STATE OF RHODE ISLAND SUPERIOR COURT
PROVIDENCE S.C.

RICHARD PAIVA

v. P.C. 17-1486

JEFFREY ACETO, et al.

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS.

I. FACTS.

Plaintiff has asserted claims against the Defendants in this case under 42 U.S.C. § 1983 seeking redress for violations of his constitutional rights specifically Articles I §§ 2, 5, 8 and 21 of the Rhode Island Constitution and the First, Eighth, and Fourteenth Amendments to the United States Constitution as well as under Rhode Island General Laws § 42-56-1[1] (a)(1) and (a)(2) and 42-56-10 (11), (16) and (22).[2] He seeks declaratory and injunctive relief as well as damages.

[1] R.I.G.L. § 42-56-1 (a) states: "The legislature finds and declares that:
(1) The state has a basic obligation to protect the public by providing institutional confinement and care of offenders and, where appropriate, treatment in the community;
(2) Efforts to rehabilitate and restore criminal offenders as law-abiding and productive members of society are essential to the reduction of crime;

[2] R.I.G.L. § 42-56-10 states: "In addition to exercising the powers and performing the duties, which are otherwise given to him or her by law, the director of the department of corrections shall:
…
(11) Establish, maintain, and administer programs, including, but not limited to, education, training, and employment, of persons committed to the custody of the department, designed as far as practicable to prepare and assist each person to assume the responsibilities and exercise the rights of a citizen of this state;
…
(16) Maintain adequate records of persons committed to the custody of the department;
…
(22) Make and promulgate necessary rules and regulations incident to the exercise of his or her powers and the performance of his or her duties, including, but not limited to, rules and regulations regarding nutrition, sanitation, safety, discipline, recreation, religious services, communication, and visiting privileges, classification, education, training, employment, care, and custody for all persons committed to correctional facilities.

In his amended complaint, Plaintiff alleges that one or more of the Defendants have subjected him to various conditions of imprisonment that if true, are disturbing. First, he alleges that there are mice in his cell that are peeing and defecating on his clothing, bedding and cell floor on a routine basis, that Defendants are aware of this, and that Defendants are doing nothing about it. (¶7). This he alleges violates the Eight Amendment to the United States Constitution and Article I § 8 of the Rhode Island Constitution. (¶69).

He alleges that the Defendants have failed to issue him socks, boxer shorts, t-shirts, thermals and a winter hat, refusing in fact to give him thermals or a winter hat since he was incarcerated in 2009, and that the clothing that he was issued has been worn and disposed of after becoming un-wearable. (¶14). Accordingly, he alleges that he is now faced with the choice of sleeping naked with woman prison guards around him or giving up his recreation during the winter months. (¶18). This he alleges constitutes cruel and unusual punishment in violation of the Eight Amendment to the United States Constitution and Article I § 8 of the Rhode Island Constitution and R.I.G.L. § 42-56-1(a)(1). (¶70).

He next alleges that due to lack of exhaust fans in the showers in the cell blocks, that steam from the showers is entering the Plaintiff's cell, causing his bedding, clothing, and personal items to become moldy, and causing him to suffer from chronic sinus problems and sore throats. (¶54, 56). This he alleges constitutes cruel and unusual punishment and a violation of the Eighth Amendment to the United States Constitution and Article I § 8 of the Rhode Island Constitution. (¶78-79). He also alleges that Defendants Meleo, Aceto, and Cloud forged clothing records which constitute a violation of the Fourteenth Amendment to the United States Constitution, Article I § 2 of the Rhode Island Constitution and R.I.G.L. § 42-56-10 (16), (22). (¶72).

He next alleges that, while in solitary confinement, he was denied all access to any newspaper or personal photographs, essentially leaving him completely cut off from the world as he was, in

solitary confinement, denied all visitation and telephone calls. (¶ 37, 38). This he alleges constitutes a violation of the Freedom of Speech Clause of the First Amendment to the United States Constitution and Article I § 21 of the Rhode Island Constitution. (¶73).

He also alleges that while in solitary confinement, the Defendants Aceto and Cloud failed to ensure that he received an hour of outdoor recreation each day and a fifteen minutes shower as was required under DOC Policy #11.01-6, and that instead he received one half hour of recreation a day. (¶67). This he alleges constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, Articles I §§ 5, 8 of the Rhode Island Constitution, R.I.G.L.§ 42-56-1 (a)(2), and R.I.G.L. § 42-56-10(11). (¶76-77).

He lastly alleges that Defendant Wall, despite his obligation to provide rehabilitation, is denying the Plaintiff the ability to participate in any programming and thus forcing him to remain idle, in essence warehousing him. (¶43, 44). This he alleges constitutes a violation of the Equal Protection clause of the Fourteenth Amendment and Article I § 5 of the Rhode Island Constitution. (¶75).

Defendants seek to dismiss the complaint in its entirety based on R.I.G.L. § 13-6-1, claiming that its provisions remove subject matter jurisdiction from this Court and deprive the Plaintiff of standing to file this lawsuit as his "death" has occurred. This is in error as the Statute cannot bar him from proceeding with his claims under Federal Law under the Supremacy Clause of the United States Constitution and because the statute itself is unconstitutional under the provisions of the Rhode Island Constitution as it cannot survive a strict scrutiny analysis.

II. STANDARD.

As was noted in Palazzo v. Alves, 944 A.2d 144, 149-50 (2008), when ruling on a motion to dismiss, the Court "examines the allegations contained in the plaintiff's complaint, assumes them to be true, and views them in the light most favorable to the plaintiff. Ellis v. Rhode Island Public Transit Authority, 586 A.2d 1055, 1057 (R.I. 1991); see also Builders Specialties Co. v. Goulet, 639 A.2d 59, 60 (R.I. 1994); Rhode Island Affiliate, ACLU, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989). '[T]he sole function of a motion to dismiss is to test the sufficiency of the complaint,' and thus this Court need not look further than the complaint in conducting our review. See Bernasconi, 557 A.2d at 1232. The grant of a Rule 12(b)(6) motion to dismiss is appropriate 'when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim.'"

When ruling on a question of a statute's unconstitutionality, the party raising the issue of unconstitutionality has the burden of proving that fact beyond a reasonable doubt. State v. Garnetto, 75 R.I. 86, 92 (1949); see also Prata Undertaking Co. v. Bd. of Embalming & Funeral Directing, 55 R.I. 454, 461 (R.I. 1936). Unless an act is unmistakably in excess of legislative power, a court should not construe a statute in a manner that renders it unconstitutional. See In re Christopher S., 776 A.2d 1054, 1057 (R.I 2001). This Court is required to "make every reasonable intendment in favor of the constitutionality of a legislative act" and draw all presumptions in favor of its constitutionality. Garnetto, 75 R.I. at 92 (citing Gorham v. Robinson, 57 R.I. 1 (R.I. 1936)).

III. ARGUMENT.

The Defendants' motion to dismiss the complaint must fail in its entirety. First, R.I.G.L § 13-6-1, the so-called "Civil Death Act" is unconstitutional under 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 to redress violations of his rights under the First, Eighth, and Fourteenth Amendment to the

United States Constitution as well as under Rhode Island General Laws § 42-56-1 (a)(1) and (a)(2) and 42-56-10 (11), (16) and (22). Second, R.I.G.L. § 13-6-1 is unconstitutional under Article I of the Rhode Island Constitution Sections 2 and 5 in that it fails a strict scrutiny analysis because it denies Plaintiff his rights to due process, equal protection under the laws, and the right to a remedy for the Defendants' violations of Articles I §§ 2, 5, 8 and 21 of the Rhode Island Constitution and for their violations of the First, Eighth, and Fourteenth Amendment to the United States Constitution as well as Rhode Island General Laws § 42-56-1(a)(1) and (a)(2) and 42-56-10 (11), (16) and (22).

A. R.I.G.L. § 13-6-1 cannot bar an inmate from proceeding with a legal action in state court asserting a 42 U.S.C. § 1983 action for violation of the rights secured to him by the United States Constitution.

Rhode Island General Laws § 13-6-1 provides:

> Every person imprisoned in the adult correctional institutions for life shall, with respect to all rights of property, to the bond of matrimony and to all civil rights and relations of any nature whatsoever, be deemed to be dead in all respects, as if his or her natural death had taken place at the time of conviction. However, the bond of matrimony shall not be dissolved, nor shall the rights to property or other rights of the husband or wife of the imprisoned person be terminated or impaired, except on the entry of a lawfully obtained decree for divorce.

The First Amendment to the United States Constitution guarantees that government will make no law abridging the right of the people to petition the government for redress of grievances. Central to this right to petition is the right of access to the courts by all people, including incarcerated individuals. California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510, (1971); Johnson v. Avery, 393 U.S. 483 (1969). Accordingly, the United States Supreme Court has held that inmates cannot be denied the opportunity to petition courts for writs of habeas corpus, Ex Parte Hull, 312 U.S. 546, 85 L. Ed. 1034, 61 S. Ct. 640 (1941), and any restriction which unduly impinges upon a prisoner's right to seek habeas corpus relief is invalid. Johnson v. Avery, supra. The Supreme Court has expanded this principle and recognized that prisoners possess the right of access

to courts for the purpose of filing suits that seek the redress of constitutional violations. Procunier v. Martinez, 416 U.S. 396, 419 (1974); see Cruz v. Beto, 405 U.S. 319, 321 (1972). These cases support the general proposition that inmates cannot be denied access to courts to seek relief from or remedies for certain unconstitutional activities which are intimately and directly related to their incarceration, such as the Plaintiff is doing in the instant action.

42 U.S.C. § 1983 authorizes a "suit in equity, or other proper proceeding for redress" against any person who, under color of state law, "subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution." Plaintiff's complaint states such claims. Plaintiff is asserting claims for violation of his constitutional rights against the Defendants that challenge the conditions of his prison confinement, seeking monetary and injunctive relief. These claims may be brought pursuant to § 1983 in the first instance. See Muhammad v. Close, 540 U.S. 749, 751 (2004) (per curiam).

In Haywood v. Drown, 556 U.S. 729, 736 (2008), an inmate filed a 42 U.S.C. § 1983 action in a New York State Court against individual corrections officers and the United States Supreme Court held that a New York Statute that prevented the inmate from suing the individual officers because it removed subject matter jurisdiction from the State Court must fail in light of the provisions of 42 U.S.C. § 1983 which otherwise allowed the inmate to sue the officers individually. In so holding, the Supreme Court stated: "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.' . . . In other words, although States retain substantial leeway to establish the contours of their judicial systems, they lack authority to nullify a federal right or cause of action they believe is inconsistent with their local policies. 'The suggestion that [an] act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal

contemplation does not exist.'" (citations omitted). This principle has been recognized by the Rhode Island Supreme Court in L.A. Ray Realty v. Town Council, 698 A.2d 202, 214 (R.I. 1997) where our Court stated: "state law requirements may not be applied if their application would contravene the purpose of a federal law or policy, or if different outcomes would result depending on whether 42 U.S.C. § 1983 claims were brought in federal or state court, thereby thwarting the federal interest in uniformity." It is without question, therefore, that the Plaintiff may assert his 42 U.S.C. § 1983 claims in this Court for violation of his constitutional rights irrespective of what R.I.G.L. § 13-6-1 provides.

As the Court stated in Cooper v. Aaron, 358 U.S. 1 (1958), "[t]he command of the Fourteenth Amendment is that no "State" shall deny to any person within its jurisdiction the equal protection of the laws. This includes the Federal Laws. "A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, . . . denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning." Ex parte Virginia, 100 U.S. 339, 347 (1879). Thus, the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, see Virginia v. Rives, 100 U.S. 313 (1879); Pennsylvania v. Board of Directors of City Trusts of Philadelphia, 353 U.S. 230 (1957); Shelley v. Kraemer, 334 U.S. 1 (1948); or whatever the guise in which it is taken, see Derrington v. Plummer, 240 F.2d 922 (5th Cir. 1956); Department of Conservation and Development v. Tate, 231 F.2d 615

(4th Cir. 1956). Article VI of the Constitution makes the Constitution the "supreme Law of the Land."

As was noted by United States Supreme Court Chief Justice Taney in Ableman v. Booth, 61 U.S. 506, 534 (1859), every state legislator, executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3, "to support this Constitution." this requirement reflected the framers' "anxiety to preserve it [the Constitution] in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a State . . . ." Ableman, 61 U.S. at 534. "If the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the constitution itself becomes a solemn mockery . . . ." United States v. Peters, 9 U.S. 115, 136 (1809).

By attempting to enforce R.I.G.L. § 13-6-1, the State is arguing that the Plaintiff's ability to enforce his Federal Rights should be nullified and he should be barred from bringing a suit. The state is essentially arguing that irrespective of the conduct of its prison guards, which in this instance includes subjecting Plaintiff to mice excrement, lack of proper clothing, mold, and inhumane conditions in solitary confinement, the Plaintiff has no right to bring suit to challenge those conditions and enforce the rights that are available to him through the United States Constitution, the State Constitution and 42 U.S.C. § 1983. Such a contention gives the State, by the Department of Corrections and its employees, the absolute right to treat prisoners, such as the Plaintiff, who have received life sentences in whatever manner they choose. The State could choose not to feed these individuals, deny them medical care, torture them, or do anything short of execute them and prisoners, such as the Plaintiff would, under the Defendants' analysis, have absolutely no redress available to them from the Court.[3]

[3] Habeas Corpus is likely unviable to challenge prison conditions as a court may only grant a petition for writ of habeas corpus if the petitioner can show that "he is in custody in violation of the

The State's position that the case should be dismissed is in error. The statute is unconstitutional and in direct conflict with the Supreme Court's decision in Haywood v. Drown, 556 U.S. 729, 736 (2008). The plain language of the Federal Constitution provides that "this Constitution, and the laws of the United States which shall be passed in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the Contrary notwithstanding." Ableman, 61 U.S. 517. Rhode Island General Laws § 13-6-1 is unconstitutional to the extent it states that the Plaintiff, and other similarly situated, may not proceed with a suit in State Court under 42 U.S.C. § 1983 to seek a remedy through 42 U.S.C. § 1983 for the violation of their otherwise enumerated Constitutional Rights.

Here, the decisions of the Federal Judiciary, and the Federal Laws have outpaced a Rhode Island Statue enacted in 1909, making it blatantly in conflict with a Federal Law, namely 42 U.S.C. § 1983, which allows suits to enforce the Plaintiff's constitutional rights and as a result R.I.G.L. § 13-6-1 is unconstitutional. Accordingly, the Statute cannot be construed to bar the Plaintiff's claims under 42 U.S.C. § 1983 for violation of his Federal Constitutional Rights. The motion to dismiss accordingly must be denied.

Constitution . . . ." 28 U.S.C. § 2254(a). A habeas corpus petition is the correct method for a prisoner to challenge the "legality or duration" of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), quoting, Preiser v. Rodriguez, 411 U.S. 475, 485, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973); Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases.

In contrast, a civil rights action pursuant to 42 U.S.C. § 1983 is the proper method for a prisoner to challenge the conditions of that confinement. McCarthy v. Bronson, 500 U.S. 136, 141-42, 111 S. Ct. 1737, 114 L. Ed. 2d 194 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at 574; Advisory Committee Notes to Rule 1 of the Rules Governing Section 2254 Cases. "Habeas jurisdiction is absent, and a § 1983 action proper, where a successful challenge to a prison condition will not necessarily shorten the prisoner's sentence." Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003).

B. Rhode Island General Laws § 13-6-1 does not survive strict scrutiny analysis and must be declared unconstitutional as it violates numerous provisions of the Rhode Island Constitution.

The Defendants argue that the Plaintiff is denied the ability to seek a remedy for the violation of his Constitutional Rights due to the application of Rhode Island General Laws § 13-6-1. This contention violates Article I, Section 2 of the Rhode Island Constitution which states: "... 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," and Article I, Section 5 of the Rhode Island Constitution that provides: "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."

R.I.G.L. § 13-6-1 can only be read to infringe on the constitutional rights of the Plaintiff and all other inmates serving life sentences as it literally suspends all of their civil rights. "'[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). Accordingly, to survive constitutional scrutiny, R.I.G.L. § 13-6-1 must pass the strict scrutiny test.

In order to justify such a statute under the strict scrutiny test, the state must demonstrate: (1) the existence of a compelling governmental interest, (2) that the challenged provision is necessary to advance that interest, and (3) that the provision is narrowly tailored to do so. See Austin v. Mich. State Chamber of Commerce, 494 U.S. 652, 657 (1990); see Citizens Against Rent Control/Coal. for Fair Hous. v. Berkeley, 454 U.S. 290, 298-300 (1981). It cannot do so here.

1. The Statute violates the Plaintiff's Right to Due Process guaranteed to him under Article I, Section 2 of the Rhode Island Constitution.

If this Court were to enforce the provisions of R.I.G.L. § 13-6-1, as the State request, it would abridge the Plaintiff's rights and deprive the Plaintiff of his ability to appear before this court to seek relief for the violation of both his Federal and State Constitutional Rights thus denying him due process under the laws. As was noted in the Rhode Island Supreme Court in L.A. Ray Realty v. Town Council, 698 A.2d 202, 213(R.I. 1997) "in procedural due process claims, the deprivation by state action of a constitutionally protected interest in 'life, liberty, or property' is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law."

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: "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." If R.I.G.L. § 13-6-1 were enforced, the Plaintiff would be left with no meaningful opportunity to be heard. There is no process available to him outside of Court by which the plaintiff can get a remedy from the Defendants for the wrongs done him which Plaintiff claims rise to the level of violations of Articles I §§ 2, 5, 8 and 21 of the Rhode Island Constitution and the First, Eighth, and Fourteenth Amendment to the United States Constitution as well as under Rhode Island General Laws § 42-56-1(a)(1) and (a)(2) and 42-56-10 (11), (16) and (22).

When addressing Civil Death statutes, courts have previously held they were unconstitutional and violated the Due Process Clause. 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 because it: "prohibits appellant from prosecuting his appeal, the statute is

unconstitutional as violative of the Fifth and Fourteenth Amendments of the United States Constitution" in as much as it violates both the Equal Protection and Due Process clause because it left the Appellant with no meaningful opportunity to be heard calling the statute a "relic of medieval fiction" and an "outdated and inscrutable common law concept" (Citations omitted).

Similarly, in McCuiston v. Wanicka, 483 So. 2d 489, 491 (Fla. 2d 1986) the Court 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. . . Any restrictions must be liberally construed in favor of the constitutional right. . . 'The law abhors the denial of access to the courts for any other reason than a wilful abuse of the processes of the court.'" Id. at 492. (citations omitted).

There is no justification that could possibly be put forward that substantiates the complete bar the Plaintiff and other inmates with life sentences face if R.I.G.L. § 13-6-1 is interpreted to strip from them their ability to file a civil action in this court. There is no compelling governmental interest that can possibly be served by denying Plaintiff, and other individuals who are serving life sentences, access to the Court to seek a remedy for the Defendants' constitutional violations. The statute as written is overly broad – denying the Plaintiff total access to court – and not narrowly tailored to one identifiable interest of the state. If the statute is upheld and the Plaintiff is denied all access to file civil actions in Court, the Plaintiff and others with life sentences are placed at great risk of harm as the Defendants will be able to do whatever they want to that class of prisoner, without the Plaintiff being able to seek any judicial remedy to rectify those wrongs and with almost complete

impunity. Accordingly, the Statute cannot survive a strict scrutiny analysis and the motion to dismiss must be denied on Due Process grounds.

2. The Statute violates the Plaintiff's rights to equal protection under Article I Section 2 of the Rhode Island Constitution and denies him the ability to remedy the Defendants' other constitutional violations guaranteed to him under Article I Section 5.

Rhode Island General Laws §13-6-1 as written denies to the Plaintiff his ability to exercise any of his civil rights while he is incarcerated with a life sentence. This denies to the Plaintiff equal protection under the law and his ability to seek a remedy which is guaranteed to him by Article I, Section 5 of the Rhode Island Constitution which provides: "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." In essence this means that despite claiming a violation of Articles I §§ 2, 5, 8 and 21 of the Rhode Island Constitution and the First, Eighth, and Fourteenth Amendment to the United States Constitution as well as under Rhode Island General Laws § 42-56-1 (a)(1) and (a)(2) and 42-56-10 (11), (16) and (22), the Plaintiff, because of this statute, is denied any remedy.

In Delorme v. Pierce Freightlines Co., 353 F. Supp. 258, 260 (Or. D.C. 1973), the Court using a much less stringent rational basis test than that which is required here due to the right to a remedy being set forth in our state constitution, found that inmates as a whole, under the Equal Protection Clause, could not as a group be prevented from filing civil litigation as while: "there is no dispute that the goals of preventing pointless litigation and rehabilitating prisoners are constitutionally permissible, [if the Oregon civil death statute] is to withstand the test of the Equal Protection Clause, defendants must also show that these goals are rationally related to the action taken by the State, which suspends the right of an imprisoned felon to litigate his legal claims. Defendants have not made such a showing. We find that the means used here to accomplish the

State's purposes are impermissibly broad. . . The State cannot reduce frivolous litigation by excluding from court an entire class of litigants because some members of the class may assert improper claims. Much less onerous ways are available to protect the judicial process. See Boddie v. Connecticut, 401 U.S. 371, 381-382, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971). We find no basis to believe the State's contention that rehabilitation is impaired by allowing prisoners to litigate their claims. The State's justifications are particularly unconvincing in light of the harsh effect on [Plaintiff] and other prisoners who may forever lose their access to the legal machinery to redress legitimate complaints. Others who do not forever lose their claims are forced to delay their actions months or years until their release from prison. Such delays frequently deny them relief."

Here, because the right to a remedy is set forth in Article I § 5 of the Rhode Island Constitution, an enumerated constitutional right is at issue and a strict scrutiny analysis applies. See Allard v. Department of Transp., 609 A.2d at 937. Simply put, there is no compelling governmental interest that can be stated that would justify denying the Plaintiff, a prisoner with a life sentence, complete access to the Court and "a remedy for all of the wrongs done to him" which is otherwise available to him under Article I § 5 of the Rhode Island Constitution to otherwise remedy his claimed violations of Rhode Island Constitution, Articles I §§ 2, 5, 8 and 21 and the First, Eighth, and Fourteenth Amendment to the United States Constitution as well as under Rhode Island General Laws § 42-56-1 (a)(1) and (a)(2) and 42-56-10 (11), (16) and (22). There cannot possibly even be a rational basis for this blanket denial.

The State has for years been sued by individual prisoners, to include prisoners who have been serving life sentences. There is nothing that would suggest that the Defendants and the State should get a free pass on the wrongs committed by the Department of Corrections and its employees against these inmates, whether that be as pled, as in this instance, due to mice and their excrement in the Plaintiff's cell and on his bedding and clothing, due to its failure to provide proper

clothing to the Plaintiff, and improper conditions of solitary confinement, or in some other instance due to what might even be more egregious conduct toward an inmate with a life sentence such as rape of the inmate, outright denial of medical care or food to the inmate, or even torture of that inmate at the hands of one of its correctional officers. [4] The State can put forth nothing that would support the denial of the total access to the Courts to avenge these wrongs that would support a justifiably narrowly tailored State interest that could be legitimate in light of these basic human rights issues that are remedied by these actions. Accordingly, the statute fails constitutional muster under the State Constitution, it should be declared unconstitutional and the motion to dismiss should be denied.

IV. CONCLUSION

WHEREFORE, Plaintiff request that the motion to dismiss be denied in full and that R.I.G.L. § 13-6-1 be declared unconstitutional for the reasons set forth herein.

Plaintiff,
Richard Paiva,

/s/ Sonja L. Deyoe
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[4] As stated in the 2016 Department of Corrections Fiscal Year Annual Population Report there were 241 inmates sentenced to life, with only 33 inmates of that total sentenced to life without parole. In the 2015 report, there were 250 inmates sentenced to life with only 33 inmates sentenced to life without parole. There was a total of 3183 on average incarcerated in 2015 and 3,068 in 2016.

NOTICE OF LIMITED ENTRY BY COUNSEL UNDER RULE 1.2 OF RULES OF PROFESSIONAL CONDUCT.

Counsel, Attorney Sonja L. Deyoe, Co-Operating Attorney with the R.I. ACLU hereby files this matter subject to a limited scope of representation agreement with Richard Paiva and will file a limited entry of appearance with this document. Counsel is entering only with respect to the opposition to the motion to dismiss in this matter, any court hearing and only those ancillary matters that may be necessitated to address the motion to dismiss in this case.

/s/ Sonja L. Deyoe

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of September 2017, I filed a copy of the above memorandum in the Superior Court Electronic Filing system and that it was served electronically on defense counsel and a copy thereof was hand delivered to the Attorney General on September 7, 2017 and a hard copy was delivered to judicial chambers on the same day.

/s/ Sonja L. Deyoe