viability "unborn" fetus.

a. Baby Mary Doe alleges immediate, actual, and particularized injuries-in-fact, and "but for" causation.

Plaintiff, Baby Mary Doe, alleges injuries that are actual, not imminent or future. Plaintiffs plead that post-viability fetus, Baby Mary Doe, falls within the specific definition of "person" under the UDJA, R.I. Gen. Laws §11-3-1 et seq.[8]; and, as a statutory "quick child" under R.I. Gen. Laws §11-23-5. (APP.88-89. ¶¶ 45, 46, 51). Baby Mary Doe, further claims her "due process" and "equal protection" rights under the Rhode Island Constitution and the United States

[8] Prior to repeal by the RPA, R.I. Gen. Laws § 11-3-1, et seq., provided, "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." Notwithstanding legislative dicta claiming said statute is "unconstitutional," it remained part of the general laws until repealed by the RPA. (APP.86-88. ¶¶ 33, 47).

Constitution. (APP.104. ¶ 129).

Specifically, Baby Mary Doe alleges facts that support six (6) distinct claims: (1) a claim of "privileged statuses" of "person" and "quick child" under the UDJA, R.I. Gen. Laws §11-3-1, et seq. and R.I. Gen. Laws § 11-23-5; (2) a claim of the "legal rights" of a "person," and "quick child," under the UDJA, R.I. Gen. Laws §11-3-1. et seq., and R.I. Gen. Laws §11-23-5, (3) a claim of "person" within the meaning of R.I. Gen. Laws § 9-30-2, "whose rights, status, or other legal relations are affected by a statute," and claims she "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," (4) a claim of the "privileged statuses" of "person" and "quick child," under state and federal law, (5) a claim of the "legal rights" of a "person" and "quick child," under state and federal law; and, (6) the immediate, irrevocable and permanent deprivation of said "privileged statuses" and "legal rights," and violation of Baby Mary Doe's due process and equal protection rights under the Rhode Island Constitution, and the United States Constitution, resulting from the promulgation of the RPA. (APP.88-91. ¶¶ 34, 35, 36, 37, 40, 41, 48, 49, 50, 51, 54, 55, 45-63). In addition to her UDJA claims, Baby Mary Doe, also seeks a determination of the constitutionality of the RPA under state and federal law. (APP.91. ¶ 63).

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Baby Mary Doe alleges "but for" causation, such that Defendants' improper promulgation of the RPA, immediately and actually injured Baby Mary Doe - - where her statuses as a "person" and "quick child" would remain intact, with all the legal rights inuring thereto not voided, but for Defendants' wrongful conduct here. (APP.90-91. ¶¶ 56, 59, 62). Specifically, Baby Mary Doe alleges that her guaranteed right to sue for any future fatal injuries was "immediately, irrevocably, and permanently" obliterated by the RPA. (APP.90. ¶ 60).

b. Baby Mary Doe's injuries are redressable by the Court.

Baby Mary Doe seeks the following relief to remedy her injuries: (1) an adjudication that she is a "person" withing the specific wording of the UDJA; (2) a determination of her individual "rights" and "status" pursuant to state and federal law; and (3) a determination of her "rights" and "status" under the UDJA - - including, a determination and "construction of validity arising under," the RPA. (APP.88-91). The primary remedy sought, under the UDJA, is not contingent on this Court's determination as to whether or not the RPA is unconstitutional. Notwithstanding, Baby Mary Doe also seeks a determination of the constitutionality of the RPA. (APP.91.¶ 63; APP.103-116). Baby Mary Doe further alleges redressability in the court for her injuries. Specifically Baby Mary Doe alleges that the remedy of an adjudication that the RPA is "unconstitutional,

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... will immediately restore Baby Mary Doe's legal rights and privileged status of a 'quick child,'" and further restore her rights in law and equity. (APP.91.¶ 63).

Finally, Plaintiff, Baby Mary Doe, claims the same additional prayers for relief as Plaintiffs, Michael Benson, Nichole Leigh Rowley, and Jane Doe (collectively, "Plaintiffs BRD"), set forth below.

2. Baby Roe claims statutory standing, under Rhode Island's UDJA and R.I. Gen. Laws §11-3-1, et. seq. statutes; and, as a pre-viability "unborn" fetus.

a. Baby Roe alleges immediate, actual, and particularized injuries-in-fact and "but for" causation.

Distinct from Baby Mary Doe, Plaintiff, Baby Roe, alleges injuries that are actual, not imminent or future. Plaintiff, pre-viability fetus Baby Roe, claims her "due process" and "equal protection" rights under the Rhode Island Constitution and the United States Constitution. (APP.104. ¶ 129). Specifically, Plaintiffs' pleading alleges facts and claims that Baby Roe falls within the specific definition of "person" under the UDJA. (APP.86-88. ¶¶ 31, 32, 37).

Plaintiff, Baby Roe, alleges sufficient facts that support her claims of: (1) the "privileged status" and "legal rights" of "person" under state and federal law; (2) the immediate, irrevocable and permanent deprivation of said "privileged status" and "legal rights," under the due process and equal protection clauses of

the Rhode Island Constitution, and the United States Constitution, (3) a claim of "privileged status" and "legal rights" of "person" under the UDJA; and (4) a claim of "person" within the meaning of R.I. Gen. Laws § 9-30-2, "whose rights, status, or other legal relations are affected by a statute," and claims she "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." (APP.86-88. ¶¶ 34, 35, 36, 37, 40, 41).

Baby Roe also claims that Rhode Island law conferred on her the legal "status" of "person" within R.I. Gen. Laws § 11-3-1, et seq., which provides, "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." (APP.86.¶ 33); *See also*, (P.Brief.12 at fn.8).[9] Baby Roe alleges that the RPA strips her said privileged "status[es]." (APP.86-87. ¶¶ 36, 40, 41). Baby Roe also alleges that the RPA negatively altered her "status[es]" and "legal rights." (APP.87.¶ 42). Baby Roe claims that "but for" Defendants' wrongful passage and signing of the RPA, she would not have been deprived of her "privileged status" as a "person"; nor, deprived of her "legal rights" as a "person" under the UDJA, under the meaning

[9] Plaintiffs cite to their appellate brief herein as (P.Brief.page number).

and language of the fourteenth amendment of the United States Constitution, and under the "due process" and "equal protection" clauses of the Rhode Island Constitution. (APP.87-88.¶ 193).

b. Baby Doe's injuries are redressable by the Court.

Baby Roe seeks the following relief for her injuries: (1) an adjudication that she is a "person" withing the specific wording of the UDJA; (2) a determination of her individual "rights" and "status" pursuant to state and federal law; (3) a determination of her individual "rights" and "status" under the UDJA, including a determination and "construction of validity arising under," the RPA. (APP.103-118).

This primary remedy sought, under the UDJA, is not contingent on this a court's determination as to whether or not the RPA is unconstitutional. Notwithstanding, Baby Roe also seeks a determination of the constitutionality of the RPA under state and federal law. (APP.88.¶ 44). Finally, Plaintiff, Baby Roe claims the same additional prayers for relief as Plaintiffs BRD, set forth below.

3. Plaintiffs, Michael Benson, Nichole Rowley, and Jane Doe allege violations of the "equal protection" clauses of the Rhode Island Constitution and the United States Constitution.

Plaintiffs set forth in their First Amended Complaint the affidavits of

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General Counsel Conley and Speaker Smith. (APP.94-99.¶¶ 85-108). Specifically, Plaintiffs allege that General Counsel to the President of the 1986 Rhode Island Constitutional Convention - - wherein the current Article I, Section 2 was drafted, adopted, and promulgated - - swore that Article I, Section 2, "was meant as a restraint against any unilateral effort by the Rhode Island General Assembly to create a *Roe v. Wade*-type 'abortion right,' - - absent a proper amendment in accordance with the provisions of Rhode Island Constitution, Article XIV - Constitutional Amendments and Revisions." (APP.96-98.¶¶ 95-105). Plaintiffs further allege that any attempt to "codify" *Roe v. Wade,* outside the amendment process provided for in Article XIV of the Rhode Island Constitution, is "facially in violation" of Article I, Section 2, and "shall be void." (APP.98-99. ¶¶ 106-108).

a. Plaintiffs allege that Defendants' conduct changed Plaintiffs BRD's "status," within the meaning of the UDJA.

In addition to Plaintiffs' allegations setting forth each one's claim of violation of his/her constitutional "equal protection" guarantee - - to have their negative vote relative to the RPA unimpaired or suppressed - - Plaintiffs BRD claim a change in their "status" as a validly registered voter entitled to vote on the issue of whether to amend the Rhode Island Constitution in order to establish a new Rhode Island "right" and/or "privacy guarantee" to abortion and "the funding

thereof." (APP.82-85. ¶¶ 6, 16, 26). Plaintiffs BRD allege that each one's "right" and "status" have changed within the meaning of the UDJA, under R.I. Gen. Laws ¶ 9-30-2. (APP.82-85.¶¶ 7, 17, 27). Plaintiffs BRD's allegations seek, as part of this distinct claim apart from any constitutional challenge, the separate relief of "obtain[ing] a declaration of his[/her] rights and status," relative to the RPA, "within the meaning of R.I. Gen. Laws § 9-30-2." (APP.83-85.¶¶ 8, 18, 28).

b. Plaintiffs' allegations and claims for relief are based on "voter suppression" of their negative vote and, alternatively, on the deprivation of their "right to vote."

Plaintiffs, Michael Benson, Nichole Leigh Rowley, and Jane Doe ("Plaintiffs BRD") claim their Rhode Island Constitution, Article I, Section 2 ("Article I, Section 2"), "due process" and "equal protection" rights, reserved for the "people of the State of Rhode Island and Providence Plantations." (APP.104. ¶ 129). Plaintiffs BRD allege their legal status as individual "registered voters" in the State of Rhode Island ("Rhode Island"), as the foundation for their equal protection right to have their negative vote, against the RPA, not impaired by State action. (APP.82-84. ¶¶ 1, 2, 11, 12, 21, 22).

Plaintiffs BRD allege that each has voted in the past, without State interference, and desires to vote "on whether Rhode Island should 'codify' an abortion right like *Roe v. Wade* and its progeny." (APP.83-85.¶¶ 3, 13, 23).

Plaintiffs BRD understand that the purpose of the RPA was to "establish a new Rhode Island fundamental right to abortion and the funding thereof." (APP.82-85. ¶¶ 4, 5, 14, 15, 24, 25). Moreover, Plaintiffs allege that the "due process" and "equal protection clauses" of the Rhode Island Constitution mandate that their negative votes be counted. (APP.82-85.¶¶ 5, 15, 25; APP.97-97.¶¶, 99, 103; APP.104.¶ 134; APP.108.¶ 158; APP.112.¶ 180).

Further, Plaintiffs BRD allege, supported by the affidavit of General Counsel to the President of the 1986 Rhode Island Constitutional Convention, Patrick T. Conley ("General Counsel Conley"), that Article I, Section 2, places an affirmative restraint against the General Assembly, relative to any new law "granting" or "securing" a "right to abortion" in Rhode Island. (APP.94-99. ¶¶ 85-108). Specifically, Plaintiffs allege myriad facts, supported by the affidavits of General Counsel Conley and the then-Speaker of the Rhode Island House of Representatives, Matthew J. Smith ("Speaker Smith"), supporting: (1) that the intent and scope of Article I, Section 2, was that the Rhode Island General Assembly lacked the constitutional authority to pass the RPA; (2) that the RPA is "inconsistent" and "void" under Article I, Section 2, and Article VI, Section 1 of the Rhode Island Constitution; (3) that the Rhode Island Constitution mandates that the creation of a new individual "right" to abortion in Rhode Island must

comport with the Rhode Island Constitution, Article XIV, Constitutional Amendments and Revisions requirements; and, (4) that the RPA violates the Rhode Island Constitution and the United States Constitution. (APP. 94-98. ¶¶ 85-108).

Pointedly, Plaintiffs allege that the General Assembly and the Governor lacked the proper authority, under the Rhode Island Constitution, to take the unilateral State action of passing and signing in to law the RPA. (APP.103-114.¶¶ 132, 133, 140, 156, 164, 184, 191). Plaintiffs BRD allege that had each been allowed to vote, without the impairment of Defendants' State action, "would have voted against [the RPA]," and, against "any new 'right' to abortion in Rhode Island." (APP.82-85. ¶¶ 5, 15, 25). Specifically, Plaintiffs BRD allege that Defendants' conduct impaired each one's individual "no" vote, on the issue of whether to allow a new fundamental right to abortion in Rhode Island - - "amount[ing] to [an] unconstitutional **suppression of his [/her] vote**." (APP.83-85.¶¶ 9, 19, 29).

Plaintiffs BRD plead their right to equal protection under the law, guaranteed to each Plaintiff under the Rhode Island Constitution, and under the United States Constitution. (APP.103-113). Significantly, Plaintiffs, here, do not claim that Defendants' conduct was an unconstitutional suppression of every

Rhode Islander's vote, but specifically, allege a **suppression of his/her individual "no" vote,** relative to the RPA. (APP.82-85. ¶¶ 5, 15, 9, 19, 29).

Precisely, Plaintiffs BRD dually allege that each one's "constitutional right to vote, through the Article XIV Constitutional Amendments and Revisions, on the issue of whether to 'grant' 'secure' or 'fund' 'any right relating to abortion,' has been unconstitutionally," (1) **"suppressed**," and, (2) **"denied,"** by Defendants." (APP.105.¶ 139; APP.109.¶163; APP.112.¶183) (emphasis supplied). Plaintiffs BRD "asserts his[/her] intent, and desires his[/her] constitutional right to vote on whether to 'grant' 'secure' or 'fund' a new 'right relating to abortion' in the State of Rhode Island." (APP.106. ¶¶ 142, 143, 144; APP.110.¶¶ 166, 167, 168; APP.113.¶¶ 185, 186, 187).

Plaintiffs BRD allege that there are many other Rhode Island "citizens" who share the same injuries as Plaintiffs BRD, but Plaintiffs BRD are not claiming any general public right, relative to the suppression of Plaintiffs BRD's individual negative vote suppression. (APP.105. ¶ 134; APP.108.¶ 158; APP.112.¶ 180).

Alternatively, as a separate and distinct allegation, Plaintiffs BRD also allege that Defendants' conduct, "immediately, irrevocably, and permanently deprives [each one] of [his/her] constitutional fundamental right to vote on the issue of establishing a new Rhode Island 'right' to abortion and the funding

thereof." (APP.83-85. ¶¶ 10, 20, 30). Distinctively, Plaintiffs BRD further allege, as a secondary claim, that there are many other Rhode Island "citizens" that suffer the same injury attendant to their right to vote. (APP.83-85. ¶¶ 158, 180).

Significantly, Plaintiffs cite to the sections of the Rhode Island Constitution, unchallenged by Defendants here, in support of Plaintiffs BRD's constitutional right to have the effectiveness of their "no" vote maintained - - specifically, Plaintiffs allege that Article I, Section 1 of the Rhode Island Constitution "requires that the Rhode Island Constitution can only be changed by an 'explicit and authentic act of the whole people.'" (APP.94-95.¶ 87). Plaintiffs allege that the current Article I, Section 2, in its title and relevant text, mandates that the **due process and equal protection clauses of said Article I, Section 2**, shall not "be construed to grant or secure any right relating to abortion or the funding thereof." (APP.95-96. ¶¶ 93, 94).

c. Plaintiffs BRD allege actual injury and "but for" causation.

Plaintiffs BRD allege injuries that are actual, not imminent or future. (APP.2-85. ¶¶ 6, 10, 16, 20, 26, 30). And, Plaintiffs' pleading alleges that Defendants' unauthorized and wrongful conduct was the direct cause of their injuries. (APP.82-85. ¶¶ 6, 10, 16, 20, 26, 30).

d. Plaintiffs BRD's injuries are redressable by the Court.

Plaintiffs BRD's fundamental claim for relief is for that relief necessary to remediate the disadvantage to Plaintiffs BRD, caused by Defendants' debasement of Plaintiffs BRD's negative vote - - via voter suppression. (APP.114-116. ¶¶ 195-210). Specifically, Plaintiffs BRD seek a declaration of their "rights" and "status" under the Rhode Island Constitution, the United States Constitution; and, further seek a UDJA declaration of the "duties and obligations" of Defendants, - - and, determination of the validity and construction - - relative to Defendants' promulgation of the RPA. (APP.114-116 ¶¶ 195-210); (APP.116-118). Plaintiffs BRD pray for a declaration of whether the RPA violates the Rhode Island Constitution and the United States Constitution's "due process" and "equal protection" clauses. (APP.116-118. ¶¶ 6, 7).

Distinct from Plaintiffs BRD's prayer for a declaration of rights, duties and obligations of the parties, resulting from Plaintiffs BRD's "status" change under the UDJA, all Plaintiffs additionally seek a declaration as to whether the RPA is "void" under the Rhode Island Constitution. (APP.117-118. ¶ 5). Plaintiffs' allege a real and actual controversy exists between the parties, under R.I. Gen. Laws § 9-1-30 *et seq.,* to be decided by the Court. (APP.116. ¶ 210).

And, finally, Plaintiffs claim preliminary and permanent injunctive relief,

seeking suspension of the effective date of the RPA. (APP.117. ¶¶ 4, 5).

4. Plaintiff, Catholics For Life, Inc., d.b.a. Servants of Christ for Life ("SOCL") alleges the RPA strips their protected "status," and claims relief under the UDJA, individually and derivatively.

a Plaintiff, SOCL alleges facts and claims sufficient for individual and third-party standing.

SOCL, is a Rhode Island non-profit corporation with a stated purpose to "advocate for, represent, and support the legal rights of the unborn...," like Baby Mary Doe and Baby Roe. (APP.91-92. ¶¶ 65, 68, 69, 70). SOCL "advocates, serves, and represents the interests of individual Rhode Island unborn children that fall within the definition of 'person,' ... and 'quick-child.'" (APP.92. ¶ 70).

Plaintiff SOCL's claims allege "but for" causation, specifically that Defendants' wrongful conduct caused SOCL direct, actual, and immediate injury to its "legal relations" and "status" as advocates for the unborn. (APP.92.¶ 73). SOCL claims specific relief under the UDJA, including, a determination of the constitutionality of the UDJA. (APP.92.¶ 74).

5. Plaintiffs allege Defendants' conduct lacked constitutional authority, and that Defendants abused their power, under the Rhode Island Constitution, in promulgating the RPA.

All Plaintiffs allege that Defendants lacked proper authority, under the Rhode Island Constitution to assert any "plenary" or "reserved" powers, as a basis

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for their unilateral State action - - in the passage and signing of the RPA. (APP.99-100. ¶¶ 109-114). Specifically, Plaintiffs "contend that the Rhode Island General Assembly has no "residual powers" or "plenary powers" upon which to rely as a basis of authority to pass the RPA - - in derogation of the restraints set forth in Article I, Section 2. (APP.116. ¶ 205). Plaintiffs allege that the RPA was "void" upon passage by the General Assembly - - being in violation of the supremacy clause of the Rhode Island Constitution. (APP.98-113. ¶¶ 107, 108, 109-114, 132, 133, 140, 164, 179, 184, 188). Finally, all Plaintiffs allege that the "Rhode Island General Assembly lacked and abused its legislative powers, under the Rhode Island Constitution, in passing" the RPA. (APP.113-114).

II. ERRORS CLAIMED / QUESTIONS RAISED

A. Plaintiff, post-viability fetus, Baby Mary Doe, seeks the relief of a determination of her rights and obligations under the Uniform Declaratory Judgments Act ("UDJA"). R.I. Gen. Laws § 9-30-2. The Rhode Island Supreme Court has held that an "unborn" post-viability fetus is a "person" entitled to seek relief from the courts. Prior to the RPA, Baby Mary Doe had the additional privileged legal status, rights and protections of a statutory "quick child." R.I. Gen. Laws. § 11-23-5. Prior to the RPA, Baby Mary Doe also had the legal status of a "person," under R.I. Gen. Laws. § 11-3-1, et seq., notwithstanding legislative

dicta claiming the statute "unconstitutional." The RPA immediately and irrevocable stripped Baby Mary Doe's privileged legal statuses, rights and protections. The Trial Justice decided that Baby Mary Doe lacked standing and dismissed all her claims. Plaintiffs submit that was error

B. Plaintiff, pre-viability fetus, Baby Roe, seeks the relief of a determination of her rights and obligations under the UDJA. Prior to the RPA, Baby Roe had the legal status of a "person," under R.I. Gen. Laws. § 11-3-1, et seq., notwithstanding legislative dicta claiming the statute "unconstitutional." This Court has held that the "unborn" have legal rights in numerous circumstances. The RPA immediately and irrevocably stripped Baby Roe's privileged legal status, rights and protections. The Trial Justice denied Baby Roe's standing - - using legislative commentary to negate existing Rhode Island law and Rhode Island Supreme Court precedent - - and dismissed all her claims. Plaintiffs submit that was error.

C. The United States Supreme Court has held that a claim of violation of the equal protection clause, relating to voter suppression/dilution is sufficient to confer standing. This Court is bound by United States Supreme Court precedent. Plaintiffs alleged equal protection violations resulting from promulgation of the RPA. The Trial Justice dismissed all of Plaintiffs BRD's claims. Plaintiffs submit

that was error.

D. In dismissing all of Plaintiffs' claims, the Trial Justice ignored relevant federal precedent, went outside the complaint, and shifted the burden of proof - - at the mere pleading stage of litigation - - from Defendants to Plaintiffs. Plaintiffs submit that was error.

E. The Rhode Island Supreme Court "confers standing liberally in matters involving substantial public interest," and conferred standing when the "plaintiff raise[d] a question of statutory interpretation of great importance to citizens." This case not only raises a question of statutory interpretation - - but, also of first-impression interpretation of specific provisions of the Rhode Island Constitution. The Trial Justice did not apply the "substantial public interest" exception, to the standing requirement, to Plaintiffs' claims here. Plaintiffs submit that was error.

III. ARGUMENT / POINTS MADE

The Trial Justice, while generally articulating the Rule 12(b)(6) standard, wrongly engaged in a merits discussion and determination, considered selective extrinsic evidence beyond the four corners of Plaintiffs' complaint - - without converting Defendants' Rule 12(b)(6) motion to a Rule 56[10] motion - -,

[10] R.I. Super. R. Civ. P., Rule 56.

erroneously wholesale excluded the affidavits of General Counsel Conley and Speaker Smith which were part of Plaintiffs' pleading, and, ultimately erroneously shifted the burden of proof to Plaintiffs here - - dismissing all their claims. (APP.59-64). This Court must reverse.

JUSTICIABILITY IS A PROCEDURAL BAR TO ACCESS TO THE COURTS, WITHOUT CONSIDERATION OF THE UNDERLYING MERITS OF THE CASE.

"'When standing is at issue, the focal point shifts to the claimant, **not the claim**, and a court must determine if the plaintiff "whose standing is challenged is a proper party to request an adjudication of a particular issue **and not whether the issue itself is justiciable" or, indeed, whether or not it should be litigated**.' *Watson v. Fox*, 44 A.3d 130, 135 (R.I. 2012) (quoting, *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005))." *Key v. Brown University*, Nos. 2015-4-Appeal, 2015-110-Appeal, Rhode Island Supreme Court, June 27, 2017 at p. 5 (emphasis supplied).

Moreover, the hurdle of justiciability, at the pleading stage, is at its lowest. *See, Lujan v. Defenders of Wildlife*, 112 S.Ct. 2130, 2137 (1992). Specifically, "[A]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss, we 'presume that general allegations embrace those specific facts that are necessary to support the

claim.'" *Id.* (quoting, *Lujan v. National Wildlife Federation*, 497 U.S. 871, 889 (1990)). In *Lujan*, the United States Supreme Court specifically recognized **that plaintiff's burden of proof is contingent on "the manner and degree of evidence required at the successive stages of the litigation**." *Lujan v. Defenders of Wildlife*, 112 S.Ct. 2130, 2136 (1992) (emphasis supplied); *See also, Lujan v. National Wildlife Federation*, 497 U.S. 871, 883-889 (1990); *See also, Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 114-115, and n. 31. The Trial Justice failed to recognize this precedent, and erroneously failed to apply it.

As Plaintiffs' Counsel argued at hearing, "[i]t is a unique circumstance in which the Court would actually undertake constitutional construction or statutory construct," and determine the merits of this case, on a Rule 12(b)(6) motion. (APP.57-59). Defendants cited three cases as authority for the Trial Justice to engage in a merits deliberation and decision here. Two of them are about-self-executing statutes, a precondition to plaintiffs accessing the court - - which is inapplicable here. And, the last is about a defense of immunity, which Defendants fail to raise here. The Trial Justice erroneously failed to recognize that Defendants' cases are inapposite to this case.

Specifically, in the rare case where the court interpreted a statute or constitutional provision as part of a Rule 12(b)(6) standing challenge, this Court

held that, "[A]t the outset, this court recognizes that this case presents a unique question of standing." *A.F. Lusi Construction, Inc. v. Rhode Island Convention Center Authority*, 934 A.2d 791 (R.I. 2007). Specifically, in *A.F. Lusi Construction, Inc.*, similar to Defendants' threshold case of *Bandoni v. State*, 715 A.2d 580 (R.I. 1998), the court was facing questions of whether or not the relevant provision was self-executing - - required to make a determination of a precondition to plaintiff's standing there. Not so here. The question in *A.F. Lusi Construction, Inc.* and *Bandoni* was, "is this statute self-executing or whether or not defendant has some immunity under the statute" - - presenting the unique circumstances, not presented in this case, under which the court has undertaken constitutional construction at the mere pleading stage of litigation. (APP.58-59). Defendants raised no similar immunity defense here, verifying that this case does not present a "unique" case of standing. To the contrary, this case presents a regular procedural question. It was clear error of law for the Trial Justice to engage in an underlying determination of the merits of this case and, ultimately, impose an exponentially higher burden of proof (beyond a reasonable doubt) on Plaintiffs here, than our state and federal precedent require.

AN "IDENTIFIABLE TRIFLE" IS SUFFICIENT PROOF OF INJURY-IN-FACT AT THE MERE PLEADING STAGE OF LITIGATION.

Pointedly, "[the requirement that Plaintiffs adequately allege an injury-in-fact 'serves to distinguish a person with a direct stake in the outcome of a litigation - - even though small - - from a person with a mere interest in the problem.' *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 690 n.14 (1973) (*citing, inter alia*, Kenneth C. Davis, *Standing: Taxpayers and Others*, 35 U. Chi. L. Rev. 601, 613 (1968) ('[A]n **identifiable trifle is enough for standing** to fight out a question of principle.')). *Citizens for Responsibility and Ethics in Washington, et al. v. Trump*, United States Court of Appeals, Case No. 18-474 (2d Cir., September 13, 2019) at p.16 (emphasis supplied). Plaintiffs' allegations and claims here even surpass this liberal standard, as they specifically allege individual claims of due process and equal protection violations under the Rhode Island Constitution and the United States Constitution; along with allegations and claims of denial of statutory "privileged statuses," - - all resulting directly from Defendants' wrongful conduct. (P.Brief.10-26; APP.69-120). The Trial Justice committed reversible error when she refused to accept the "truth" of Plaintiffs' allegations, wholesale discounted the affidavits which were part of Plaintiffs' First Amended Complaint, refused to resolve all doubts in Plaintiffs' favor, and ignored reasonable inferences to which Plaintiffs were entitled. (P.Brief.10-26).

Specific to Plaintiffs allegations supporting standing, the United States Supreme Court held that standing rests on the "invasion] [of] a legal right - - one of property, one arising out of contract, one protected against tortious invasion, **or one founded on a statute which confers a privilege**," evincing an "injury in fact, economic or otherwise." *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 152-153 (1970) (emphasis supplied); *See also*, *Rhode Island Ophthalmological Society v. Cannon*, 317 A.2d 124, 129 (R.I. 1974). Plaintiffs pleading plainly sets forth allegations and claims of denial and stripping of the statutory "privileged status" of "person," "quick child," and individual "voter" (P.Brief.10-30; APP.69-120). The Trial Justice erred in not finding Plaintiffs pleading supports sufficient standing to access the court. This Court must reverse.

Even if this Court found the Trial Justice rightly granted dismissal and judgment on those specific claims of Plaintiffs' - - which Defendants' directly took issue with - - the Trial Justice still committed reversible error in dismissing **all** of Plaintiffs' claims and ordering entry of judgment thereon. Defendants' Rule 12(b)(6) motion only challenged certain claims in Plaintiffs' First Amended Complaint and left others unchallenged. And, Plaintiffs' remaining unchallenged allegations and claims are sufficient to entitle Plaintiffs to be heard on the merits

of their case. *See, Rhode Island Superior Court Rules of Civil Procedure, Rule 8(e)* ("[a] party may set forth two (2) or more statements of a claim or defense alternatively or hypothetically, either in one (1) count or defense or in separate counts or defenses. When two (2) or more statements are made in the alternative and one (1) of them is made independently would be sufficient, the pleading is not made insufficient by the insufficiency of the one (1) or more of the alternative statements."). Without foundation or discussion, the Trial Justice dismissed all of Plaintiffs' claims, including those unchallenged by Defendants. That was error. This Court must reverse and remand.

THE TRIAL JUSTICE MAY NOT WHOLESALE DISREGARD AFFIDAVITS THAT ARE PART OF PLAINTIFFS' PLEADING.

The Trial Justice erroneously held that the affidavits of General Counsel Conley and Speaker Smith were not "competent evidence of either intent nor are they competent evidence relative to the statutory interpretation analysis." (APP.61). The Trial Justice failed to apply this Court's rule that, "[when confronted with an issue of constitutional interpretation, 'this Court's chief purpose is to give effect to the intent of the framers.'" *Woonsocket School Committee et al. v. The Honorable Lincoln Chaffee in his official capacity as the Governor or the State of Rhode Island, et al.*, 89 A.3d 778, 787 (R.I. 2014) (quoting, *Viveiros v. Town of Middletown*, 973 A.2d 607, 610 (R.I. 2009) (citation

omitted). This Court held it will "also look to the 'historical context of a constitutional provision' when 'ascertaining its meaning, scope, and effect.' *Viveiros*, 973 A.2d at 611. 'Thus, this Court may properly consult extrinsic sources, including "the history of the times" and the "state of affairs as they existed" when the constitutional provision in question was adopted, as well as the proceedings of constitutional conventions. *Id.* (quoting, [City of Pawtucket v.] *Sundlun*, 662 A.2d at 45)." *Woonsocket School Committee et al. v. The Honorable Lincoln Chaffee in his official capacity as the Governor or the State of Rhode Island, et al.*, 89 A.3d 778, 788 (R.I. 2014). Assuming arguendo that the Trial Justice had authority to consider the underlying merits of this case on a Rule 12(b)(6) motion, brought at the mere pleading stage of litigation, she exceeded any authority by dismissing facts (not legal conclusions) which she was bound to accept as true.[11] That was clear error.

A. The Trial Justice committed reversible error by dismissing all of Baby Mary Doe's claims.

The Trial Justice erred in ruling that Baby Mary Doe lacks standing.

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[11] At a minimum, the undisputed facts in the affidavits of General Counsel Conley and Speaker Smith raise genuine issues of material facts in dispute under R.I. Super. R. Civ. P. R. 56. If this Court finds the Trial Justice failed to properly convert Defendants' Rule 12(b)(6) motion to a Rule 56 motion - - because the Trial Justice considered matters outside of the four corners of Plaintiffs' First Amended Complaint - - this Court must reverse and remand.

(APP.61-62). The Trial Justice failed to consider critical allegations in Plaintiffs' pleading; failed to apply prevailing Rhode Island law; used negative legislative dicta to avoid existing law; completely ignored United States Supreme Court precedent; and, failed to hold Defendants to their "beyond a reasonable doubt" burden of proof. (APP.59-64).

Baby Mary Doe claims relief not only under state and federal "due process" and "equal protection" guarantees, but, also seeks relief as "any **person** ... whose rights, status, or other legal relations are affected by a statute ... [who] may have determined any question or construction of validity arising under the ... statute ... and obtain a declaration of rights, status, or other legal relations thereunder." *R. I. Gen Laws § 9-30-2*. (emphasis supplied) (P.Brief.10-15). The Trial Justice erroneously failed to acknowledge that this Court has already extended the status of "person" to a post-viability fetus, under certain Rhode Island laws. Moreover, it is uncontroverted that this Court has held that a post-viability fetus is a "person" for purposes of the "quick child" statute. *See, R.I. Gen. Laws § 11-23-5.*

1. The Rhode Island Supreme Court has held that a "quick child," like Baby Mary Doe, is a "person," who is competent and entitled to access the courts.

The Trial Justice made virtually no findings relative to Baby Mary Doe's allegations and claims regarding her status as a "quick child," merely saying, "I

think that Mary Doe's quick child claim to standing is not persuasive...." (APP.62). Defendants failed to show, or even advance, any argument that would negate Baby Mary Doe's state and federal, statutory and constitutional, "status" as a "viable" fetus, and "quick child." (AP.90.¶ 58). And, this Court has held that a "quick child," is a "person," entitled to seek relief, and have the merits of her case heard. *See, Perron v. Treasurer of the City of Woonsocket*, 403 A.2d 252, 255 (1979).

The Trial Justice erroneously failed to consider the sufficiency of Plaintiff, Baby Mary Doe's, allegations that support a "concrete" "particularized" injury, distinct from the "public at large," based on her privileged status as a "quick child." *See, Watson v. Fox*, 44 A.3d 130, 135 (R.I. 2012). That was error.

Defendants exhausted themselves at hearing with the false argument that Baby May Doe must be dead to advance any claims here. (APP.17-18). Their parochial argument turns a blind eye to the UDJA and this Court's binding precedent that a post-viability fetus may bring suit for a change in legal or privileged "status," as here.

More particularly, Plaintiffs' allegations and claims in their pleading support the proposition that Baby Mary Doe's standing rests on the "invasion] [of] a legal right ... **one founded on a statute which confers a privilege**." *Association*

of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 153 (1970) (emphasis supplied). Defendants wrongful promulgation of the RPA "immediately and irrevocably" "invaded" the "legal right" of Baby Mary Doe, relative to her statutorily conferred "status" as a "quick child" - - causing actual injury to Baby Mary Doe. (APP.88-91. ¶¶ 45-63). Defendants did not refute these alleged facts, and the Trial Justice was bound by this Court's precedent to accept them as true. (P.Brief.10-15). She did not. That was error.

Baby Mary Doe's standing is also rooted in the rule this Court set forth in *Miccolis v. Amica Mutual Insurance Company*, 587 A.2d 67 (R.I. 1991). In deciding whether to extend the Rhode Island wrongful death statute's reference of "person" to a non-viable fetus, Justice Weisberger, in *Miccolis*, surveyed other jurisdictions. Specifically, Justice Weisberger noted, "The court in Humes [v. Clinton, 246 Kan. 590, 792 P.2d 1032 (1990)] recognized that **a viable fetus is capable of independent existence and is rightfully recognized as a separate entity capable of maintaining its own cause of action**." *Miccolis v. Amica Mutual Insurance Company*, 587 A.2d 67, 70 (R.I. 1991) (emphasis supplied). Accordingly, this Court has held that a viable fetus was deemed a "person" within the meaning of Rhode Island's wrongful death statute. *Id*. at 71. Plaintiffs argued that the facts here support that Baby Mary Doe qualifies as a "person" under the

UDJA. (APP.38-44). The Trial Justice never addressed this issue. That was error.

Defendants fail to challenge Plaintiffs' pleading of: (1) Baby Mary Doe's claim of privileged status as a "quick child," as defined under the "quick child" statute, *R.I. Gen. Laws § 11-23-5*; (2) fail to provide any historical or present challenge to the constitutionality of R.I. Gen. Laws § 11-23-5; (3) fail to challenge Baby Mary Doe's claims of protection of the due process and equal protection clauses of the Rhode Island Constitution and United States Constitution - - that inure to Baby Mary Doe as a result of her "privileged status" as a "quick child"; and (4) fail to cite to any state or federal law that derogates Baby Mary Doe's claims under the UDJA's guarantee to have her "rights" determined, relative to the RPA's stripping of her "privileged status" as a "quick child." Surely, this is more than a "trifle,"of an injury-in-fact; but, a significant, plausible and probable basis for real relief for Baby Mary Doe here. *See, Citizens for Responsibility and Ethics in Washington, et al. v. Trump*, United States Court of Appeals, Case No. 18-474 (2d Cir. Sept. 13, 2019) at p.16.

Defendants ultimately failed to prove "to a certainty" that there are no circumstances whatsoever wherein Baby Mary Doe would be entitled to relief. *See*, *Bragg v. Warwick Shopper's World, Inc.*, 227 A.2d 582, 584 (R.I. 1967); *See also*, *Garcia v. Hilton Hotels International, Inc.*, D.C., 97 F.Supp. 5,8; *See also*,

Rosen v. Restrepo, 380 A.2d 960, 962 (1977); *See also, Forecaster of Boston, Inc. v. Woonsocket Sponging Co.,* 505 A.2d 1379, 1380 (R.I. 1986) Accordingly, "[Plaintiff Baby Mary Doe] is entitled to a hearing and to the [Superior Court's] decision on [her] claims." *Baker v. Carr*, 396 U.S. 186, 208 (1962). The Trial Justice committed clear error of law when she prematurely dismissed all of Baby Mary Doe's claims. This Court must reverse and remand Baby Mary Doe's case back to the trial court.

2. The Rhode Island Supreme Court has recognized the rights of a post-viability fetus within the law.

Baby Mary Doe seeks a very narrow ruling from this Honorable Court relative to her claims for relief - - namely, whether she is a "person" within the limited meaning of the UDJA - - entitled to the relief provided for therein. (P.Brief.10-15). Plaintiffs do not seek, as Defendants mistakenly argue, a determination that Baby Mary Doe is a "person" for all purposes. Baby Mary Doe seeks to have her "rights" and "status" determined relative to the RPA, and, within that limited scope, claim the relief afforded by the UDJA. (APP.69-120).

Plaintiff, Baby Mary Doe's, individual rights - - that flow from the status of "person" - - also emanate from the due process clauses of the Rhode Island Constitution and the United States Constitution, Fourteenth Amendment. Like Rhode Island, the United States Supreme Court precedent, relative to the

construction of the word "person" in the 14th Amendment is not confined only to the issue of abortion, to which Defendants have limited their arguments here. To the contrary, Baby Mary Doe's claims of "privileged status" as "person" here is not premised on "abortion," but on statutory and constitutional construction of the RPA, under the UDJA. (P.Brief.10-30; APP.69-120). The Trial Justice's failure to see that critical distinction was error. Moreover, the Trial Justice erroneously failed to consider or apply relevant United States Supreme Court and other federal precedent in rendering her decision to dismiss all of Baby Mary Doe's claims. (APP.64-66).

The pro-abortion nature of the RPA is not the focal point of Baby Mary Doe's claims, but, instead, that Defendants' promulgation of the RPA stripped her of her "privileged status" of "person" within the UDJA, "quick child," and "person" statutes. (P.Brief.10-15). And, because of Defendants' stripping of that "privileged status," Baby Mary Doe is entitled to be heard on the merits of her claims.; namely, to have the trial court render a determination as to "any question or construction of validity arising under ... the statute [RPA]... and obtain a declaration of rights, status, or other legal relations thereunder." (APP.86. ¶ 31); *See, Baker v. Carr*, 396 U.S. 186, 206 (1962); *See also, Perron v. Treasurer of the City of Woonsocket*, 403 A.2d 252, 255 (1979).

There is nothing novel, in Rhode Island law, that would prohibit this Court from finding that, for the purposes of the UDJA, Baby Mary Doe falls under the term "person," therein. Rhode Island grants rights to the unborn in the following areas: (1) wrongful death claims, *See*, *R.I. Gen. Laws § 10-7-1*; (2) intestacy inheritance rights, *See*, *R.I. Gen. Laws § 33-1-1* and *R.I. Gen. Laws §15-8-3*; (3) fetal death registration, *See*, *R.I. Gen. Laws § 23-3-17*; (4) until the promulgation of the RPA, to a statutory "quick child," and "person" under *R.I. Gen. Laws § 11-3-1, et seq*. *See,* (APP.86. ¶ 31); and, (5) "Representation of unborn, unascertained, and incompetent persons." *See*, *R.I. Gen. Laws § 33-22-17*; *See also*, (APP.87. ¶¶ 38, 42). At no time has this Court declared any of the above statutes "unconstitutional." And, at no time has any court declared R.I. Gen. Laws § 11-23-5 ("quick child" statute) "unconstitutional." As there are various conceivable sets of circumstances wherein Plaintiff, Baby Mary Doe, can seek relief as a "person," this Court's extension to the UDJA is only logical.

Conclusively, Baby Mary Doe seeks a determination of rights and status, and relief, under the UDJA - - which has nothing to do with Defendants' primary cases relied upon of *Roe v. Wade* or *Doe v. Israel*.[12] This Court has conferred

[12] Defendants focus their entire arguments on an erroneous interpretation of *Roe v. Wade*, suggesting that because the United States Supreme Court did not take on the ultimate question of whether a fetus is a "person" there, that Baby

the "status" of "person" on plaintiffs similar to Baby Mary Doe; and, that status has now been wholesale denied by the promulgation of the RPA. Said denial and stripping of her "status" is an actual, very real, individual, and particularized injury - - clearing Baby Mary Doe over the low procedural hurdle of standing, challenged at the mere pleading stage of litigation. *See*, *Lujan v. National Wildlife Federation*, 497 U.S. 871, 889 (1990); *See also*, *Citizens for Responsibility and Ethics in Washington, et al. v. Trump*, United States Court of Appeals, Case No. 18-474 (2d Cir., September 13, 2019) at p.16.

Critically, and dispositively, Defendants failure to acknowledge or even argue against Plaintiff, Baby Mary Doe's, allegations that support her standing, under the "privileged status" conferred upon her by R.I. Gen. Laws § 11-23-5, as a "quick child," should not have been ignored by the Trial Justice. The Trial Justice's erroneous disposing of Baby Mary Doe's case must not stand. This Court must reverse and remand.

B. The Trial Justice committed reversible error by dismissing all of Baby Roe's claims.

Baby Roe is distinguishable from Baby Mary Doe in that she is a pre-

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Mary Doe's case falls. Notwithstanding, Plaintiff, Baby Mary Doe does not seek such a broad determination from this Court, but merely seeks the benefit of the definition of "person" afforded her by this Court to bring a UDJA claim and constitutional challenge to the RPA.

viable fetus and does not claim the status of a statutory "quick child." (P.Brief.10-17). Baby Roe does, however, claim the statutory status of a "person" under R.I. Gen. Laws. § 11-3-1 et seq., and Rhode Island Supreme Court precedent. (P.Brief.15-17). It was error for the Trial Justice to use legislative dicta as a basis to hold R.I. Gen. Laws 11-3-1, et seq., "unconstitutional," and, then, use that determination as a basis to dismiss all of Baby Roe's claims.

1. The Rhode Island Supreme Court has recognized the rights of a pre-viability fetus within the law.

Baby Roe seeks a very narrow ruling from this Court relative to her claims for relief - - namely, whether she is a "person" within the limited meaning of the UDJA - - entitled to the relief provided for therein. (APP.69-120). Baby Roe does not seek, as Defendants mistakenly argue, a determination of her status as a "person" for all purposes. (APP.69-120). Baby Roe seeks to have her "rights" and "status" determined and, within that limited scope, claims the relief afforded her by the UDJA relative to the RPA. (P.Brief.69-120). The Trial Justice's failure to see that critical distinction was error.

Defendants limit their arguments against Baby Roe's claims of the "status" of "person," to the United States Supreme Court decisions insinuating that a "fetus" is not a "person" under *Roe v. Wade* and its progeny. Yet, when all of Plaintiffs' allegations and claims are examined, Plaintiffs' pleading extends far

beyond the confines of the abortion issue; reaching foremost into the statutory and constitution construction of the RPA, under the UDJA and state and federal precedent. (APP.69-120).

The pro-abortion nature of the RPA is not the focal point of Baby Roe's claims, but, instead, that Defendants' wrongful promulgation of the RPA stripped her of her "privileged status" of "person" within the UDJA, and "person" statutes. (APP.69-120). And, because of Defendants' stripping of that "privileged status," Baby Roe is entitled to be heard on the merits of her claims; namely, to have the trial court render a determination as to "any question or construction of validity arising under ... the statute [RPA]... and obtain a declaration of rights, status, or other legal relations thereunder." (APP.86. ¶ 31); *See, Baker v. Carr*, 396 U.S. 186, 206 (1962); *See also, Perron v. Treasurer of the City of Woonsocket*, 403 A.2d 252, 255 (1979).

Again, there is nothing novel, in Rhode Island law, that would prohibit this Court from finding that, for the purposes of the UDJA, Baby Roe falls under the term "person," therein. Specifically, Rhode Island grants rights to the unborn in the following areas: (1) wrongful death claims, *See, R.I. Gen. Laws § 10-7-1*; (2) intestacy inheritance rights, *See*, *R.I. Gen. Laws § 33-1-1* and *R.I. Gen. Laws §15-8-3*; (3) fetal death registration, *See*, *R.I. Gen. Laws § 23-3-17*; (4) until the

promulgation of the RPA, to a "person" under *R.I. Gen. Laws § 11-3-1, et seq. See,* (APP.86. ¶ 31); and, (5) "Representation of unborn, unascertained, and incompetent persons." *See*, *R.I. Gen. Laws § 33-22-17*; *See also*, (APP.87. ¶¶ 38, 42).

Notwithstanding Defendants' claim that R.I. Gen. Laws § 11-3-1, et seq., were deemed "unconstitutional," they remained a part of the general laws prior to the RPA - - otherwise, they would not have needed to be repealed by the RPA. (APP.69-120). Moreover, it is the duty of this Court to determine the constitutionality of a Rhode Island law, not a legislative scrivener. Regardless, it is not the constitutionality of that statute that is relevant at this mere pleading stage of litigation, it is the fact that the statute conferred a "privileged status," stripped by Defendants' wrongful conduct, that places Baby Roe within the available remedies of the UDJA - - satisfying the low bar of standing here. *See*, *Lujan v. National Wildlife Federation*, 497 U.S. 871, 889 (1990); *See also*, *Citizens for Responsibility and Ethics in Washington, et al. v. Trump*, United States Court of Appeals, Case No. 18-474 (2d Cir., September 13, 2019) at p.16.

Conclusively, the Rhode Island Supreme Court has conferred the "status" of "person" on plaintiffs similar to Baby Roe; and, that status has now been wholesale denied by the promulgation of the RPA. Said denial and stripping of

her "status" is an actual, very real, individual, and particularized injury.

Plaintiffs' allegations and claims in their pleading support the proposition that Baby Roe's standing rests on the "invasion] [of] a legal right ... **one founded on a statute which confers a privilege**." *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153 (1970) (emphasis supplied). Defendants unauthorized promulgation of the RPA "immediately and irrevocably" "invaded" the "legal right" of Baby Roe - - causing actual injury to her. (APP.8-91. ¶¶ 45-63).

Defendants failed to prove "to a certainty" that there are no circumstances whatsoever wherein Baby Roe would be entitled to relief. Accordingly, "[Plaintiff Baby Roe] is entitled to a hearing and to the [Superior Court's] decision on [her] claims." *Baker v. Carr*, 396 U.S. 186, 208 (1962). The Trial Justice committed clear error of law when she dismissed all of Baby Roe's claims. This Court must reverse and remand.

2. The Trial Justice erred in dismissing the claims of SOCL.

a. Plaintiffs' allegations support an individual "injury-in-fact" to SOCL.

Defendants' argument that SOCL's claims are derivative of Baby Roe and Baby Mary Doe, and, because they "lack standing," SOCL lacks standing, is

without merit based on, at least, the unchallenged status of Baby Mary Doe as a "quick child." *See*, *infra*.

Plaintiffs' pleading alleges that, "but for" Defendants' wrongful conduct SOCL would not be deprived of their right to advocate for unborn "persons," nor would their "legal relations" with Baby Roe and Baby Mary Doe have been changed. (APP.92. ¶¶ 68-74). SOCL claims its interest falls within the UDJA and that it is entitled to the relief therein. (APP.92 ¶ 74). Plaintiffs' pleading sets forth sufficient allegations to support that their standing is more than an "abstract concern." *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 40 (1976) (citations omitted). They are entitled to be heard on the merits of their claims. *See, Baker v. Carr*, 396 U.S. 186, 208 (1962). The Trial Justice committed error by denying SOCL's claims and entering judgment against it. This Court must reverse and remand.

C. The Trial Justice committed reversible error by dismissing all of Plaintiffs" BRD's claims.

Articulating no rationale or specific cases upon which she relied, the Trial Justice erred in dismissing Plaintiffs BRD's claims. (APP.62). Her errors are compounded by her decision to totally ignore all relevant federal precedent on the issue of standing. (APP.64-65). Plaintiffs plead myriad allegations, rooted in state and federal Due Process and Equal Protection Clauses - - which place them

squarely "within the zone of interests to be protected or regulated by the statute **or constitutional guarantee in question**." *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 152 (1970) (emphasis supplied).[13] *See*, (P.Brief.10-30; APP.69-120).

There is no doubt that Plaintiffs' pleading implicates the state and federal "constitutional guarantee[s]" of due process and equal protection under the law. (P.Brief.10-30). The Trial Justice was bound to accept all of Plaintiffs' allegations as true and view all the allegations and claims in the "light most favorable to [Plaintiffs]." *Bragg v. Warwick Shoppers World, Inc.*, 227 A.2d 582, 584 (R.I. 1967) (quoting, *Garcia v. Hilton Hotels International, Inc.*, D.C., 97 F.Supp. 5,8 (citations omitted)). Further, the Trial Justice was bound to accept Plaintiffs' claims of "status" and "constitutional guarantees," and, the stripping of them by the RPA, as true. She did not. Plaintiffs plead more than an "identifiable trifle." *See*, *Citizens for Responsibility and Ethics in Washington, et al. v. Trump*, United States Court of Appeals, Case No. 18-474 (2d Cir., September 13, 2019) at p.16.

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[13] The plaintiff in the recent Superior Court case of *Harrop v. The Rhode Island Division of Lotteries, et al.*, C.A. PC-2019-5273, Bench Decision dated September 9, 2019 is distinguishable from Plaintiffs here, in that Plaintiffs here allege a separate and distinct right/guarantee of equal protection under the law (i.e. state and federal equal protection violations), while Harrop relied solely on a "general right to vote."

Defendants' refusal to meet these allegations head on rendered their arguments unfit, and, yet the Trial Justice erroneous accepted and acted on them. This Court must reverse and remand.

1. Plaintiffs BRD each have suffered an injury held by the United States Supreme Court, and Rhode Island Supreme Court, to be actual, concrete, individual and particularized in nature.

Defendants failure to address all of Plaintiffs' allegations, that support violations of the state and federal due process and equal protection clauses, abrogates their argument that Plaintiffs BRD suffered no "concrete" "injury-in-fact." Defendants sole argument in support of their Rule 12(b)(6) motion, relative to Plaintiffs BRD's standing, is that Plaintiffs BRD allege only the general "right to vote" which is a common injury to the general public-at-large. (APP.18-21).

When Plaintiffs' pleading is read in its entirety, however, Plaintiffs BRD, "are asserting 'a plain, direct and adequate interest in **maintaining the effectiveness of their votes**,' *Coleman v. Miller*, 307 U.S. at 438, not merely a claim of 'the right, possessed by every citizen, to require that the Government be administered according to the law....' *Fairchild v. Hughes*, 258 U.S. 126, 129; compare *Leser v. Garnett*, 258 U.S. 130." *Baker v. Carr*, 396 U.S. 186, 208 (1962) (emphasis supplied).

Colegrove v. Green, 328 U.S. 549 (1946), "squarely held that voters who

allege facts showing disadvantage to themselves as individuals have standing to sue." *See, Baker v. Carr*, 396 U.S. 186, 206 (1962). Plaintiffs BRD's pleading alleges such disadvantage, specifically, that Defendants wrongly "suppressed" their negative vote against Defendants' passage and signing of the RPA. (APP.104-116. ¶¶ 129, 139, 163, 183, 207). The Trial Justice was bound to accept Plaintiffs' allegations as true. She did not. That was error.

The United States Supreme Court recently held that it has, "long recognized that a person's right to vote is 'individual and personal in nature.' *Reynolds v. Sims*, 377 U.S. 533, 561 (1964). Thus, 'voters who allege facts showing disadvantage to themselves as individuals have standing to sue' to remedy the disadvantage.' *Baker v. Carr*, 369 U.S., at 206, 82 S.Ct. 691." *Gill v. Whitford*, 138, S.Ct. 1916, 1929 (2018) (the Court in *Gill* held that Plaintiffs had suffered a particularized injury to their **equal protection rights**). Here, Plaintiffs BRD similarly allege equal protection guarantees, yet, the Trial Justice affirmatively and erroneously stated she was not considering federal law in her dismissal and judgment against Plaintiffs. (APP.64-65). That was reversible error.

Moreover, "[a] citizen's right to a vote **free of arbitrary impairment by state action** has been judicially recognized as a right secured by the [United States] Constitution when such impairment resulted from dilution by a false tally,

cf. United States v. Classic, 313 U.S. 299; or by a refusal to count votes from arbitrarily selected precincts, *cf. United States v. Mosley*, 238 U.S. 383, or by a stuffing of the ballot box, *cf. Ex parte Siebold*, 100 U.S. 371; *United States v. Saylor*, 322 U.S. 385." *Id*. at 208. Every one of these cases represents a heinous form of "voter suppression" - - which is precisely the same kind of allegation made by Plaintiffs BRD. (APP.69-120). The Trial Justice erroneously failed to even consider this binding precedent.

Defendants' reliance on *Burns v. Sundlun* in support of their motion to dismiss here is wrong. Significantly, in *Burns*, this Court was reviewing a decision of the lower court, **after a hearing on the merits** - - not at the pleading stage - - wherein, at trial, Plaintiffs bear the ultimate burden of proof on the issue of standing. *Burns v. Sundlun*, 617 A.2d 114, 116 (R.I. 1992). And, the only injury asserted in *Burns* was a general right to vote. Here, at the mere pleading stage, Defendants bear the burden of proof. *See*, *Bragg v. Warwick Shoppers World, Inc.*, 227 A.2d 582, 584 (R.I. 1967). Moreover, the *Burns* holding is significantly distinguishable, as Plaintiffs' here plead alternatively - - including in their pleading the allegations of due process and equal protection violations. *See, Rhode Island Superior Court Rules of Civil Procedure, Rule 8*.

Plaintiffs BRD are noticeably distinguishable from the plaintiff in the

Superior Court case of *Harrop v. The Rhode Island Division of Lotteries, et al.* There, plaintiff, Harrop, only "assert[ed] that he has standing to challenge the State's enactment of sports wagering and online sports wagering because he has been deprived of his [general] constitutional right to vote." *Harrop v. The Rhode Island Division of Lotteries, et al.*, C.A. PC-2019-5273, Bench Decision dated September 9, 2019, at page 9. Not so here. Plaintiffs BRD's allegations are far more detailed and specific to each individual - - and, rest on each one's guarantee of equal protection under the law, under the Rhode Island Constitution and the United States Constitution. (APP.69-120). Unlike the plaintiff in *Harrop v. The Rhode Island Division of Lotteries, et al.*, C.A. PC-2019-5273, Bench Decision dated September 9, 2019, at page 9, where plaintiff there stood on the shoulders of all Rhode Island voters, Plaintiffs BRD's allegations stand on their own merit. The Trial Justice failed to see this distinction. That was error.

Like the prior mistake Defendants made in their analysis and reliance on *Burns v. Sundlun*, *Bowen v. Mollis*, 945 A.2d 314 (R.I. 2008) does not provide dispositive support for Defendants' Rule 12(b)(6) motion, as they argued. Again, Plaintiffs BRD allege much more than their mere "right" to vote. (P.Brief.10-30). And, *Bowen* offers no guidance relative to a pleading, like Plaintiffs', that, alternatively, alleges violations of each one's individual state and federal

constitutional guarantee of due process and equal protection. *Bowen* is simply a general taxpayer suit - - unlike Plaintiffs' suit here. Specifically, the plaintiff in *Bowen* contended that he had standing because, as a taxpayer, "who must pay to the state his proportionate share of the expense of 'a constitutionally-justifiable ballot.'" *Bowen v. Mollis*, 945 A.2d 314 (R.I. 2008). Nowhere in Plaintiffs' pleading do they make a similar allegation. *Bowen* is verily distinguishable on the facts here.

Bowen does, however, offer general support for Plaintiffs' argument that once an individual particularized injury is alleged, it is no obstacle to the sufficiency of their pleading that other citizens ("public at large") may also share the same injury. *Bowen v. Mollis*, 945 A.2d 314, 317 (R.I. 2008). Again, it is possible for a plaintiff to allege a particularized injury-in-fact that is also shared by the public at large. The Trial Justice failed to see this subtle distinction.

Specifically, Plaintiffs' claim that "Article I, Section 2, of the Rhode Island Constitution establishes a 'due process' and 'equal protection' right for the 'people of the State of Rhode Island and Providence Plantations." (APP.104. ¶129). Plaintiffs BRD aver sufficient facts, when accepted as true and resolving all doubts and inferences in favor of Plaintiffs BRD, to find that Plaintiffs claim each one's vote has been "so debased as to be subject to invidious discrimination."

Sweeney v. Notte, 183 A.2d 286, 300 (R.I. 1962) (i.e. suppression of Plaintiffs' negative votes here "diluted" any opposition to the RPA, "refused" opposition votes, and effectively "stuffed" the "ballot box" with only favorable considerations).

Accepting as true, as this Court obliged the Trial Justice, Plaintiffs BRD allege that they enjoy state and federal "equal protection" under the law; that the General Assembly lacked and therefore abused its power in passing the RPA; and, that a Constitutional Amendment is necessary to "grant," "secure," or "fund" abortion in the State of Rhode Island. (APP.69-120).

The final case Defendants rely upon for their standing challenge, against Plaintiffs BRD, is merely a regurgitation of the law and facts similar to the first three cases Defendants cite. *Watson v. Fox*, 44 A.3d 130 (R.I. 2012), reiterates the general rule that the doctrine of standing requires a "concrete" "particularized" injury, distinct from the "public at large." *Id*. at 135. *Watson*, like *Bowen*, was a simple taxpayer suit - - wherein Defendants concede that "the plaintiff [in *Watson*] sought a declaratory judgment as a private taxpayer." Not so here. The terminal infirmity with *Watson*, like Defendants' prior three cases, is that it offers no sword against Plaintiffs BRD's alternative allegations of violations of state and federal equal protection clauses. (APP.69-120).

It was the Trial Justice's "function to examine the complaint to determine if plaintiffs are entitled to relief **under any conceivable set of facts**." *Watson v. Fox*, 44 A.3d 130, 135 (R.I. 2012) (citations omitted) (emphasis supplied). Plaintiffs here allege sufficient facts to: (1) claim their state and federal due process and equal protection constitutional guarantees, and (2) claim Defendants, through State action, impaired the effectiveness of their votes and debased their individual negative votes through voter suppression. Defendants put forth no arguments to suggest that the above circumstances, "beyond a reasonable doubt," could not support Plaintiffs BRD's claims. Defendants failed to carry their heavy burden of proof here. The Trial Justice committed reversible error by not holding Defendants to that burden of proof here.

This Court said, "Indeed, there is a strong implication that recourse to the state judiciary by an elector complaining that his vote has been so debased as to be subject to invidious discrimination will, unless the state courts fail to respond, forestall federal intervention." *Sweeney v. Notte*, 95 R.I. 68; *See also, Harrop v. The Rhode Island Division of Lotteries, et al.*, C.A. PC-2019-5273, Bench Decision dated September 9, 2019, at page 10-11.

Moreover, it is not necessary for the court "to decide whether [Plainttiffs BRD's] allegations of impairment of their [negative] votes [by the RPA enactment

as such] will ultimately entitle them to any relief in order to hold that they have standing to seek it." *Baker v. Carr*, 396 U.S. 186, 208 (1962). Accordingly, "[Plaintiffs BRD] are entitled to a hearing and to the [Superior Court's] decision on their claims." *Baker v. Carr*, 396 U.S. 186, 208 (1962). The Trial Justice's failure to allow Plaintiffs BRD access to the courts, at this mere pleading stage of litigation, was clear error. This Court must reverse.

3. Plaintiffs seek the relief of a determination of the rights and obligations of the parties, not merely a declaration that RPA is unconstitutional.

A critical distinction between general taxpayer suits, like *Bowen*, *Watson*, and *Harrop*, and Plaintiffs' here, is the relief sought by the plaintiffs. General taxpayer suits seek only to have the court mandate their government conduct themselves in accordance with the general laws. Here, however, Plaintiffs seek specific remedies to address the disadvantage laid upon them by Defendants' equal protection violation - via suppression of their votes against the RPA. (APP.69-120).

The United States Supreme Court said that "voters who allege facts showing disadvantage to themselves as individuals have standing to sue" to remedy the disadvantage. *See, Baker v. Carr*, 396 U.S. 186, 206 (1962). Further, Plaintiffs seek, not just a declaration that the RPA is unconstitutional under the Rhode

Island Constitution and the United States Constitution (APP.117. 49 ¶ ¶ 6, 7), but, more pointedly, seek a declaration of rights and status of the parties under the UDJA, and a determination of the construction and validity of the RPA, under the UDJA. (APP.117-118. 49-50 ¶ 8, 9, 10, 11). *Harrop* sought only a general determination that the defendants in that case follow the State law on the "sports betting" issue and failed to allege any specific relief that would remedy any individual injury.

Plaintiffs injuries here (i.e. the debasement of their "no" votes and invidious discrimination under the equal protection clause) would be sufficiently remedied by a determination from this Court that Defendants had a duty and obligation, under the Rhode Island Constitution and the United States Constitution's due process and equal protection clauses, to obtain proper authority to promulgate the RPA.

Defendants offered no argument against Plaintiffs BRD's allegations of "voter suppression" of each one's individual negative vote - - in relation to the equal protection clauses of the Rhode Island and United States Constitutions. It is Defendants' burden, beyond a reasonable doubt, to prove to a certainty, that there are no circumstances based on the allegations in Plaintiffs' pleading, alone, that would support standing in relation to Plaintiffs' allegations supporting equal

protection clause violations. Defendants' failure to even advance a challenge to these allegations leaves them in a vacuum. It was clear error for the Trial Justice to shift the burden of proof here and fail to even consider relevant and binding federal precedent. This Court must reverse and remand.

D. The Trial Justice committed reversible error in dismissing all of Plaintiffs' claims, ignoring relevant federal precedent, going outside the complaint, and shifting the burden of proof from Defendants to Plaintiffs.

In her bench decision, the Trial Justice acknowledged the complexities and detail of Plaintiffs' complaint, and, her affirmative decision to look outside thereof to extrinsic documents in her deliberations - - without converting Defendants' Rule 12(b)(6) motion to a Rule 56 motion. (APP.60-66). The Trial Justice further acknowledged that she did not consider any relevant federal precedent in her decision, notwithstanding Plaintiffs' complaint alleges violations of the "due process" and "equal protection" clauses of the Rhode Island and United States Constitution. (APP.65). She further saw the likelihood that she was shifting the ultimate burden of proof from Defendants to Plaintiffs, by rendering a decision on the underlying constitutionality of the RPA, at the mere pleading stage of this litigation. (APP.60-66). And, the Trial Justice patently ignored the fact that genuine issues of material fact exist, as supported by Plaintiffs' pleading - - as to the constitutional construction of the RPA. (APP.60-66).

As argued above, the Trial Justice: failed to apply the proper legal standard required by a Rule 12(b)(6) motion; failed to even consider relevant binding United States Supreme Court precedent; with no consideration or deliberation, disposed of Plaintiffs' claims that were rooted in federal constitutional guarantees; committed clear error or law under this Court's precedent; failed to specifically address all of the allegations in Plaintiffs' First Amended Complaint (including, supporting affidavits); failed to consider the low pleading threshold Plaintiffs needed to cross for standing, at the mere pleading stage of litigation; and erroneously failed to grant Plaintiffs access to the court. (P.Brief.1-58). The Trial Justice, through her clear errors, has destabilized the current law relative to dispositive motions and constitutional construction in this State. This Court must make clear that Plaintiffs cannot be denied access to the courts under these circumstances. This Court must reverse and remand.

E. The Trial Justice committed reversible error by failing to find that the "substantial public interest" exception to the general standing requirement applies to Plaintiffs here.

The Trial Justice erroneously abandoned the "substantial public interest" doctrine in dismissing all Plaintiffs' claims. (APP.62). A conclusion by a court that certain plaintiffs lack standing, "does not , however, require [the court] to dismiss plaintiff's case." *Burns v. Sundlun*, 617 A.2d 114, 116 (R.I. 1992).

Notwithstanding the Trial Justice's determination that all Plaintiffs lack standing, the Trial Justice should have denied Defendants' Rule 12(b)(6) motion - - because Plaintiffs' case falls within the "substantial public interest" exception to the general standing rules.

"On rare occasions this court has overlooked the standing requirement to determine the merits of a case of substantial public interest. *Sennott v. Hawksley*, 103 R.I. 730, 731-32, 241 A.2d 286, 287 (1968) (allowing taxpayer standing because of the substantial public interest raised by the case)." *Id*. This Court, "noted the tendency of [the] court to confer standing liberally in matters involving substantial public interest." *Ibid*. In *Burns* this Court conferred standing because the "plaintiff raise[d] a question of statutory interpretation of great importance to citizens in localities that could become home to gambling facilities seeking to simulcast and invite wagering of out-of-state events [and] conclude[d] that the question of whether the public has a right to vote at a public referendum on this issue should be heard by this court." *Burns v. Sundlun*, 617 A.2d 114, 116 (R.I. 1992). Far greater than mere statutory construction, this case raises issues of construction of the Rhode Island Constitution. The Trial Justice's failure to apply this exception was clear error.

More specifically, Plaintiffs' case raises claims that implicate two sections

of the Rhode Island Constitution that, to date, have not been interpreted by this Court. First, whether Article I, Section 2's limitation on the use of its due process and equal protection clauses, acts as a judicial restraint on the Defendants' legislative power - - specific to the RPA. And, second, whether, as Article VI, Section 1 makes the Rhode Island Constitution the "supreme law of the state," this Court must, like in *Burns*, conclude that Plaintiffs and "the public has a right to vote" on the issue of any amendment to the Rhode Island Constitution on the issue of granting or securing a right to abortion and the funding thereof. *Burns v. Sundlun*, 617 A.2d 114, 116 (R.I. 1992). At a minimum, Plaintiffs argue that the relevant provisions of the Rhode Island Constitution are ambiguous - - requiring this Court's interpretation.[14]

This Court has also not spoken as to the scope of the repeal of Article VI, Section 10, relative to Defendants' claim of absolute legislative power here, under Article VI, Section 2. To the extent Defendants now explicitly reach out to a "separation of branches" portion of the Rhode Island Constitution to re-introduce power prohibited by Article I, Section 2, - - as made applicable to the legislature

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[14] Defendants persist in their flawed argument that all parties agree the relevant constitution provisions are plain and clear. More precise, Defendants argue their interpretation is clear, and Plaintiffs argued their different interpretation is clear. Yet, both interpretations are inapposite, rendering the relevant provisions ambiguous and left to the final interpretation of this Court.

through Article VI, Section 1, supremacy clause - - this case echoes the voice of the public interest in harnessing legislative abuse of power and corruption in our government.

Unlike in *Watson v. Fox*, Plaintiffs do not seek an advisory opinion here. In *Watson*, the "thrust of plaintiffs' complaint was that the General Assembly had violated the 'separation of powers' principles embedded in the Rhode Island Constitution." *Watson v. Fox*, at footnote 3. Not so here. Here, Plaintiffs seek a declaration of the duties and obligations of the General Assembly and Governor relative to the RPA. (APP.69-120). More importantly, in contrast to *Watson*, and unchallenged by Defendants here, Plaintiffs' pleading alleges circumstances that sustain "concrete adverseness" between Plaintiffs and Defendants, necessary "to address thorny constitutional questions." *Watson v. Fox*, 44 A.3d 130, 138-39 (R.I. 2012); *See, Flast*, 392 U.S. at 99, 88 S.Ct. 1942, *Baker v. Carr*, 369 U.S. at 204, 82 S.Ct. 691 (1962).

The Trial Justice erroneously granted Defendants' Rule 12(b)(6) motion, because the instant case raises issues of "substantial public interest" that can only be resolved by the court. This Court must reverse and remand.

IV. Conclusion

For all the above reasons and any additional reasons raised by our Reply

Brief and at oral argument, this Court must vacate the Order dismissing Plaintiffs' case, reverse the Judgment entered for Defendants, and remand this case back to the trial court for further proceedings.

Respectfully Submitted by,
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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 18(B)

Using the word count program of the word processing system on which this Brief was prepared, I hereby certify that this document contains 14,135 words, and is in compliance with the word limit in this Court's Rules of Appellate Procedure.

s/ Diane Messere Magee (Bar Id. No. 5355)
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CERTIFICATION

I hereby certify that a copy of this document, together with its appendix, was served on all parties entitled thereto via this Court's e-file and serve system. Parties Counsel of Record served:

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I further certify that:

An original and nine (9) copies of this brief and an original and five (5) copies of the appendix, are being mailed to the Clerk, Rhode Island Supreme Court, 250 Benefit St. - 7th Floor, Providence, RI 02903, within five (5) days of notice of acceptance, in accordance with R.I. S. Ct. R. App. P. 18.

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