

STATE OF RHODE ISLAND
SUPREME COURT

CODY ALLEN ZAB

v.

SU-2019-0459-A
CA: PM2017-4195

RHODE ISLAND DEPARTMENT
OF CORRECTIONS, et al.

and

JOSE R. RIVERA

v.

SU-2019-0462-A
CA: PC2017-0433

RHODE ISLAND DEPARTMENT OF
CORRECTIONS, by and through its
Director, PATRICIA COYNE-FAGUE
In her official capacity only

ON APPEAL FROM SUPERIOR COURT

BRIEF FOR APPELLANTS

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INTRODUCTION

This appeal concerns the constitutionality of Rhode Island General Laws § 13-6-1, hereinafter called “Civil Death Act.” The Civil Death Act deems all individuals sentenced by the Rhode Island Superior Court to life in prison at the Adult Correctional Institution (“ACI”) civilly dead during the period of their imprisonment at the ACI. This Court has held that the Civil Death Act deprives life prisoners of most of their commonly held civil rights, and, chillingly, that the Act removed the authority of the Superior Court to hear any claims brought by these prisoners. Gallop v. Adult Correctional Institutions, 182 A.3d 1137 (R.I. 2018).

The cases before the Court are on appeal after final judgment entered against Appellants following a consolidated bench decision of the Superior Court, J. Lanphear, on a motion to dismiss Riviera’s complaint and a motion for summary judgment against Zab. In his decision, J. Lanphear granted the motions, holding that the Superior Court had no authority to hear the Appellants’ personally injury claims as it was divested of jurisdiction to do so by the language of R.I.G.L. § 13-6-1 and this Court’s prior holdings in Gallop. R346-348.

This appeal raises important and novel issues regarding the rights of prisoners sentenced to life in prison by Rhode Island Superior Court and

held at the ACI. For a State, and a community, that values access to the state judicial system by all persons, as is enunciated by Article 1, Section 5 of the Rhode Island Constitution¹ the Civil Death Act denies Appellant the right to have any of their civil claims heard in the Superior Court. If the Rhode Island Constitution does anything, it protects the rights of the people within this state to access one of its branches of government, namely the judiciary, through the state courts and seek a remedy for wrongs done to them. The Civil Death Act prevents Appellants from doing exactly that. The statute violates fundamental concepts of Due Process and Equal protection and is unconstitutional.

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Appellants Cody Allen Zab and Jose Rivera² are inmates sentenced to life and held at the ACI. R345. In his Superior court case, Appellant Zab asserted claims of negligence against the Department of Corrections (DOC)

¹ Article 1, Section 5 of the Rhode Island Constitution states:

Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws

² While this is a consolidated appeal involving two different Appellants, for ease of reading, they will be referred to as Appellants herein.

and an outside contractor, Global Tel-Link, Inc., and under 42 U.S.C. § 1983 against the DOC for a violation of his Eighth Amendment right to be free of cruel and unusual punishment. These claims result from an incident in which Zab suffered a burn on his arm when it made contact with a very hot uninsulated pipe. R006. Appellant Jose Rivera filed a negligence action against the DOC alleging that he suffered injuries when he slipped and fell on a walkway outside of Maximum security on the way to his work detail. R352. The State filed a motion for judgment on the pleadings under R.I.G.L. § 13-6-1 versus Rivera and a motion for Summary judgment against Zab that was joined by Global Tel-Link, Inc. R060, R360.

By agreement of all parties, both matters were consolidated for hearing. The Court, J. Lanphear, determined that he did not have jurisdiction to hear the Appellants' claims once he determined that Appellants were sentenced to life in prison and held at the ACI based on this Court's decision in Gallop v. Adult Correctional Institutions, 182 A.3d 1137 (R.I. 2018). R346.

STATEMENT OF ISSUES

1. Whether R.I.G.L. § 13-6-1 violates the Supremacy Clause of the United States Constitution as it denies the Plaintiff remedies that are secured to him by 42 U.S.C. § 1983.
2. Whether R.I.G.L. § 13-6-1 is unconstitutional because it violates the Equal Protection Clause under Articles 1 § 2, 21, and 8 of the Rhode Island Constitution and the First and Eighth Amendments of the United States Constitution by failing a strict scrutiny analysis.
3. Whether R.I.G.L. § 13-6-1 violates the Appellants right to substantive due process by negating their fundamental right to access the Courts.
4. Whether the taking of Appellants' chose property rights, accrued to them based on personal injury claims arising after they were sentenced to life at the ACI, occurred without due process of law.
5. Whether Appellant Zab's claims are barred by Issue Preclusion or Res Judicata.

STANDARD OF REVIEW

Appellants’ challenge the constitutionality of R.I.G.L. § 13-6-1 and its application to deny them the ability to proceed with their claims in Superior Court. “When reviewing a challenge to a statute's constitutionality, this Court exercises the “greatest possible caution. Unless the party challenging the statute's constitutionality can “prove beyond a reasonable doubt that the act violates a specific provision of the constitution or the United States Constitution, this Court will not hold the act unconstitutional.” Mackie v. State, 936 A.2d 588, 596 (R.I. 2007)

ARGUMENT

As will be briefed further, the Civil Death Act, as interpreted by this Court, removes from Appellants the ability to seek any relief from the Rhode Island State Courts because it divests the Superior Court of its authority to hear the Appellants’ claims. As a result, the Act removes from Appellants all avenues they have to ask the State Courts to enforce the protections they are granted under the Rhode Island Constitution, the United States Constitution and at the common law. The effect of the Civil Death Act is to leave the Appellants at the absolute mercy of all others, to include their fellow prisoners, officers at the ACI, and anyone who goes there.

The Civil Death Act is unconstitutional as a matter of law because: 1) It violates the Supremacy Clause of the United States Constitution as it serves to deny Appellant Zab the remedies secured to him by 42 U.S.C. § 1983; 2) The Civil Death Act is unconstitutional as it fails an Equal Protection Analysis under numerous provisions of Article I of the Rhode Island Constitution to include Sections 2, 21 and 8 and the First and Eighth Amendments to the United States Constitution; 3.) The Civil Death Act is unconstitutional as it violates the Appellants' rights to substantive due process and 4.) The Civil Death Act is unconstitutional as it removes from Appellants' chose property rights that they acquired as a result of suffering a personal injury after they were sentenced to life in prison, without procedural due process.

- I. Rhode Island General Laws § 13-6-1 is unconstitutional as it removes from the Superior Court the ability to hear Appellant Zab's 42 U.S.C. § 1983 claims under the Eighth Amendment to the United States Constitution.

Rhode Island General Laws § 13-6-1 is unconstitutional under the Supremacy Clause as it prevents Appellant Zab from bringing an action in State Court under 42 U.S.C. § 1983. The Civil Death Act cannot be used to bar Appellant Zab from pursuing a claim based on the violation of his Eighth Amendment rights under the United States Constitution in our Superior Courts as R.I.G.L. § 8-2-14 gives the Superior Courts the power to hear all

claims at law³, except those of Appellants, and accordingly creates an impermissible conflict with the Supremacy Clause.

In Haywood v. Drown, 556 U.S. 729, 736 (2008), the United States Supreme Court held that a state law that limited a prisoner’s ability to file a 42 U.S.C. § 1983 in the State’s Courts of general jurisdiction to enforce the rights the prisoners had under the United States Constitution violated the supremacy clause. In so holding, it noted that “a State cannot employ a jurisdictional rule ‘to dissociate [itself] from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source.’ . . .” . . . States . . . lack authority to nullify a federal right or cause of action they believe is inconsistent with their local policies.” *Id.*

Absent the Civil Death Act, a jurisdictional rule, all other prisoners and persons in the state of Rhode Island are allowed to access the Superior Courts and file civil actions provided they seek more than five thousand dollars (\$5,000) in relief, which both Appellants did. See R.I.G.L. § 8-2-14 (Setting forth the original jurisdiction of the Superior Court). The statute is unconstitutional as it violates the Appellants’ ability to pursue their federal

³ This is a general statement for our purposes. It is admitted that the District Court has jurisdiction over claims of \$5,000 or less and the Superior Court has jurisdiction of all claims at law over that amount. See R.I.G.L. 8-2-14.

claims in state courts of general jurisdiction where they are otherwise allowed to be heard.

- II. The Civil Death Act is unconstitutional as it violates the Appellants' rights to Equal Protection under the State and Federal Constitutions.

In Gallop v. Adult Correctional Institutions, 182 A.3d 1137 (R.I. 2018), a case involving a personal injury claim of Gallop against the ACI, this Court stated: "The [Civil Death] statute unambiguously declares that a person such as Plaintiff, who is serving a life sentence, is deemed civilly dead and thus does not possess most commonly recognized civil rights." Id. at 1141. The Gallop Court then stated that the Civil Death Act meant that: "persons serving a life sentence are prohibited from asserting civil actions." Id. at 1142. Further that the Superior Court, would have been "error for the Superior Court to proceed" on Plaintiff's claim as it was acting in excess of its jurisdiction if it did so as the legislature had divested it of its jurisdiction in these matters. Id. at 1143.

Proving that this holding was not limited to personal injury matters, in Zab v. Zab, 203 A.3d 1175 (R.I. 2019), this Court said that even in family law matters, different than the personal injury suit asserted in Gallop, Zab could not raise his claims because he, as a person sentenced to life in prison

and held at the ACI, was barred by the Civil Death Act which divested the Family Court of jurisdiction to hear his claims.

The Civil Death Act, so construed by this Court, is unconstitutional under the equal protection⁴ clause of the Rhode Island Constitution, Article 1 § 2, as it strips the Appellants of their constitutional rights under Article 1 § 5, 21, and 8, and their rights under the First and Eighth Amendments to the United States Constitution without serving a compelling state interest which justifies its broad scope and devastatingly blunt effect.

As this Court has stated, the Civil Death Act bars the Appellants from exercising their most basic rights, including their right to sue in State Court in civil matters. Gallop, 182 A.3d at 1142. As the only means the Appellants have to enforce their State Constitutional rights is through litigation in State Courts, a direct implication of Gallop and Zab is that the

⁴Article 1 § 2 of the Rhode Island Constitution provides:

All free governments are instituted for the protection, safety, and happiness of the people. All laws, therefore, should be made for the good of the whole; and the burdens of the state ought to be fairly distributed among its citizens. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws. No otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state, its agents or any person or entity doing business with the state. Nothing in this section shall be construed to grant or secure any right relating to abortion or the funding thereof.

Appellants have no avenue to enforce their State Constitutional rights violating the very premise from which the State Constitution was drafted, i.e. to give the people these rights. See Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir. 2005)(“The most fundamental of the constitutional protections that prisoners retain are the free speech rights which allow them to file prison grievances and to pursue civil rights litigation in the courts, for “[w]ithout those bedrock constitutional guarantees, inmates would be left with no viable mechanism to remedy prison injustices.”); See also, Marbury v. Madison, 5 U.S. 137, 163 (1803)(“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. One of the first duties of government is to afford that protection.”) The Civil Death Act removes from Appellants any ability to protect themselves of any mistreatment or bad conduct by their jailors or the jailors contractors in the State courts.

“In determining whether a statute complies with equal-protection standards, we must examine both the nature of the classification established by the act and the individual rights which may be violated by the act.” Kennedy v. State, 654 A.2d 708 (R.I. 1995). The rights set forth in Article 1 § 5, Article 1 § 21 and Article 1 § 8 of the State Constitution are all fundamental rights. Federal Hill Capital, LLC v. City of Providence by and

through Lombardi., 227 A.3d 980, 987 (R.I. 2020) (Fundamental rights include those expressly guaranteed by the Constitution). These rights are being denied only to prisoners sentenced to life in prison by Rhode Island Superior Court and held at the ACI and no other persons in this state.

“[W]here the legislation infringes upon explicit constitutional rights . . . legislative enactments must be narrowly drawn to express only a compelling state interest.” Allard v. Department of Transp., 609 A.2d 930, 937 (R.I. 1992). The compelling state interest is analyzed using a strict scrutiny analysis which requires that the government prove that classifications impinging on the constitutional rights “are narrowly tailored measures that further compelling governmental interests.” Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 227 (1995). To survive this analysis, the State must prove that the statute is using the least restrictive means to achieve its asserted interest. Brown v. Entertainment Merchants Ass’s, 564 U.S. 786, 799 (2011); Ex parte Thompson, 442 S.W.3d 325, 344 (TX CCA 2014); see U.S. v. Alvarez, 567 U.S. 709, 725-26 (2012) (plurality op.) (“There must be a direct causal link between the restriction imposed and the injury to be prevented”). All of the challenges made by Appellants under the equal protection clause are governed by the strict scrutiny standard as each challenge implicates rights provided to Appellants by the Rhode

Island Constitution, and in some instances the United States Constitution.

No compelling justification has been put forth by the State supporting the effect of the Civil Death Act, namely the denial of most of Appellants' civil rights, including the right to assert and be heard on an action in the State Courts of general jurisdiction.

- A. Article 1 § 5 and 21 of the Rhode Island Constitution and the First Amendment to the United States Constitution provide Appellants with a fundamental right of access to the Court negated by the Civil Death Act.

The Civil Death Act infringes on expressly enumerated constitutional rights provided to all persons in the State of Rhode Island, to include Appellants, through Article 1§5 of the Rhode Island Constitution which provides that:

[E]very person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws.

This Article of the Rhode Island Constitution creates a fundamental right for all persons in Rhode Island, to include Appellants, to go to court and seek a

remedy for wrongs to them. Cherenzia v. Lynch, 847 A.2d 818, 824 (R.I. 2004).⁵

The full text of Article 1 § 5 of the R.I. Constitution was originally enacted as Article 1 § 2 of the Rhode Island Constitution in 1842, well before the codification of the Civil Death Act in 1909 and its apparent enactment in 1857.⁶ The Legislature knew of the provisions of the state constitution at the time this statute was enacted and passed it despite the fact that, on its face, the Act strips the Appellants of their most basic State Constitutional rights.

There is nothing within the constitution that states that Appellants, sentenced to life in prison and held at the ACI, are not persons for purposes of the State Constitution. In fact this Court has held that Appellants are “persons” with in the language of Article 1 § 5 in In re Incurring of State

⁵ The phrase “conformably to the laws” set forth in this Constitutional provision is a term of art that indicates that this right is in accordance with due process of law. It does not imply that a law can be enacted to completely remove the protections given by this provision of the constitution. See McCoy v. Kenosha County, 218 N.W. 348, 350-51 (Wis. 1928).

⁶ See <https://web.archive.org/web/20160223014452/http://webserver.rilin.state.ri.us/RhodeIslandHistory/chapt4.html>. In addition, please note that it appears that the Civil Death Act actually dates back to 1857. See R.I. Statute, Chapter 22 Section 36 (1857).

Debts, 19 R.I. 610, 613, 37 A. 14, 15 (1896) where this Court stated that the “the term ‘people,’ as used in the Constitution, is broad and comprehensive, comprising in most instances all the inhabitants of the State.” As such, Appellants retain their constitutional rights as one of the “all persons” identified repeatedly in the State Constitution. They cannot simply be stripped of these rights by a statute.

The United States Supreme Court has repeatedly stated that a prison inmate “retains those [constitutional] rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.” Pell v. Procunier, 417 U.S. 817, 822 (1974). This Court noted a similar principal in Anderson v. Salant, 38 R.I. 463, 96 A. 425, 429 (1916) when it stated: “we think a convict stands upon a different footing from a slave, and his rights are not so restricted as it was ruled in that case with respect to a slave. The convict occupies a different attitude from the slave toward society. He is not mere property, without any civil rights, but has all the rights of an ordinary citizen which are not expressly or by necessary implication taken from him by law.”⁷ This includes his rights under the First Amendment and Article 1 § 21.

⁷ The Civil Death Act was enacted by the legislature, it is not a regulation created by the prison system itself, making the holdings in Turner v. Safley, 482 U.S. 78 (1987) and its progeny inapplicable.

“[T]he right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government.” Borough of Duryea Pa. v. Guarnieri, 564 U.S. 379 (2011). This Court has held that Article 1 § 21 of the Rhode Island Constitution⁸ is coextensive with the First Amendment of the United States Constitution. Cove Road Development v. Western Cranston Indus. Park Associates, 674 A.2d 1234, 1236 (R.I. 1996).

In Cove, this Court stated:

The First Amendment to the United States Constitution protects the right of the people to “petition the government for a redress of grievances.” In a similar formulation, art. 1, sec. 21, of the Rhode Island Constitution declares that “[t]he citizens have a right . . . to apply to those invested with the powers of government, for redress of grievances, or for other purposes, by petition, address, or remonstrance.” As a consequence of this fundamental constitutional principle, this Court cannot gainsay that the right to petition governmental bodies for the redress of grievances is “among the most precious of the liberties safeguarded by the Bill of Rights.” United Mine Workers of America v. Illinois State Bar Association, 389 U.S. 217, 222 (1967). It does not protect speech and assembly only to the extent it can be characterized as political. ‘Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured . . . are not solely religious or political ones.’

Id. (Citations omitted).

⁸ Article 1, Section 21 of the Rhode Island Constitution provides: “Right to assembly -- Redress of grievances -- Freedom of speech. -- The citizens have a right in a peaceable manner to assembly for their common good, and to apply to those invested with the powers of government, for redress of grievances, or for other purposes, by petition, address, or remonstrance. No law abridging the freedom of speech shall be enacted.”

The Civil Death Act acts as a prior restraint on the ability of the Appellants to seek relief in the State Courts and, accordingly, exercise their ability to petition the government. Alexander v. United States, 509 U.S. 544, 550 (1993) (“Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints.”). Prior to the time any action may be ripe to bring before the Court, the Civil Death Act prevents the Appellants from being heard on their claims, irrespective of what issue they raise, by our Superior Courts.

In re Court Order Dated October 22, 2003, 886 A.2d 342, 350 (R.I.2005), this Court stated: “[P]rior restraint on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” *Id.* at 350–51. A system of prior restraints “bear[s] a heavy presumption against its constitutional validity,” and the Government “carries a heavy burden of showing justification for the imposition of such a restraint.” 810 Capital Cities Media, Inc. v. Toole, 463 U.S. 1303, 1305 (1983) (citation omitted). The government may impose reasonable restrictions on the time, place, or manner of protected speech, provided the restrictions “are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental

interest, and that they leave open ample alternative channels for communication of the information.” Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293 (1984); see Heffron v. International Society for Krishna Consciousness, Inc., 452 U.S. 640, 648 (1981) (quoting Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 771 (1976)). Here, the Civil Death Act provides Appellants with no means to exercise their rights to file suit and petition the State Courts. Indeed, its language states that Appellants have no civil rights at all.

In Kennedy v. Cumberland Engineering Co., Inc., 471 A.2d 195, 197 (R.I. 1984) this Court recognized that: “the total denial of access to the courts for adjudication of a claim, even before it arises,” violates the constitutional protection mandated by article 1, section 5, as “to hold otherwise would render this constitutional protection worthless.”

In Laurence v. Rhode Island Dep't of Corr., 68 A.3d 543, 548–49 (R.I. 2013), involving an inmate serving life in prison at the ACI, this Court, citing to Cok v. Read, 770 A.2d 441 (R.I. 2001) noted that while courts may place reasonable limits on the filings of litigants who abuse the judicial system this type of restriction should be drawn narrowly. The Laurence Court went on to state that an “[a]cross the board restrictions to court access ‘should be issued only when abuse is so continuous and

widespread as to suggest no reasonable alternative,” citing Cok, 770 A.2d at 444. Along similar lines, this Court has also held a litigant cannot be denied the ability to file a suit for a temporarily unlimited period of time. See In re Estate of Brown, 206 A.3d 127, 135 (R.I. 2019).

The State has presented no evidence of abuse of the civil justice system by inmates, such as Appellants, sentenced to life in prison. This Civil Death Act acts as an unlimited temporal limitation on the Appellants’ actions, applying for the entire time an inmate is serving a life sentence at the ACI.

This Court’s holdings with respect to a full bar to preventing individuals from filing civil actions align with those of the United States Supreme Court and various other Federal Courts where it has been held that inmates have a right to file suit. See, e.g., Wolff v. McDonnell, 418 U.S. 539 (1974)(Stating inmate has a right to file action); Laurence, 68 A.3d 545 (Allowing a prisoner serving a life sentence to file civil actions finding blanket restrictions preventing him from doing so “impermissibly infringe[s] upon [plaintiff’s] right of access to the courts.”); Hooks v. Wainwright, 352 F.Supp. 163, 167 (M.D.Fla.1972)(“the constitutional protection of access to the courts ... includes access to all courts, both state and federal, without regard to the type of petition or relief sought.”); Corpus v. Estelle, 551 F.2d

68, 70 (5th Cir.1977) (“[R]easonable access to the courts must include access in general civil legal matters.”); Souza v. Travisono, 368 F.Supp. 959 (D.R.I.1973).

As has been repeatedly noted by the Courts, regardless of a prisoner's misdeeds—however reprehensible—“[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution.” Turner, 482 U.S. at 84. The most fundamental of the constitutional protections that prisoners retain are the free speech rights which allow them to file prison grievances and to pursue civil rights litigation in the courts, for “[w]ithout those bedrock constitutional guarantees, inmates would be left with no viable mechanism to remedy prison injustices.” Rhodes, 408 F.3d at 567. There is, without this right, no ability of the plaintiff to challenge even the most egregious conduct by the State or any of the other contractors or entities who they face at the ACI.

Other states assessing their now repealed civil death statutes, have found that where their Civil Death Acts worked to deny a life prisoner access to the Courts, the statutes violated the inmate's right to equal protection under the laws. In McCulston v. Wanicka, 483 So. 2d 489 (Fla App. 2d 1986), the Florida Court of Appeals, invalidated its Civil Death Act which denied an inmate the right to be heard. In doing so, it relied on cases

which held that: “(a)n inmate's right of unfettered access to the courts is as fundamental a right as any other he may hold. . . . All other rights of an inmate are illusory without it’ ” McCary v. Sullivan, 509 F.2d 1332, 1337 (5th Cir 1975). It also relied on Adams v. Carlson, 488 F.2d 619, 630 (7th Cir. 1973) where the Court stated that: “Citation of authority is hardly needed for the proposition that an inmate's right of unfettered access to the courts is as fundamental a right as any other he may hold. All other rights of an inmate are illusory without it, being entirely dependent for their existence on the whim or caprice of the prison warden.” Citations omitted.

In addressing whether a life prisoner, on parole⁹ was barred by its civil death statute from bringing a claim for personal injury, the Oklahoma Supreme Court in Davis v. Pullium, 484 P.2d 1306, 1308 (OK 1971) stated no, noting that that:

Even though the State had pronounced him ‘civilly dead’, he was allowed his mortal existence. Perhaps, we should do the same. Stripped of his civil rights, he nevertheless remains a person and a citizen. Even naked citizenship alone is meaningful and priceless. While a convicted felon may be disenfranchised, denied the right to hold office or otherwise not allow to participate in matters of government, or to enjoy the full fruits of citizenship, he nevertheless cannot be regarded as human waste. Constitutionally, he still enjoys

⁹ Unlike R.I.G.L. § 13-6-1, the Oklahoma statute did not state the period of civil death was limited to while the inmate was imprisoned, stating rather “Civil death. ‘A person sentenced to imprisonment in the state prison for life, is thereby deemed civil dead.’” Title 21 O.S.1961, Section 66.

matters of self-preservation. Actions affecting his existence, safety and personal liberties are natural rights which are fully and perpetually protected. ‘This view is in accord with modern day decisions and penal reforms, which have moved away from the punitive concepts of the early common law.

In Mehdipour v. Wise, 65 P.3d 271 (Ok 2003), the Oklahoma Supreme Court furthered its holdings in an action where an inmate sued his lawyers for abuse of process, and the lawyer responded that the suit should be dismissed as the inmate was civilly dead. The Mehdipour Court stated that the language of their civil death statutes:

in the absence of other recognized and established principles of law, would seem to divest a citizen of all rights whatsoever and render [the inmate] absolutely civiliter mortuus, but the principles of law which this verbiage literally imports had its origin in the fogs and fictions of feudal jurisprudence and doubtlessly has been brought forward into modern statutes without fully realizing either the effect of its literal significance or the extent of its infringement upon the spirit of our system of government. *Id.* at 273.

The Court then found that a literal construction of the civil death statute in question could not be justified, as it would lead to a result in conflict with important policies of the law finding that their Statute violated the Oklahoma equal protection clause as it denied the Plaintiff his constitutional rights to a remedy.¹⁰ It held that despite his status as a prisoner, their Civil Death Act:

¹⁰ Art. 2, § 6 of the Oklahoma Constitution provides: “The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or

“[did] not deprive Plaintiff of his right to file and be heard on his non-constitutionally-based claim against the Defendants.” Id. 274.

Putting aside the fact that the Civil Death Act itself does not provide a manner in which the Appellants’ can petition the State courts and be heard, the Appellees have argued before that the Civil Death Act is legitimate because of the relationship between the statute and the objective of punishing the Appellants. While punishment is certainly a legitimate objective of a punitive statute, particularly where someone has committed a crime so reprehensible that it resulted in a life sentence, there is no understandable justification for removing from a prisoner his right to be heard in Court even before it arises. From a prior restraint perspective, as Learned Hand put it, the State must prove the impossible, namely that “the gravity of the ‘evil,’ discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.” United States v. Dennis, 183 F.2d 201, 212 (2nd Cir. 1950), aff’d, 341 U.S. 494 (1951). How the State can put forth an argument that addresses the restraint on the Appellants’ speech prior to the time that speech arises is mysterious at best.

reputation; and right and justice shall be administrated without sale, denial, delay or prejudice.”

The Civil Death Act denies Appellants their rights of free speech rights and ability to seek a remedy and puts the Appellants in a position where they cannot, under the State Constitution, challenge the conditions of their confinement, even when those conditions subject them to the States' abject negligence in caring for them or deliberate impingement on their constitutional rights. At the extremes, such an interpretation of punishment literally allows RIDOC, and all other persons or entities at the ACI to do whatever they want to the Appellants', perhaps short of killing them, irrespective of how harsh, severe, or bizarre, and leave Appellants' with no state court redress. There is no justification for such an egregiously punitive regulatory statute which acts to prevent a suit before its basis is even established. It is not narrowly tailored to any legitimate state purpose which would justify its impingement on the inmate's fundamental rights of free speech.

- B. The Civil Death Act violates Article 1 § 8 of the Rhode Island Constitution and the Eighth Amendment to the United States Constitution because it enacts cruel and unusual punishment.

Article 1 § 8 and the Eighth Amendment impose¹¹ a constitutional limitation upon punishments: they cannot be “cruel and unusual.” This is a flexible standard “[n]o static ‘test’ can exist by which courts determine whether conditions of confinement are cruel and unusual, for the Eighth Amendment ‘must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.’” Rhodes v. Chapman, 452 U.S. 337, 346 (1984) (quoting Trop v. Dulles, 356 U.S. 86, 101 (1958) (plurality opinion)). While a decision under Article 1 § 8, and the Eighth Amendment must not be merely a judge's subjective views, the Constitution contemplates that ultimately a court's own judgment will be brought to bear on the question. Rhodes, 452 U.S. at 346.

In Trop, 356 U.S. at 94 the United States Supreme Court stated that:

The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards. Fines, imprisonment and even execution may be imposed depending upon the enormity of the crime, but any technique outside the bounds of these traditional penalties is constitutionally suspect.” *Id.* 100.

¹¹ In State v. Monteiro, 924 A.2d 784, 795 (R.I. 2007), this Court recognized that: “the Eighth Amendment's prohibition against cruel and unusual punishment and the provisions of article 1, section 8, of the Rhode Island Constitution are identical.” Federal decisions on the Eighth Amendment, are therefore, instructive on this Constitutional provision.

It went on to hold: “that use of denationalization as a punishment is barred by the Eighth Amendment. There may be involved no physical mistreatment, no primitive torture. There is instead the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development. The punishment strips the citizen of his status in the national and international political community. His very existence is at the sufferance of the country in which he happens to find himself.” *Id.* at 101.

While Appellants are not being stripped by the Federal Government of their rights to citizenship, the Civil Death Act accomplishes much the same purposes as it deprives Appellants of their basic rights provided to them by the Rhode Island Constitution by making them non-persons and non-citizens. It is therefore a cruel and unusual punishment if the Act was designed for a punitive purpose.

There cannot possibly be a reason to deprive Plaintiff of what is in essence his state personhood and citizenship by removing all of his civil rights as provided by the Civil Death Act. This statute on its face constitutes a cruel and unusual punishment, for the Plaintiff and all others sentenced to life in Rhode Island who are housed at the ACI. It puts the actions of the

state toward Appellants beyond reproach from the State Courts. See Hudson v. Palmer, 468 U.S. 517, 523 (1984) (“[P]risons are not beyond the reach of the Constitution. No “iron curtain” separates one from the other. Indeed, we have insisted that prisoners be accorded those rights not fundamentally inconsistent with imprisonment itself or incompatible with the objectives of incarceration.”). The Statute is unconstitutional as it violates these basic principles.

III. Rhode Island General Laws § 13-6-1 is unconstitutional on substantive due process grounds as it removes from Appellants their ability to be heard in State Court.

“[A]n individual claiming a protected interest must have a legitimate claim of entitlement to it. Protected liberty interests ‘may arise from two sources—the Due Process Clause itself and the laws of the States.’” Hewitt v. Helms, 459 U.S. 460, 472 (1983). In State v. Germane, 971 A.2d 555 (R.I. 2009), this Court stated that the due process clause of the federal constitution and the parallel provision of our state’s constitution “provide[] heightened protection against government interference with certain fundamental rights and liberty interests.” citing Washington v. Glucksberg, 521 U.S. 702, 720 (1997). It can hardly be disputed that a fundamental right exists to file a civil action and that right cannot be completely removed by a state statute.

Substantive due process addresses rights so “implicit in the concept of ordered liberty” that “neither liberty nor justice would exist if they were sacrificed.” Palko v. Connecticut, 302 U.S. 319, 325-26 (1937). “Such rights are more fundamental and profound than the several liberty interests that have been deemed sufficient to trigger the requirements of procedural due process. Consequently, the fundamental rights protected by substantive due process are substantially shielded from adverse state actions regardless of the procedures used by the state.” Germane, 971 A.2d at 583 citing Washington, 521 U.S. at 721. Substantive Due process provides a “guarante[e] more than fair process,” Washington v. Glucksberg, 521 U.S. at 719, it “bar[s] certain government actions regardless of the fairness of the procedures used to implement them,” Daniels v. Williams, 474 U.S. 327, 331 (1986).

In order to prevail on the substantive due process prong of a constitutional argument, Appellants are required to identify state impingement on one or more of the fundamental rights that the Courts have deemed are “objectively, deeply rooted in this Nation's history and tradition.” Washington, 521 U.S. at 720–21 (internal quotation marks omitted). Here, while Appellants argue that they have a constitutional right under the both the State and Federal Constitutions to file civil litigation and

appear before the Court, in the event this Court finds that there is no constitutionally explicit right to do so, Appellants suggest that alternatively, the Court can find that there is a fundamental right to file litigation in state court under the substantive due process clause.

As previously discussed, the Civil Death Act effectively supersedes all of Appellants' State Constitutional rights by denying them the ability to file a suit in State Court and have those constitutional rights enforced and puts them at the mercy of all those they interact with. There are no alternative means for the prisoners, who have life sentences, to vindicate their state rights other than the filing of a suit in State Court asserting these state claims and this statute prevents that. If the holding in Gallop was so limited to saying that Gallop could not bring a personal injury action, then this might be a very different argument, but, in its holding this Court made it explicitly clear that Gallop lost his ability to be heard by the Superior Court as the Civil Death Act removed its jurisdiction to hear Gallop's claims.¹² It

¹² In the Rhode Island Constitution, Article X section 1 provides that: "The judicial power of this state shall be vested in one supreme court, and in such inferior courts as the general assembly may, from time to time, ordain and establish." Article X section 2 provides specifically that: "The supreme court shall have final revisory and appellate jurisdiction upon all questions of law and equity." These provisions taken together imply that trial courts will make the first decision on matters of law and equity.

underlined that holding in Zab where it held the Family Court did not have the ability to hear his claims because he was civilly dead.

In Boddie v. Connecticut, 401 U.S. 371, 377 (1971), Justice Harlan, in discussing the rights of person's seeking access to the judicial process stated: "Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." Further, "In short, 'within the limits of practicability' a State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause." Id. at 379(Citation omitted). When the Civil Death Act is enforced, the Appellants are left with no meaningful opportunity to be heard in State court. There is no process available to them, outside of Court, to get a remedy from the Appellees for the wrongs done them.

In Bush v. Reid, 516 P.2d 1215 (Ak 1973), the Alaska Supreme Court, building on Boddie, found that their civil death statute, that deprived a parolee of his civil rights during the time he was in custody of the parole board denied him due process as it violated the fabric of justice by denying the petitioner the sole avenue they could seek for relief to "repair the breach" in their relations with others. The Civil Death Act does the same here.

The denial of access to the Rhode Island courts occurs pre-filing of any suit by the Plaintiff and pre-injury to the Appellants, denying Appellants “effective” and “meaningful” access to the courts. Bounds v. Smith, 430 U.S. 817, 822 (1977). In other jurisdictions, legislatures have ameliorated these effects by tolling the statute of limitations or allowing for a “spoliation of evidence” lawsuits, Rhode Island has done neither. Our statutes only allow for the appointment of an administrator of the prisoner’s estate by a creditor of the prisoner. See R.I.G.L. § 13-6-4. Our statute does not even allow the person sentenced to life in prison to ask for the appointment of an administrator to proceed with their claims while they are imprisoned and seemingly under Gallop any petition to do so would be dismissed as they are deemed civilly dead and have no standing to be heard by the Court. See R.I.G.L. § 13-6-4. The Civil Death act is effectively a bar to these claims altogether.

When addressing Civil Death statutes, courts have previously held these statutes were unconstitutional because they violated the principles of substantive due process and prevented access to the Courts. In Bilello v. A. J. Eckert Co., 42 A.D.2d 243, 246 (NY 3rd App Div. 1973) the Court, addressing a similar civil death statute as ours in New York stated that their statute violated the principles of substantive due process because it

prohibited an appellant from prosecuting his appeal, leaving him with no meaningful opportunity to be heard. In doing so, it called the statute a "relic of medieval fiction" and an "outdated and inscrutable common law concept" (Citations omitted).¹³

In McCulston, 483 So. 2d at 491 the Florida Court of Appeals held that a Florida statute that suspended the civil rights of persons convicted, imputing civil death while they were incarcerated, violated the prisoner's rights to due process under article 1, section 21, of the Florida Constitution, which guaranteed access to the courts to "all persons." In doing so, it stated that: "The courts of this state should scrutinize carefully any actions taken by the legislature which may place impermissible burdens on the exercise of the right of access to the courts. . . . In the absence of an overpowering public necessity, the legislature is without power to abolish such a right without providing a reasonable alternative. . . . 'The law abhors the denial of

¹³ The case of Johnson v. Rockefeller, 365 F. Supp. 377 (USDC SDNY 1973), summarily affirmed in Butler v. Wilson, 415 U.S. 953 (1974), is inapposite. It held that: "In actuality the effect of the statute is to deny [the inmate] only the right to go through the formal ceremony of marriage." It did not decide any issues with respect to claims for monetary damages of civilly dead prisoners, as it found those claims were mooted by enactments of the legislature during the period of the suit. *Id.* at 380. In addition, the Johnson Decision comes after the decision in Bilello, 42 A.D.2d at 246 where the New York Court, addressing the New York Statute held that life prisoners could proceed with civil litigation as that provision in the New York statute was unconstitutional.

access to the courts for any other reason than a willful abuse of the processes of the court.” Id. at 492. (citations omitted).

This court has previously, without setting forth an enumerated constitutional article and section, held that there is a right to file a civil action and appear in court. In Cok, 770 A.2d at 444, this court noted that while courts may place reasonable limits on the filings of litigants who abuse the judicial system this type of restriction should be drawn narrowly. To be enforced, “[n]ot only must an order restraining the filing of civil actions have a narrowness of scope, but it also must be supported by specific findings.” Id at 444. The Cok Court did not address whether this was constitutionally mandated by any provision of the State Constitution.

Similarly the Courts in In re Estate of Brown, 206 A.3d at 135 and in Laurence, 68 A.3d at 548–49, held, without holding there was a violation of any enumerated constitutional provisions, that there was a right to access the Court to file civil matters. The Laurence Court went on to state that an “[a]cross the board restrictions to court access ‘should be issued only when abuse is so continuous and widespread as to suggest no reasonable alternative,’” Id. at 548-49 citing Cok, 770 A.2d at 444. As previously stated, there is no proven abuse of the system by inmates sentenced to life in prison that as a group justifies this blanket restriction of access to the State

Courts. Similarly, the Statute does not create a temporal limitation, but one that applies for the entire time an inmate is serving a life sentence at the ACI with statutes of limitations frequently running during the inmates' imprisonment.

As Appellants have a right, not enumerated by the Constitution, to appear before a court and be heard on their civil matters, their substantive Due process rights are denied by the application of the Civil Death Act which divest the Superior court of authority to hear their claims.

- IV. The removal of Appellants' property rights, attendant to claims that exist after they were sentenced to life at the ACI, violates principles of procedural due process of law applicable under both the Fifth Amendment and Fourteenth Amendment to the United States Constitution and Article 1 § 2 of the Constitution.

A chose in action, such as a claim for personal injuries, is a property right which vest in the individual who was hurt at the time of injury.

Chesapeake Utilities Corp. v. Hopkins, 340 A. 2d 154 (De 1975). See also, Bush, 516 P.2d at 1291. Both Appellants were vested with these property rights when they were injured due to the conduct of the Appellees.¹⁴ Neither of these Appellants were provided with any procedural due process of law prior to being deprived of their property rights which vested upon their

¹⁴ Qualified immunity was waived by the State under R.I.G.L. § 9-31-1 subject to the limitations set forth in R.I.G.L. § 9-1-15

injury because of the application of the Civil Death Act. They have been, under the decision in Gallop, denied all access to the court to have the merits of their claims heard.¹⁵

There was no pre-deprivation process involving Appellants' tort claims prior to them being taken by this statute. At no time prior to being injured and vested with those claims could Appellants have known the nature of any of their potential claims that might exist for them in the future, so they were not, and could not, be anticipated when they were sentenced. Similarly, there is no grievance procedure or administrative procedure for Appellants' to follow with respect to their injury claims against the ACI which would meet the requirements of procedural due process. Even if there was some required grievance procedure for inmates who are injured at the

¹⁵ An argument that the State, when it enacted the Torts Claim Act, knew that it was carving out an exception based on the Civil Death Act fails. First, as per the claims against the contractor Global Tel*Link Corporation, there is no need for the tort act to apply. Second, the Statute provides: "The state of Rhode Island and any political subdivision thereof, including all cities and towns, shall, subject to the period of limitations set forth in § 9-1-25, hereby be liable in all actions of tort in the same manner as a private individual or corporation, provided however, that any recovery in any such action shall not exceed the monetary limitations thereof set forth in the chapter." R.I.G.L. § 9-31-1, making it apparent that the claims of Appellants arise out of the common law and not a statute. R.I.G.L. § 9-31-1 constituted a full waiver by the state of its defense to those claims by inmates. See Gallop v. Adult Correctional Institutions, 218 A.3d 543, 545 (R.I. 2019) (Noting that Plaintiff's complaint asserted, or attempted to assert, numerous common law claims for various types of negligence against the ACI and others).

ACI to follow, such a process would not apply to Appellant Zab's claims against the contractor. This taking of the Appellants' property rights, before they have even vested, by the Civil Death Act violates the procedural due process guarantees of the Fifth Amendment and Fourteenth Amendment to the United States Constitution and Article 1, Section 2 on the Rhode Island Constitution.

The basic guarantee of procedural due process is that, "before a significant deprivation of liberty or property takes place at the state's hands, the affected individual must be forewarned and afforded an opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Amsden v. Moran, 904 F.2d 748, 753 (1st Cir.1990) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). No rigid taxonomy exists for evaluating the adequacy of state procedures in a given case; rather, "due process is flexible and calls for such procedural protections as the particular situation demands." Morrissey v. Brewer, 408 U.S. 471, 481 (1972). The problem here is that there was no process was given to Appellants' at all with respect to their injury claims before they were taken. The Appellants were absolutely deprived of their chose-based property rights with no procedural due process related to the incidents in which they were injured. Yet, as this Court determined in Gallop, the Superior Courts have no jurisdiction to entertain

Appellants' claims, so they have no ability to seek enforcement of their chose property rights.

As noted by the Supreme Court in Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972)

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims.

Roth, 408 U.S. at 577. As the property right did not vest until they were injured, there is no way that procedural due process requirements could be satisfied on the Appellants' claims through the criminal system, as they did not yet exist.

In other context, it is clear that Appellants, who are inmates, are granted procedural due process rights attendant to the taking of their property such as the interception of their mail, Starr v. Knierman, 474 Fed. Appx. 785 (1st Cir. 2012), or amounts held in their inmate accounts. Young v. Wall, 642 F.3d 49, 54 (1st Cir. 2011). Or, more broadly when an inmate

asserts a 42 U.S.C. § 1983 action against a State Officer and the State is ordered to pay the inmate sums. The state cannot simply take that money.¹⁶

Here, the Appellants are simply denied all of the property rights they have in their injury claims under R.I.G.L. § 13-6-1, a Statute passed by the State, without any process at all which is unconstitutional from a procedural due process perspective. Accordingly, the statute should be declared unconstitutional.

V. Appellant Zab's Claims Are Not Barred By Res Judicata or Collateral Estoppel

Neither res judicata nor collateral estoppel bar the Appellant Zab's claims. As a first note, at the time the matter was filed in Ferreira v. A.T. Wall, 2016 WL 8235110 (D.R.I. 2016), the Appellant had not even been injured yet. Similarly, Zab could not be asked to file his claim for injuries, in a suit in which he and three others raised a denial of permission to marry.

¹⁶ Assuming Zab asserts a valid federal claim under 42 U.S.C. § 1983 for the violation of his eighth amendment rights and received an award of damages for the actions of an individual correctional officer, where would that award of damages go? He has been imprisoned since 2008 when he was sentenced to life. Where does the federally awarded money damages that vest to Zab after his "civil death" go once its paid? Zab, alive by Federal Law must prosecute the action in his own name, not by an executor or administrator, so how do the damages flow to the estate, if it is argued they do? See Smith v. Estate of Catterall, 107 R.I. 729 (1970) for premise that to be distributed, the asset must be one owed to, or a part of the estate of, the decedent at the time of their death.

Appellant has never before argued that Rhode Island General Laws § 13-6-1 is unconstitutional in that it bars him from filing a civil action and exercising basic rights available to him under the state constitution. The Appellant previously challenged the Appellee's enforcement of a prison policy against him that prevented him from marrying his fiancé in Federal Court under the United States Constitution. Appellant could not have brought his claim for violation of the provisions of the Rhode Island Constitution in Federal Court. See Murray v. Vose, 1999 WL 482395 (D.R.I. 1999) (“The federal court has no jurisdiction to hear any claim that does not raise a federal constitutional issue.”)

As per Zab v. Zab, 203 A.3d 1175 (R.I. 2019), Appellant was arguing in his 2017 motion that because he was civilly dead, he should be allowed to have his invalid marriage, which occurred while he was imprisoned for life, sealed and expunged. See Zab v. Zab, P13-1396. The Family Court found that the marriage was binding. See order Zab v. Zab, P13-1396.

This Court, on appeal, sua sponte, determined that Zab had no standing to be before it because the Family Court had no jurisdiction to hear his claim on the merits. The fact that the Court did not have the authority to hear his claim on the merits was not ever raised below in the Family Court. Indeed, this Court noted: “Before this Court, plaintiff argues that the Family

Court misinterpreted 13-6-1 and, thus, erred in denying the motion to seal because his marriage to Katherine was invalid. However, before we address plaintiff's assignment of error, we must first determine whether plaintiff, who, based upon the imposition of sentence of life imprisonment, is deemed "civilly dead" in accordance With 13-6-1, had the legal capacity to seek relief in the Family Court. We conclude that the Family Court had no authority to entertain any issue except whether plaintiff is in fact civilly dead." Unlike Gallop, Zab was not allowed at the Family Court the opportunity to fully develop and argue the constitutionality of the statute as it pertained to the jurisdiction of the trial courts to hear his claim as the issue was not raised and the decision in Gallop had not yet been entered raising this issue to his attention. Indeed, the Family Court founds Zab's marriage while incarcerated and serving a life term at the ACI valid, essentially holding the Civil Death Act did not apply to it.

"The doctrine of collateral estoppel provides that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." State v. Pacheco, 161 A.3d 1166, 1172 (R.I. 2017). There was no ultimate issue of fact determined in any of Appellant's prior litigation that dealt with Zab's ability to appear before the Superior Courts where he had

challenged the constitutionality of the state statute itself on any state constitutional grounds. “Collateral estoppel applies where there exists “(1) an identity of issues, (2) the previous proceeding must have resulted in a final judgment on the merits, and (3) the party against whom collateral estoppel is asserted must be the same or in privity with a party in the previous proceeding.” Pacheco, 161 A.3d at 1172. There was no identity of the issues in any of the underlying actions.

To avoid unfairness, courts have declined to apply collateral estoppel” where its application would be inequitable.” Casco Indemnity Co., v. O’Connor, 755 A.2d 779, 782 (R.I. 2000). (Collateral estoppel cannot apply where the party against whom it is being applied did not have a full and fair opportunity to litigate the issue or little incentive to litigate it.) see also Foster–Glocester Regional School Committee v. Board of Review, 854 A.2d 1008, 1017 (R.I. 2004) (same). It would be inequitable to apply it here.

At no point prior to Gallop was there a decision by this Court that stated that the Civil Death Act divested the trial courts of this state of their jurisdiction to hear the merits of Appellant Zab’s claims. In Zab, 203 A.3d 1175, the issue was not raised in the lower court and not briefed by Appellant in his 2017 motion which preceded the Gallop decision in 2018 which put forth this bar to his action.

At no point in Ferreira, 2016 WL 8235110 (D.R.I. 2016) did Appellees ever argue that the Appellant Zab had no right to file an action in State Court due to the Civil Death Act, that action was brought in Federal Court, where Zab could only properly be heard on those Federal Constitutional claims he could brought with his other co-plaintiff's under 42 U.S.C. § 1983. At no time did Appellant ever argue that his rights under the cited articles of the State Constitution were at issue, nor could he have.

This case is not a proper place for claim preclusion either based on res judicata. As noted in ElGabri v. Lekas, 681 A.2d 271, 276 (R.I. 1996), the Restatement (Second) of Judgments “recommends that the doctrine of res judicata be applied to those matters actually litigated between parties, as well as those that are derived from a “series of connected transactions.” See 1 Restatement (Second) Judgments § 24 “[T]he doctrine “serves as an ‘absolute bar to a second cause of action where there exists identity of parties, identity of issues, and finality of judgment in an earlier action.”” ElGabri, 681 A.2d at 275.

First, there was no identity of the parties in the Zab v. Zab matter as the State was not involved, and in Ferreira, issues as to the constitutionality of the Civil Death Act under State Law were not raised in a Federal Court or argued. The prior litigation involving Zab involved very different claims and

issues. Accordingly, these principles do not act as a bar to Appellant Zab's challenges to the Civil Death Act.

CONCLUSION

WHEREFORE, Appellants request that Rhode Island General Law § 13-6-1 be declared unconstitutional for the reasons set forth herein and that the matters be remanded to Superior Court for further proceedings therein.

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 18(B). 1.

This Appellant brief contains 10, 274 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/ Sonja L Deyoe
Signature of Filing Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March 2021, I filed a copy of the above memorandum in the Tyler Management System and filed it therein to the Supreme Court and all counsel of records. I further certify that hard copies of this brief will be delivered in accordance with the Appellate Rules of Civil Procedure.

/s/ Sonja L. Deyoe