IN THE SUPREME COURT OF RHODE ISLAND

No. SU-2020-0066-A

MICHAEL BENSON, ET AL., PLAINTIFFS-APPELLANTS

V.

GINA M. RAIMONDO, ET AL., DEFENDANTS-APPELLEES

On Appeal from a Judgment Entered in the Superior Court,
Providence County No. PC-2019-6761 (DARIGAN, J.)

BRIEF OF AMICUS CURIAE THE THOMAS MORE SOCIETY IN SUPPORT OF PLAINTIFFS-APPELLANTS

Raymond A. Marcaccio, Esquire (#3569)
OLIVERIO & MARCACCIO LLP
30 Romano Vineyard Way, Suite 109
North Kingstown, RI 02852
(401) 861-2900
(401) 861-2922 Fax
ram@om-rilaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Decisions

Other Federal Courts

State Court Decisions

Rhode Island Supreme Court

Rhode Island Superior Court

Statutes

Case Number: SU-2020-0066-A
Filed in Supreme Court
Submitted: 7/15/2021 3:29 PM
Envelope: 3193930
Reviewer: Justin Coutu

INTEREST OF AMICUS CURIAE

Amicus Curiae, the Thomas More Society ("TMS"), is a national, non-profit, public interest law firm dedicated to defending life, from conception to natural death, the family, and First Amendment rights, including freedom of speech and religious liberty. TMS nationally seeks to safeguard and foster support for these causes by pro bono advocacy for their preservation and protection in state and federal trial and appellate courts. Consistent with its mission, the Thomas More Society submits this brief in support of Plaintiffs-Appellants.

I. STATEMENT OF FACTS AND PRIOR PROCEEDINGS

This appeal challenges the Rhode Island Reproductive Privacy Act, R.I. Gen. Laws, § 23-4.13-1 *et seq*. ("RPA"), passed by the Rhode Island General Assembly and signed by the Governor in 2019. The First Amended Complaint (Plaintiffs-Appellants' App. ("APP.") 069-120) asserts that the RPA unlawfully amended the Rhode Island Constitution by "grant[ing]", "secur[ing]" and "funding" a "right relating to abortion", a right that Article I, Section 2 of the Constitution disavowed absent amendment by a majority vote of the entire electorate as per Article I, Section 1 and Article XIV of the Constitution. No such vote was held. The First Amended Complaint also asserts that the Rhode Island General Assembly has no "residual" authority to create a right of abortion outside of a constitutional amendment inasmuch as Article VI, Section 10 repealed any

Case Number: SU-2020-0066-A
Filed in Supreme Court
Submitted: 7/15/2021 3:29 PM
Envelope: 3193930
Reviewer: Justin Coutu

plenary or residual legislative powers. (APP. 099 (¶¶109-114); 105 (¶140); 109 (¶164); 112-113 (¶184); 116 (¶¶205-206)).

Plaintiffs, Michael Benson, Nichole Leigh Rowley, and Jane Doe ("Plaintiff voters"), are eligible Rhode Island voters who would have voted against a constitutional amendment recognizing the right of abortion had it been put to the vote of the electorate. (APP. 079; 082 - 084, 113 (¶¶185-187)). These Plaintiff voters seek a declaratory judgment that they were illegally deprived of their right to vote on the alleged constitutional amendment. (APP. 105 (¶139), 109 (¶163), 112 (¶183); 115-116 (¶¶197, 200, 203)).

Plaintiff Baby Roe, a pre-viable 15-week old fetus, alleges, through her mother Plaintiff Rowley, that under Rhode Island General Laws §11-3-4, she had certain legal rights of a "person", which were "immediately, irrevocably, and permanently" removed when the RPA was passed. She alleges that this action violated her rights of due process and equal protection under the Rhode Island Constitution and the Constitution of the United States. (APP. 0086-0088, esp. ¶¶40-41; 114, Count V).

Plaintiff Baby Mary Doe, a post-viable 34-week old fetus, through her mother Plaintiff Jane Doe, makes the same allegations as Plaintiff Baby Roe, and in addition alleges that she is a "quick child" as defined in R.I. Gen. Laws §11-23-5. Passage of the RPA removed her legal rights and protected status as a "quick

child" violating her rights of due process and equal protection under the Rhode Island Constitution and the Constitution of the United States. (APP. 088-091, esp. ¶¶58-63; 114, Count V).

Plaintiff Catholics For Life, Inc., under the fictitious name "Servants of Christ for Life" ("SOCL"), alleges that its purpose is to advocate for, represent, and support the legal rights of those unborn, specifically, Baby Roe and Baby Mary Doe -- and others similarly situated." (APP. 092, ¶69). Passage of the RPA deprived SOCL of its right to sue on behalf of unborn persons to challenge the deprivation of their due process and equal protection rights, and of its right to fulfill a critical part of its stated purpose in protection of the unborn and promotion of the "sanctity of life." (APP. 092, ¶70-71).

In its November 27, 2020 decision, the court below, without analysis, granted Defendants-Appellees' ("Defendants") motion to dismiss on the pleadings, concluding that none of the plaintiffs had standing to bring suit. In ruling, the court said:

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

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

As for whether standing can be conferred by the substantial public interest exception, I do not see it that way as has been argued. Finding standing on those grounds is reserved for truly rare and exceptional cases, and I don't think that such a truly rare or exceptional case is present here, and I think that Judge Stern's outline in the *Harrop*[1] case on that point was right on point. APP. 061-062.

II. ERRORS CLAIMED

A. Plaintiff Voters Have Standing to Bring This Action.

To demonstrate standing, the Rhode Island Supreme Court requires allegation of an injury in fact:

> Under Rhode Island law, a plaintiff has sufficient standing to sue if he or she alleges "an injury in fact resulting from the challenged statute." *Rhode Island Ophthalmological Society v. Cannon*, 113 R.I. 16, 26, 317 A.2d 124, 129 (1974) . . . In *Blackstone Valley Chamber of Commerce v. Public Utilities Commission*, 452 A.2d 931, 933 (R.I. 1982), we described the test for standing by stating, "[the] petitioner must still allege a personal stake in the controversy -- his own injury in fact -- before he will have standing to assert the broader claims of the public at large."

[1] *Harrop v. The Rhode Island Division of Lotteries, et al.*, C.A. PC-2019-5273, Bench Decision dated September 9, 2019.

Burns v. Sundlun, 617 A.2d 114, 116 (R.I. 1992).[2] See also *Key v. Brown University*, 163 A.3d 1162, 1169 (R.I. 2017)("We have defined injury in fact as 'an invasion of a legally protected interest which is (a) concrete and particularized * * * and (b) actual and imminent, not conjectural or hypothetical.' *N & M Properties, LLC v. Town of West Warwick*, 964 A.2d 1141, 1145 (R.I. 2009)."). "Concrete" means real and not abstract, "particularized" means personal and individual. *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 15483 (2016).

Without analysis, the court below decided that the Plaintiff voters did not suffer a "concrete and particularized harm" in connection with "either their so-called voter suppression claims or their equal protection and due process claims." APP. 061. That conclusion is in error. The injury the Plaintiff voters allege is concrete (not abstract) and particularized (individual and not general).

The Plaintiff voters allege that the RPA in effect amended the Rhode Island Constitution by eliminating Article II, Section 1's explicit disavowal that its grant of due process and equal protection rights included a grant or securing of a right to abortion. Plaintiff voters allege that to alter that constitutional bargain the Constitution had to be amended "by an explicit and authentic action of the whole people", as required by Article I, Section 1, and via the electoral process set forth

---

[2] "[T]he presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 52, n. 2 (2006).

in Article XIV. The General Assembly on its own has no power to alter the Constitution and it acted unlawfully in doing so through passage of the RPA, which was effected without a vote "of the whole people" or in accordance with the electoral requirements of Article XIV. By their actions Defendants General Assembly and Governor denied the Plaintiff voters their right to vote in opposition to the constitutional change. This was a form of voter denial/dilution, which is recognized to confer standing. Voting is "the most basic of political rights". *FEC v. Akins*, 524 U.S. 11, 25 (1998). The right is "individual and personal" such that denial or dilution of the right to vote constitutes a concrete and particularized injury. *Gill v. Whitford*, 138 S.Ct. 1916, 1929 (2018), quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964); *Baker v. Carr*, 369 U.S. 186, 206 (1962) ("voters who allege facts showing disadvantage to themselves as individuals have standing to sue.").

Moreover, the General Assembly's passage of the RPA in disregard of Article XIV of the Rhode Island Constitution violated Plaintiff voters' right to equal protection under law because it treated opponents of the change less favorably than proponents. "[E]qual treatment under law is a judicially cognizable interest that satisfies the case or controversy requirement of Article III . . .". *Davis v. Guam*, 785 F.3d 1311, 1315 (9th Cir. 2015). A plaintiff need only allege denial of equal treatment. *Harrison v. Kernan*, 971 F.3d 1069, 1074 (9th Cir. 2020)(citing

Davis). The U.S. Supreme Court has consistently held that voters treated unequally have standing to challenge the unequal treatment. *See Shaw v. Reno*, 509 U.S. 630 (1993) (finding that plaintiffs alleged a cognizable injury when they were placed in a majority-minority voting district). This rule recognizes that voters treated unequally suffer an actual injury. *Sinkfield v. Kelley*, 531 U.S. 28 (2000).

The fact that Plaintiff voters' injury was shared with a larger group of people does not make it general. "[W]here a harm is concrete, though widely shared, the Court has found 'injury in fact.' " *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 24 (1998). As long as the harm is not "suffer[ed] in some indefinite way in common with people generally[,]" then a widely-shared injury is not "general." *Id.* In *Burns, supra*, this Court found that the plaintiff failed to allege "his own injury in fact." 617 A.2d 114, 116. The plaintiff alleged only that Rhode Island law required a community vote before a license permitting simulcast of horse races could be issued, and the law was not being followed. *Id.* This Court correctly held that the plaintiff failed to allege "his own personal stake in the controversy that distinguishes his claim from the claims of the public at large." *Id.* The case of *Lance v. Coffman*, 549 U.S. 437, 441 (2007) is similar. There the plaintiffs alleged that "Article V, § 44 of the Colorado Constitution . . . violated [the Elections Clause] of the U.S. Constitution by depriving the state legislature of its responsibility to draw congressional districts." *Id.* The Court said that "[t]he only

injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed. This injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past." *Id.* at 442.

The Court in *Lance* distinguished voter cases where standing was found: "[the injury here] is quite different from the sorts of injuries alleged by plaintiffs in voting rights cases where we have found standing." *Id.* The Court cited *Baker v. Carr*, 369 U.S. 186, 207–208 (1962). There, contrary to *Lance*, petitioners alleged that the statute affected them in a way different from and adverse to the way it affected the state's voters in general and therefore was sufficient to confer standing. *Id.*

In the case under review, unlike in *Burns* and in *Lance*, the Plaintiff voters do not merely allege that a law has not been followed. They allege that they, who oppose the law, were denied the right to vote on the question of its enactment. This is a "personal and individual" right and its denial is personal and individual as well. *Gill v. Whitford, supra*; *Reynolds v. Sims, supra*. The denial allegedly violates the Rhode Island Constitution (Article I, Section 2) and the 14th Amendment of the U.S. Constitution, both of which prohibit unequal treatment under law concerning the fundamental right to vote. This interest infringed upon (equal

treatment under law) perpetrates a concrete and particularized injury, an "injury in fact".

Of course, the Plaintiff voters bear the ultimate burden to show that the RPA in effect did amend the Rhode Island Constitution by recognizing a right of abortion, and was therefore subject to the electoral process mandated by Article XIV of the Constitution before such amendment can be given effect. *Gill v. Whitford*, *supra*, 138 S.Ct. at 1931-32. But the evaluation of the merits is not appropriate at the stage of determining standing. As this Court said in *N & M Properties, LLC, supra*, standing focuses on the party, not the issue. 964 A.2d at 1145; see *Harrop v. R.I. Div. of Lotteries*, 2019 R.I.Super LEXIS 130, *5-*6 (quoting *Cottrell v. Alcon Laboratories*, 874 F.3d 154 (3d Cir. 2017), *cert. denied sub nom. Alcon Laboratories, Inc. v. Cottrell*, 138 S.Ct. 2029 (2018)). See also *East Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1267 (9th Cir. 2020)("This distinction prevents Article III standing requirements from collapsing into the merits of a plaintiff's claim * * * a plaintiff can have standing despite losing on the merits * * *.' What is required is "a judicially cognizable interest"—implying that "an interest can support standing even if it is not protected by law * * *."'); *Bruggeman* ex rel. *Bruggeman v. Blagojevich*, 324 F.3d 906, 909 (7th Cir. 2003)("Of course if his claim has no merit, then he has not been injured by any wrongful conduct of the defendant; but if the consequence were that he lacked

standing, then every decision in favor of a defendant would be a decision that the court lacked standing, entitling the plaintiff to start over in another court.").

For these reasons the lower court erred in holding that Plaintiff voters did not have standing to file this action.

B. Baby Roe and Baby Mary Doe Have Standing.

Plaintiff Baby Roe, a pre-viable 15-week old fetus, alleges, through her mother Plaintiff Rowley, that under R.I. Gen. Laws §11-3-4, she had certain legal rights of a "person", which were "immediately, irrevocably, and permanently" removed when the RPA was passed. She alleges that this action violated her rights of due process and equal protection under Rhode Island law and the Constitution of the United States. (APP. 0086-0088, esp. ¶¶40-41; 114, Count V).

Plaintiff Baby Mary Doe, a post-viable 34-week old fetus, through her mother Plaintiff Jane Doe, makes the same allegations as Plaintiff Baby Roe, and in addition alleges that she is a "quick child" as defined in Rhode Island's fetal homicide law, R.I. Gen. Laws §11-23-5. Passage of the RPA removed her legal rights and protected status as a "quick child" violating her rights of due process and equal protection under the Rhode Island Constitution and the Constitution of the United States. (APP. 088-091, esp. ¶¶58-63; 114, Count V).[3]

[3] The claims of Plaintiff, Catholics For Life, Inc., are derivative of those asserted by Baby Mary Doe and Baby Roe (APP. 0091-0093), and so a finding that they

1. *Baby Mary Doe and Baby Roe Have Been Injured in the Revocation of Their Legal Interest in the Pre-*Roe *Abortion Law and in the Fetal Homicide (Quick Child) Law.*

Both Mary Doe and Roe were protected under the criminal abortion statute, R.I. Gen. Laws § 11-3-1 *et seq*.[4] The RPA repealed this statute. Moreover, Baby Mary Doe, a post-viability fetus, additionally enjoyed a protected status under the "Willful killing of unborn quick child" statute. R.I. Gen. Laws § 11-23-5.[5] Section 5 of the RPA repealed this fetal homicide statute.

Notwithstanding this, the trial court decided: "The unborn persons I find do not have rights as persons to make this challenge, and they rest their claims in large

---

have standing would constitute a finding that Catholics For Life, Inc. also has standing.

[4] Section 11-3-4 states: "It shall be conclusively presumed in any action concerning the construction, application or validity of section 11-3-1, that human life commences at the instant of conception and that said human life at said instant of conception is a person within the language and meaning of the fourteenth amendment of the constitution of the United States, and that miscarriage at any time after the instant of conception caused by the administration of any poison or other noxious thing or the use of any instrument or other means shall be a violate of said section 11-3-1, unless the same be necessary to preserve the life of a woman who is pregnant."

[5] Section 11-23-5(c) defines "quick child" to mean "an unborn child whose heart is beating, who is experiencing electronically measurable brain waves, who is discernibly moving and who is so far developed and matured as to be capable of surviving the trauma of birth with the aid of usual medical care and facilities available in this state."

part on statutory provisions that have been repealed as unconstitutional. I think Mary Doe's quick child claim is not persuasive. . .". APP. 062.

Regarding the Rhode Island criminal abortion statute, it is correct that it was ruled unconstitutional in *Doe v. Israel,* 482 F.2d 156 (1st Cir. 1973) on the authority of *Roe v. Wade*, 410 U.S. 113 (1973) and *Doe v. Bolton*, 410 U.S. 179 (1973). But the criminal abortion statute remained "on the statute books" until the RPA repealed it legislatively. Baby Roe and Baby Mary Doe had a protectible legal interest in continuing to keep the criminal abortion law on the books because *Roe v. Wade*, and *Doe v. Israel*, as judicial decisions, are subject to reversal, and could be overturned as early as the next U.S. Supreme Court term in view of the Court's grant of a writ of certiorari in *Dobbs v. Jackson Women's Health Organization*, -- S. Ct. --, 2021 WL 1951792 (May 17, 2021). If *Roe* were overturned, the Rhode Island criminal abortion statute, were it still on the books, would be revived, inasmuch as *Doe v. Israel* relied solely on *Roe* and *Doe*.[6] An

[6] Federal and state court cases have recognized that reversal of a court decision holding a statute unconstitutional revives the statute. William M. Treanor & Gene B. Sperling, *Prospective Overruling and the Revival of "Unconstitutional" Statutes*, 93 Colum. L. Rev. 1902-1955 (1993). For example, after the U.S. Supreme Court struck down as unconstitutional a District of Columbia statute, see *Adkins v. Children's Hospital*, 261 U.S. 525 (1923), and then reversed its decision in *Adkins*, see *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937), President Roosevelt asked his attorney general for the status of the D.C. statute. He replied: "The decisions are practically in accord in holding that the courts have no power to repeal or abolish a statute, and that notwithstanding a decision holding it unconstitutional a statute continues to remain on the statute books; and that if a

obvious aim of the RPA's enactment was to prevent this possibility by removing the criminal abortion law from the statute books. But this legislative action inflicted an actual injury on Baby Roe's and Baby Mary Doe's legal interest in preserving the criminal abortion statute on the statute books against the possibility of *Roe's* (and *Doe v. Israel's*) reversal.[7]

---

statute be declared unconstitutional and the decision so declaring it be subsequently overruled the statute will then be held valid from the date it became effective." 39 Op. Att'y Gen. 22, 22-23 (1937). See, *Jawish v. Morlet*, 86 A.2d 96 (D.C. 1952) ("[A] statute declared unconstitutional is void in the sense that it is inoperative or unenforceable, but not void in the sense that it is repealed or abolished; that so long as the decision stands the statute is dormant but not dead; and that if the decision is reversed the statute is valid from its first effective date." *Jawish*, 86 A.2d at 97.); *Pierce v. Pierce*, 46 Ind. 86, 95 (1874) ("It was not the overruling of those cases which gave validity to the statutes; but the cases having been overruled, the statutes must be regarded as having been all the time the law of the State."); *State ex rel. Badgett v. Lee*, 22 So. 2d 804, 806 (Fla. 1945) ("though a statute declared unconstitutional becomes inoperative, it is not dead, only dormant."); *Christopher v. Mungen*, 55 So. 273, 280 (Fla. 1911) ("Where a statute is judicially adjudged to be unconstitutional, it will remain inoperative while the decision is maintained; but, if the decision is subsequently reversed, the statute will be held to be valid from the date it first became effective"); See also, *State v. O'Neil*, 126 N.W. 454, 454 (Iowa 1910); *McCollum v. McConaughy*, 119 N.W. 539, 541 (Iowa 1909); and *State v. Douglas*, 278 So. 2d 485, 491 & n.6 (La. 1973)).

[7] Nine states have preserved their pre-*Roe* abortion bans on the books. (Alabama: Ala. Code § 13A-13-7; Arizona: Ariz. Rev. Stat. Ann. §§ 13-3603, 13-3604, 13-3605; Arkansas: Ark. Code Ann. § 5-61-102; Michigan: Mich. Comp. Laws Ann. §§ 750.14, 750.15, 750.34, 750.40; Mississippi: Miss. Code Ann. § 97-3-3; New Mexico: N.M. Stat. Ann. §§ 30-5-1, 30-5-3; Oklahoma: Okla. Stat. Ann. tit. 21, §§ 861, 862; West Virginia: W. Va. Code Ann. § 61-2-8; and Wisconsin: W.S.A. 940.04). According to the Guttmacher Institute, eleven states have passed "trigger" abortion bans in view of *Roe's* possible reversal. (Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota,

Further, Baby Mary Doe has standing because the RPA repealed the Rhode Island quick child law (R. I. General Laws, §11-23-5), which protects Baby Mary Doe and others like her from fetal homicide. The quick child law's constitutionality has never been questioned.[8] Repeal of that law therefore manifestly inflicts a concrete and particularized injury to Baby Mary Doe's legal interest in continued protection from fetal homicide under that law. In addition, Baby Mary Doe alleges that she was protected by the due process and equal protection guarantees of Article 1, Section 2 of the Rhode Island Constitution and that the RPA unlawfully purports to strip her of personhood under the Constitution and quick child law. (APP. 089-90, ¶¶53-63; 106-07, ¶147; 110, ¶171). And she has standing to claim that the RPA illegally purports to rescind her right to due process and equal protection under the 14th Amendment. APP. 114, ¶¶192-194. These constitute actual injuries conferring standing on Baby Mary Doe.

Tennessee, and Utah). See Guttmacher Institute, *Abortion Policy in the Absence of Roe*, July 1, 2021, https://perma.cc/24MB-5FKJ.

[8] Thirty-eight states have fetal homicide laws, and twenty-nine of those states' statutes cover fetuses at any stage of development. See National Conference of State Legislatures, *State Laws on Fetal Homicide and Penalty-enhancement for Crimes Against Pregnant Women*. May 1, 2018. https://www.ncsl.org/research/health/fetal-homicide-state-laws.aspx

2. *Baby Mary Doe's and Baby Roe's Status in the Abortion Context of* Roe v. Wade *Does Not Remove Their Status as Persons in this Non-*Roe *Case.*

The trial court did not distinguish between *Roe's* holding -- that a pre-viable fetus is not a "person" under the 14th Amendment of the U.S. Constitution when the issue is a woman's privacy interest in terminating a pregnancy -- and a viable fetus' legal interest in avoiding the depredations of a killer under Rhode Island's fetal homicide (or quick child) law. The latter law renders a viable fetus like Baby Mary Doe a "person" for purposes of the Rhode Island Uniform Declaratory Judgments Act, R.I. Gen. Laws § 9-30-2, enabling her to determine her rights under the fetal homicide law and other laws (like Article I, Section 2 of the Rhode Island Constitution and the 14th Amendment of the U.S. Constitution) that may protect her.

In situations when the rights of a post-viable child, in this case, Baby Mary Doe, under fetal homicide or other protective laws, do not impinge on a woman's right to abortion found by the U.S. Supreme Court to exist under the U.S. Constitution, it is erroneous and unjust to ignore injury to their legal interests on the ground that they are not "persons" in the abortion context. This is an access to the courts and to justice issue - it does not implicate a state's attempt to interfere with or abridge a woman's right to abortion previously found by the U.S. Supreme Court to exist under the U.S. Constitution. Since Baby Mary Doe was granted a

legal interest under the fetal homicide law, and that interest was eviscerated by the RPA, she has standing to ask, and justice requires, that the Court hear her claim for redress of her injury pursuant to Article I, Section 2 of the Rhode Island Constitution, the 14th Amendment of the U.S. Constitution, and the Uniform Declaratory Judgments Act. "[T]he right of access to the courts is a fundamental right protected by the Constitution." *Delew v. Wagner*, 143 F.3d 1219, 1222 (9th Cir.1998). It arises under the 14th Amendment's Equal Protection and Due Process Clauses. *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987) (Equal Protection); *Wolff v. McDonnell*, 418 U.S. 539, 576 (1974) (Due Process); *Boddie v. Connecticut*, 401 U.S. 371, 380–381 (1971) (Due Process).

For these reasons Baby Roe and Baby Mary Doe have shown an actual injury. It was error for the court below to conclude they had no standing to claim redress.

C. The Court Should Find Standing Based on the Substantial Public Interests this Case Presents.

This Court has found standing to exist in cases like this which implicate substantial public interests. See *e.g.*, *Sennott v. Hawksley*, 103 R.I. 730, 731-32, 241 A.2d 286, 287 (1968); *Burns v. Sundlun*, 617 A.2d 114, 116 (R.I. 1992). The trial court, however, declined to find standing under the "substantial public interest exception," stating "standing on those grounds is reserved for truly rare and exceptional cases, and I don't think that such a truly rare or exception case is

present here, and I think that Judge Stern's outline in the *Harrop* case on that point right on point." APP. 062. The trial court did not explain why it believed this was not a "truly rare or exceptional case".

Contrary to the trial court's ruling, this case is a case of "substantial public interest" that should be heard by this Court even if the Court concludes that Baby Mary Doe, Baby Roe, and the Plaintiff voters have not demonstrated an actual injury redressable by this Court. Among other significant issues presented, this case involves construction of the Rhode Island Constitution and the means that may be legally employed to alter it. As Article I, Section 1 declares, "the constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all." Whether the Rhode Island Constitution was altered, not by "an explicit and authentic act of the whole people," but by a fraction thereof, in disregard of the required electoral method (as defined in Article XIV) for changing this "sacred" document presents a question of the utmost and fundamental public interest affecting the "whole people" which this Court must address.

The issue is important also because it involves the right to vote, which is at the core of democratic government. The allegation that the Rhode Island Constitution was changed without a vote of the whole people raises a matter of grave significance for the entire voting citizenry of Rhode Island.

There are no factors mitigating against finding a substantial public interest in hearing the issues presented. The advocates are vigorous and capable. The issues are clear cut and important.

For all of these reasons the Court should order the trial court to take jurisdiction and proceed to decide the issues, including the constitutional issues, presented.

III. CONCLUSION

For the above and foregoing reasons, Amicus, Thomas More Society, respectfully urges this Court to vacate the Order dismissing Plaintiffs' case, reverse the Judgment entered for Defendants, and remand this case to the trial court for further proceedings.

The Thomas More Society,
As Amicus Curiae,
By its Attorney,

/s/ Raymond A. Marcaccio
Raymond A. Marcaccio, Esquire (#3569)
OLIVERIO & MARCACCIO LLP
30 Romano Vineyard Way, Suite 109
North Kingstown, RI 02852
(401) 861-2900
(401) 861-2922 Fax
ram@om-rilaw.com

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 18(B)

1. This Brief contains 4,607 words, excluding the parts exempted from the word count by Rule 18(b).

2. This Brief complies with the font, spacing, and type size requirements stated in Rule 18(b).

/s/ Raymond A. Marcaccio

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2021, I filed and served this document through the electronic filing system on the following:

Diane Messere Magee, Esquire
DMMageeLaw@aol.com

Thomas More Dickinson, Esquire
tmd@appealRI.com

Michael W. Field
Assistant Attorney General
mfield@riag.ri.gov

Andrea Shea
Special Assistant Attorney General
ashea@riag.ri.gov

The document is available for viewing and/or downloading from the Rhode Island Judiciary Electronic Filing System.

I further certify that an original and nine (9) copies of this brief are being mailed to the Clerk, Rhode Island Supreme Court, 250 Benefit Street, 7th Floor, Providence, RI 02903 within five (5) days of notice of acceptance, in accordance with Rule 18(h) of the Rules of Appellate Procedure.

/s/ Raymond A. Marcaccio