UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JAMES LOMBARDI, and	:	
JOSHUA DAVIS	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. 19-0364**
	:	
GINA RAIMONDO, in her official capacity as Governor of the State of Rhode Island	:	
Defendant.	:	

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Defendant, Gina Raimondo, in her official capacity as Governor of the State of Rhode Island ("Defendant" or "State"), moves this Honorable Court to dismiss the Complaint ("Compl.," ECF 1) filed by Plaintiffs James Lombardi and Joshua Davis ("Plaintiffs"), which asks this Court to strike down a longstanding State statute. Plaintiffs' Complaint should be dismissed because their alleged injury is entirely speculative and they lack standing. Additionally, Plaintiffs fail to state a claim and their allegations lack merit as a matter of law. The State respectfully asks this Court to dismiss Plaintiffs' Complaint with prejudice. Alternatively, this Court should abstain because Plaintiffs' Complaint is based on speculation about an unsettled area of state law.

FACTS

A. Plaintiffs' Complaint

Plaintiffs are both inmates sentenced to life at the Adult Correctional Institutions ("ACI") in Rhode Island. Compl. ¶¶ 1-2, 6-7. Public court filings reveal that Lombardi was sentenced to life in prison after pleading guilty to first degree murder. *See State v. Lombardi*, P1-2018-0262A. Similarly, public court filings reveal that Davis was sentenced to life after pleading guilty to one

count of first-degree murder, one count of first-degree child molestation, and one count of kidnapping of a minor. *Davis v. State*, 124 A.3d 428 (R.I. 2015).

Lombardi alleges that on September 10, 2018, he injured himself on a footlocker at the ACI. Compl. ¶ 9. Lombardi claims that his injury was the result of negligence on the part of the Rhode Island Department of Corrections ("RI DOC"). Compl. ¶¶ 14. Davis alleges that on September 6, 2018, a RI DOC nurse administered him contaminated insulin. Compl. ¶ 18. Davis does not allege that he incurred any concrete damages, but nonetheless claims that the nurse's action constituted medical malpractice, battery, and cruel and unusual punishment under the Eighth Amendment. Compl. ¶¶ 20-22. Neither Plaintiff pleads that he filed a lawsuit based on these allegations.

Significantly, the instant lawsuit does not assert any cause of action related to the above-described alleged injuries. Instead, this lawsuit is solely an action for declaratory and injunctive relief asking this Court to overturn a longstanding Rhode Island statute, R.I. Gen. Laws § 13-6-1, based on Plaintiffs' contention that this so-called civil death statute *could* be applied to prevent them from pursuing negligence claims and an Eighth Amendment claim in Rhode Island state court. Compl. ¶ 28. Plaintiffs allege that "[b]ut for the Civil Death Act, Plaintiffs Davis and Lombardi would bring suit against the State, through the RIDOC, in state court for their aforementioned negligent conduct and, for Davis, under 42 U.S.C. § 1983 for the violation of his Eighth Amendment rights." Compl. ¶ 28.

In a single paragraph, Plaintiffs also sweepingly claim that Rhode Island's so-called civil death statute denies inmates sentenced to life at the ACI the right to file suit and be heard in Court; the right to petition the government or "access statutory rights;" the right to own property in the inmate's name; the right to enter into contracts for legal representation or other purposes; the right

to any gains they might receive from the prosecution of a personal injury claim; the right to be free of negligent or intentional conduct causing injury; and the right to protection of "other constitutional rights" for which 42 U.S.C. § 1983 provides a remedy. Compl. ¶ 29. Plaintiffs do not plead *any* facts regarding being denied any right to enter a contract, "access… statutory rights," or own property. Neither do they plead *any* facts about being denied any constitutional rights or suffering any injuries apart from their concern that they may not be able to pursue lawsuits in state court related to their allegations about the footlocker and administration of insulin.

Plaintiffs' single-count Complaint asserts that Rhode Island's civil death statute violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983. Compl. ¶ 35. Plaintiffs also allege that Rhode Island's statute violates the Eighth Amendment to the United States Constitution and 42 U.S.C. § 1983 because it "imposes an excessive . . . punishment." Compl. ¶ 36. Additionally, Plaintiffs allege that the civil death statute violates the First, Fifth, and Seventh Amendments to the United States Constitution and 42 U.S.C. § 1983 "in treating Plaintiffs as if they were dead and denying them basic civil, statutory, and common law rights, right [sic] to petition the government, and access to the courts." Compl. ¶ 37. Plaintiffs ask this Court to declare that Rhode Island's civil death statute is unconstitutional "as applied to bar an inmate serving a life sentence from proceeding in a civil action and to deny said inmates basic civil, statutory and common law rights as a violation of the First, Fifth, Seventh, and Eighth Amendments to the United States Constitution and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983." Compl. at p. 8-9. Plaintiffs also request a permanent injunction "preventing enforcement of the Civil Death Act" and attorneys' fees. Compl. at p. 8-9.

B. Rhode Island Courts Have Only Applied R.I. Gen. Laws § 13-6-1 To Restrict Inmates Sentenced to Life from Pursuing Certain State Law Actions.

Rhode Island General Laws § 13-6-1, sometimes known as the "civil death statute," provides:

> [e]very 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 of property or other rights of the husband or wife of the imprisoned person be terminated or impaired, except on the entry of lawfully obtained decree for divorce.

The Rhode Island Supreme Court first examined the civil death statute in *Bogosian v. Vaccaro*, 422 A.2d 1253 (1980). In that case, an inmate sentenced to life attempted to invoke the civil death statute to nullify an agreement into which he had entered. The Rhode Island Supreme Court rejected the inmate's argument and held that the inmate was not civilly dead at the time when he entered the agreement. *Id.* at 1254. The Supreme Court recognized the trial court's determination that the civil death statute "was intended to be a limitation on the assertion of any rights by a prisoner serving a life sentence rather than a shield that would insulate him or her from civil liability." *Id.* The Supreme Court likewise described the civil death statute as a "sanction" derived from of a broader world history of limiting the rights of criminals, noting that "the ancient Greeks were the first to strip criminals of their civil rights, including the right to appear in court, vote, make speeches, attend assemblies, and serve in the army." *Id.* at 1254, n.1.

The Rhode Island Supreme Court's next occasion to interpret the civil death statute came nearly four decades later in *Gallop v. Adult Correctional Institutions, et al.* 182 A.3d 1137, 1139 (R.I. 2018). The plaintiff in that case, who was an inmate sentenced to life, brought a state law negligence action against state defendants alleging that he was injured while incarcerated at the

ACI. *Id.* at 1139. The Rhode Island Supreme Court affirmed the trial justice's determination that R.I. Gen. Laws § 13-6-1 divested the Superior Court of the authority to hear the merits of the plaintiff's state law negligence action. *Id.* at 1141. The Court ruled that the civil death statute "unambiguously declares that a person . . . who is serving a life sentence, is deemed civilly dead and thus does not possess most commonly recognized civil rights." *Id*. Accordingly, the Supreme Court held that the plaintiff's ability to pursue his claim was "extinguished by operation of law once his conviction became final." *Id.* The Court concluded that the "trial justice prudently and accurately dismissed the case," and affirmed the decision. *Id.* at 1143. The Supreme Court soundly rejected the plaintiff's policy arguments about the wisdom of the civil death statute and recognized that "[r]epeal is the province of the Legislature." *Id.* at 1141.

In *Gallop*, the Rhode Island Supreme Court deliberately limited its holding to ruling that the civil death statute prevented the plaintiff from pursuing a *state law negligence* action. Although the plaintiff had attempted at the eleventh hour to amend his complaint to include a federal claim, the trial justice did not grant the motion to amend because it would have drastically altered the nature of the case on the eve of trial. *Id.* at 1144-45 (quoting trial justice: ". . . the fact is this case was a go for trial. It was a go on a negligence claim. And it was not a go on a civil rights claim. It's too late."). The trial justice did *not* rule that the civil death statute would bar a federal claim; the plaintiff simply had failed to timely plead one. Accordingly, the only issue properly before the Supreme Court in *Gallop* regarding the civil death statute was whether the trial justice correctly determined that the civil death statute bars a civilly dead inmate from pursuing a *state law negligence action*, which the Court answered in the affirmative.

The plaintiff nonetheless argued to the Supreme Court that it would be improper *if* the civil death statute was applied to bar him from pursuing a *federal* claim: "[b]efore this Court, plaintiff

argues that: . . . (2) the trial court erred because the civil death statute in Rhode Island, to the extent that it impairs a person's capacity to sue under 42 U.S.C. § 1983, is invalid under the Supremacy Clause of the United States Constitution; (3) any state law that precludes access to state remedies available to litigate claims for alleged violations of any federal rights under color of law is invalidated by § 1983. . . ." *Gallop*, 182 A.3d at 1139. However, the Court did not opine on these questions because the plaintiff had only pled a state law claim and the trial justice had only applied the civil death statute to dismiss that state law claim. The Supreme Court remanded the case for the trial justice to issue a formal ruling regarding whether the plaintiff could amend his complaint to include a federal claim because even though the trial justice had effectively denied the motion to amend when granting the defendants' motion to dismiss, she had never issued a formal ruling on the motion to amend. *Id.* at 1145. In harmony with longstanding jurisprudence counseling courts against unnecessarily deciding constitutional questions, *see, e.g., State v. Lead Indus. Ass'n, Inc.*, 898 A.2d 1234, 1239 (R.I. 2006), the Supreme Court deliberately did not opine on whether the civil death statute would bar a federal claim *if* the plaintiff had been allowed to amend his complaint to include one. *Gallop*, 182 A.3d at 1144-45.[1]

The Rhode Island Supreme Court next considered the civil death statute in the context of an appeal filed by inmate Cody-Allen Zab regarding a decision of the Family Court denying his motion to "seal the record" of his prior marriage. *Zab v. Zab,* 203 A.3d 1175 (R.I. 2019). In that case, Zab argued that the record of his prior marriage should be "sealed" because he is civilly dead, and thus was prohibited from entering into the marriage. *Id.* The Supreme Court cited *Gallop* and

[1] On remand, the trial justice formally denied the motion to amend, determining that it would be prejudicial to allow the plaintiff to radically alter the nature of his lawsuit so late in the litigation and after discovery had closed. *See* C.A. No: PC10-6627. The plaintiff's appeal of the trial justice's discretionary decision denying his motion to amend his complaint is currently pending before the Rhode Island Supreme Court. *See* SU-2018-0246-A.

determined that the plaintiff's case, which involved a decision related to state family law, should be dismissed because the plaintiff is civilly dead. *Id.*

At the time when the Supreme Court denied Zab's appeal, Zab also had a lawsuit pending in Rhode Island Superior Court against RI DOC. *See Zab v. Rhode Island Department of Corrections, et al.*, C.A. NO.: PM 2017-4195. Zab's lawsuit asserted a negligence claim and an Eighth Amendment claim, both based on the allegation that Zab injured himself by touching a radiator heating pipe in the prison. Shortly after the Rhode Island Supreme Court dismissed Zab's family law case based on the civil death statute, Zab (represented by the same attorney who now represents the Plaintiffs in the instant matter) filed a motion for summary judgement in his lawsuit against RI DOC, arguing that the defendants' affirmative defense based on the civil death statute should be struck as unconstitutional. The defendants in turn filed a motion for summary judgment arguing that the civil death statute barred Zab's negligence claim. The defendants also moved for summary judgment on Zab's Eighth Amendment claim, *not* based on the civil death statute, but instead based on Zab's failure to identify evidence that could support a claim for cruel and unusual punishment, and because the injunctive relief he requested was moot.

The Rhode Island Superior Court consolidated the hearing on the cross-motions for summary judgment in the Zab matter with a hearing on another case against RI DOC involving a civilly dead inmate, *Rivera v. Rhode Island Department of Corrections, et al.*, C.A. No.: PC-2017-0433. The plaintiff in the *Rivera* matter (who was also represented by the same counsel as Zab and the same counsel representing the Plaintiffs in the instant action) had only pled a negligence claim, on which RI DOC moved for judgment on the pleadings based on the civil death statute. Both Zab and Rivera argued that the Superior Court should not apply the civil death statute to bar their negligence claims because doing so would violate the state and federal constitutions. Even

though the state defendants *only* asserted the civil death statute as a defense to the plaintiffs' *state law negligence claims*, both plaintiffs also broadly argued that the civil death statute is unconstitutional because it supposedly impedes a whole host of other state and federal rights unrelated to the plaintiffs' negligence claims.[2]

On August 21, 2019, the Rhode Island Superior Court held a consolidated hearing on the *Zab* and *Rivera* matters and ruled in favor of the state defendants in both cases. The Rhode Island Superior Court, citing *Gallop*, determined that the civil death statute barred both plaintiffs' state law negligence claims, and granted defendants summary judgment on Zab's federal constitutional claim because of mootness and his failure to identify evidence that could establish an Eighth Amendment violation. The Rhode Island Superior Court did not accept the plaintiffs' argument that the civil death statute violated the state and federal constitutions. On September 11, 2019, the Superior Court entered orders in both cases granting the defendants' motions, denying Zab's summary judgment motion, and entering judgment in favor of the defendants. On September 16, 2019, Zab and Rivera both filed notices of appeal to the Rhode Island Supreme Court. To date, no Rhode Island state court has held that the civil death statute bars a federal cause of action, and the State did not assert the civil death statute as a reason to grant summary judgment on Zab's federal claim.

Notably, the Rhode Island District Court for the District of Rhode Island has also recently analyzed Rhode Island's civil death statute. In that case, which will be discussed further *infra*, an inmate and the woman he wished to marry challenged the statute's restriction on the ability of inmates sentenced to life to marry. *See Ferreira v. Wall*, No. CV 15-219-ML, 2016 WL 8235110

[2] The State does not wish to inundate this Court with the extensive briefing from the State court proceedings in the *Zab* and *Rivera* matters, but the briefing is publicly available on the state court docket and the State would be happy to provide the briefing if it would be helpful to the Court.

(D.R.I. Oct. 26, 2016) (Lisi, J.). The federal court determined that applying the civil death statute to prevent an inmate sentenced to life from marrying is constitutional and in harmony with United States Supreme Court precedent.

LEGAL STANDARD OF REVIEW

To survive a motion to dismiss for failure to state a claim upon which relief may be granted, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007). The Court must accept the plaintiff's allegations as true and construe them in the light most favorable to the plaintiff. *See id.* However, the Court need not credit bald assertions or unverifiable conclusions. *Aulson v. Blanchard*, 83 F.3d 1, 3 (1st Cir. 1996). Unverifiable conclusions, not supported by the stated facts, deserve no deference. *See Williams v. Wall*, 2006 WL 2854296 (D.R.I 2006).

Further, a "complaint must allege 'a plausible entitlement to relief.'" *ACA Fin. Gaur. Corp. v. Advest, Inc.*, 512 F.3d 46, 58 (1st Cir. 2008) (quoting *Twombley*, 550 U.S. at 555). These "minimal requirements are not tantamount to nonexistent requirements. The threshold may be low, but it is real – and it is the plaintiff's burden to take the step which brings his case safely into the next phase of the litigation." *Gooley v. Mobil Oil Corp.*, 851 F.2d 513, 514 (1st Cir. 1988).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 6778 (2009) (citing *Twombly*, 550 U.S. at 556). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citing *Twombly*, 550 U.S. at 556). Moreover, the Supreme Court has held that "we 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" *Id.* (citing *Twombly*, 550 U.S. at 556).

Although *facts* pled in the Complaint are accepted as true when passing upon a Motion to Dismiss, Plaintiffs' conclusory assertions or legal glosses on the meaning of state statutes or cases are entitled to no such presumption. *Mayfields v. Fair Isaac Corp.*, No. CA 14-327 S, 2015 WL 566444, at *2 (D.R.I. Feb. 10, 2015) ("conclusory allegations that merely parrot the relevant legal standard are disregarded, as they are not entitled to the presumption of truth" (quoting *Manning v. Boston Med. Ctr. Corp.*, 725 F.3d 34, 43 (1st Cir.2013))); *Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 10 (1st Cir. 2011) ("The *Iqbal* Court pointed to the allegation that the *Twombly* defendants had 'entered into a contract, combination, or conspiracy,' which had been disregarded by the *Twombly* Court, as an example of a conclusory statement that, though presented as an assertion of fact, simply describes the legal conclusion that the plaintiffs sought to infer from the other conduct alleged in the complaint."). This Court can take judicial notice of the statutes and case law applicable to Plaintiffs' claims and need not credit Plaintiffs' legal contentions about the legal meaning of the statute or case law. *See Mayfields*, 2015 WL 566444, at *2 ("[t]he court's assessment of the pleadings is context-specific, requiring the court to draw on its judicial experience and common sense . . . Where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but has not shown—that the pleader is entitled to relief . . .") (internal quotations and citation omitted).

ARGUMENT

A. Plaintiffs Lack Standing to Ask This Court to Strike Down a State Statute Based on Speculation About How Rhode Island Courts May Apply That Statute to Their Unfiled, Potential Lawsuits.

Plaintiffs' lawsuit derives from their hypothesis that Rhode Island courts would not permit them to pursue lawsuits in state court based on their respective allegations about being injured at the ACI. The crux of Plaintiffs' Complaint is their assertion that "[b]ut for" Rhode Island General

Laws § 13-6-1, they would file lawsuits in state court. Compl. ¶ 28. Plaintiffs' unfounded and premature speculation about what would happen if they filed suit in state court does not confer them with standing to bring this lawsuit asking the federal court to strike down a longstanding state statute.

In *Baker v. Carr,* the United States Supreme Court explained that to satisfy the standing requirement, a complaining party must have "a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions[.]'" *Baker v. Carr*, 369 U.S. 186, 204 (1962). "The injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *O'Shea v. Littleton*, 414 U.S. 488, 494 (1974) (internal quotations omitted). In other words, "[t]he constitutional question . . . must be presented in the context of a specific live grievance." *Golden v. Zwickler*, 394 U.S. 103, 110 (1969).

"This case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate . . . The parties must continue to have a 'personal stake in the outcome' of the lawsuit." *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (citations omitted). "This means that, throughout the litigation, the plaintiff 'must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Id.* (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990)).

The United States Supreme Court has made clear that standing is a "threshold requirement." *Warth v. Seldin*, 422 U.S. 490, 517-18 (1975). "The rules of standing, whether as aspects of the Art. III case-or-controversy requirement or as reflections of prudential considerations defining and limiting the role of the courts, are threshold determinants of the propriety of judicial intervention. It is the responsibility of the complainant clearly to allege facts

demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." *Id.* In the absence of standing, this Court must dismiss Plaintiffs' claim without considering the merits, especially given that Plaintiffs' lawsuit asks this Court to review the constitutionality of a state statute. *See Raines v. Byrd*, 521 U.S. 811, 819-20 (1997) ("our standing inquiry has been especially rigorous when reaching the merits of the dispute would force us to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional . . . we must put aside the natural urge to proceed directly to the merits of this important dispute and . . . [i]nstead, we must carefully inquire as to whether appellees have met their burden of establishing that their claimed injury is personal, particularized, concrete, and otherwise judicially cognizable").

1. Plaintiffs Lack Standing to Allege that R.I. Gen. Laws § 13-6-1 Is Unconstitutional as Applied to Bar a Federal Claim in State Court.

Davis' assertion that he would not be able to litigate a federal constitutional claim pursuant to 42 U.S.C. § 1983 in state court is based on multiple layers of baseless conjecture.[3]

First, Plaintiff Davis lacks a concrete injury because Rhode Island courts have never interpreted the civil death statute as barring a civilly dead inmate from pursuing a federal claim in state court. To be sure, the text of the civil death statute reads broadly, but Rhode Island staunchly adheres to the principle that courts "will presume legislative enactments of the General Assembly to be constitutional and valid. . . . If more than one construction is possible, courts shall always adopt the construction that will avoid unconstitutionality." *In Re: Advisory Opinion to House of Representatives*, 485 A.2d 550, 552 (1984) (internal citations omitted). Moreover, Rhode Island courts "presume[ ] that the General Assembly knows the state of existing relevant law when it

[3] Lomdardi also clearly lacks standing to litigate this issue since he does not even allege that he wishes to file a lawsuit based on a federal claim.

enacts or amends a statute." *Balmuth v. Dolce for Town of Portsmouth*, 182 A.3d 576, 587 (R.I. 2018); *cf. Rust v. Sullivan*, 500 U.S. 173, 191 (1991) ("This canon [of adopting the interpretation of a statute that avoids unconstitutionality] is followed out of respect for Congress, which we assume legislates in the light of constitutional limitations."). The Rhode Island Supreme Court has held, "we are obligated to construe conflicting statutes so that, if at all reasonably possible, they both may stand and be operative. In accomplishing this objective, the underlying purpose of this court should be to determine the intention of the Legislature." *Blanchette v. Stone*, 591 A.2d 785, 787 (R.I. 1991); *Cocchini v. City of Providence*, 479 A.2d 108, 110 (R.I. 1984) ("If a conflict does exist, it is not irreconcilable, and that being so, we shall attempt to construe the two enactments in such a manner as to give full effect to each.").

Clearly, the intent of Rhode Island's civil death statute was to impose a sanction limiting the rights of inmates who have received Rhode Island's harshest sentence of life imprisonment. *See Gallop*, 182 A.3d at 1140-41; *Bogosian*, 422 A.2d at 1254 n.1. The Legislature is presumed to have been aware of pre-existing federal law, including the Supremacy Clause, when it passed the civil death statute. Given Rhode Island's rule of interpreting statutes so as to avoid a conflict between laws and adopting a construction that avoids unconstitutionality, it is unwarranted conjecture to assume that Rhode Island courts would interpret the civil death statute as attempting to restrict federal rights that the Legislature did not have the ability to restrict. No Rhode Island Court has ever adopted such an interpretation.[4] There is no reasonable basis to believe that Rhode

[4] Historically, courts interpreting the reach of broadly-worded civil death statutes have grappled with determining which rights are implicated by such statutes in light of other laws and changing historical circumstances. *See Kanter v. Barr*, 919 F.3d 437, 459, n.9 (7th Cir. 2019) (Barrett, J., dissenting) ("But here, defining the precise impact of "civil death" on a felon sentenced to life is not as important as underscoring that the impact was no longer complete destruction of rights and death to the law."). That history demonstrates that civil death statutes need not be interpreted as

Island courts would interpret the civil death statute in a manner that would bring it into conflict with federal law, and therefore purely speculative for Plaintiff to presume that he would be prevented by the civil death statute from bringing a federal claim in state court.

Second, even if the civil death statute were interpreted as intending to bar a civilly dead inmate from bringing a federal claim, the Rhode Island Supreme Court could strike down that application of the statute as unconstitutional and impermissible. When the appellant in *Gallop* recently asked the Supreme Court to decide whether it would be constitutional if the civil death statute were applied to bar a federal claim, the Court expressly declined to rule on that question because the issue was not properly before it. *Gallop*, 182 A.3d at 1144-45. It is purely speculative to assume that the Court would allow the statute to be applied in that manner if the issue were properly before it.

Third, Plaintiffs' speculation that the State would assert the civil death statute as a defense to a federal constitutional action under 42 U.S.C. § 1983 is also entirely speculative and contrary to the prior experience of the Office of Attorney General. Even though the plaintiff in *Zab*, PM 2017-4195, asserted an Eighth Amendment claim under the federal constitution, RI DOC did not move for summary judgment on that claim on the basis of the civil death statute. Instead, the state defendants only asserted that the civil death statute barred Zab's *state law* negligence action and raised different, non-civil death statute, arguments regarding Zab's federal claim. Accordingly, the Rhode Island Superior Court granted the defendants summary judgment on Zab's federal constitutional claim on grounds entirely apart from the civil death statute. There is no reason to

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eradicating each and every right of an inmate, and instead are often interpreted, consistent with legislative intent, to impact a narrower realm of rights.

believe that the State would assert the civil death statute as a defense to Plaintiff Davis' hypothetical Eighth Amendment claim.

For all these reasons, Davis' purported injury – his supposed inability to bring a federal constitutional claim in state court – is entirely speculative and does not confer standing.

2. Plaintiffs Lack Standing to Allege that R.I. Gen. Laws § 13-6-1 Is Unconstitutional as Applied to Bar a Negligence Claim in State Court.

Plaintiffs' speculation that they would not be able to pursue a negligence claim in state court is likewise based on conjecture. Although the Rhode Island Supreme Court in *Gallop* applied R.I. Gen. Laws § 13-6-1 to bar an inmate sentenced to life from pursuing a state law negligence action, the Court did not *expressly* determine whether that application of the statute is constitutional. *See generally Gallop,* 182 A.3d 1137. Indeed, when representing Zab and Rivera, Plaintiffs' counsel forcefully argued to the Superior Court that the constitutionality of the civil death statute was never expressly argued or decided in *Gallop*. The Superior Court's decision in *Zab* and *Rivera* is currently pending on appeal before the Rhode Island Supreme Court and the plaintiffs in both cases argued to the trial court that applying the civil death statute to bar a state law negligence claim is unconstitutional. If the Supreme Court were to agree with the plaintiffs/appellants in *Zab* and *Rivera* that such an application of the civil death statute is unconstitutional under either the federal or state constitution, then there would be no barrier to the Plaintiffs in this action pursuing their hypothetical negligence claims in state court. Moreover, instead of speculating what the State Supreme Court would do, Plaintiffs themselves could file their lawsuits in state court and, if the defendants assert the civil death statute as a defense, argue that applying the civil death statute to bar their claims is unconstitutional. Instead, Plaintiffs have asked this Court to preemptively strike down a state statute that is already pending review before

the State Supreme Court based on Plaintiffs' speculation about how the Rhode Island Supreme Court will rule. This does not constitute a concrete injury and does not provide them with standing.

B. Plaintiffs Lack Standing to Argue that R.I. Gen. Laws § 13-6-1 is Unconstitutional as Applied to Restrict Rights About Which Plaintiffs Have Asserted No Facts or Injury.

The bulk of Plaintiffs' Complaint focuses on an as-applied challenge to the civil death statute based on their contention that it would prevent them from pursuing lawsuits against RI DOC in state court based on their respective allegations about a footlocker and the administration of insulin. However, one paragraph of Plaintiffs' Complaint also asserts that the civil death statute is unconstitutional as applied to restrict a host of various other rights that Plaintiffs claim are restricted by the civil death statute, such as rights related to making contracts, owning property, and "the right to protection of other constitutional rights for which 42 U.S.C. § 1983 provides a remedy." Compl. ¶ 29. Plaintiffs make the conclusory assertion that they "stand in real jeopardy" of RI DOC or "other entities" violating these various unspecified rights, Compl. ¶ 30, but do not plead any facts to support that conclusion. As relief, Plaintiffs also broadly ask this Court to declare that Rhode Island's statute is unconstitutional "as applied to bar an inmate serving a life sentence from proceeding in a civil action and to deny said inmates basic civil, statutory and common law rights as a violation of the First, Fifth, Seventh, and Eighth Amendments to the United States Constitution and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983." Compl. at p. 8-9.

Plaintiffs make clear that they are challenging the civil death statute "as applied" to restrict these various other rights, Compl. at p.8, but Plaintiffs have not pled any injury they suffered as a result of R.I. Gen. Laws § 13-6-1 being applied to restrict their rights related to making contracts, owning property, or exercising any "other" constitutional right. Plaintiffs solely plead facts alleging that R.I. Gen. Laws § 13-6-1 prevents them from filing the purported lawsuits that they

respectively wish to bring. Plaintiffs do not allege that the civil death statute has been applied to them in any other way, or even plead any other way Rhode Island courts have applied the civil death statute to anyone since it was enacted in 1909, besides to restrict a civilly dead inmate's ability to proceed on a state law claim as occurred in *Gallop*.[5] Similarly, Plaintiffs do not identify any other "injury" that they have incurred as a result of the civil death statute being applied to them, and as such, they do not have standing to challenge any other application of the civil death statute.[6]

C. Rhode Island's Civil Death Statute Is a Constitutional Means of Punishing the State's Worst Criminals.

Plaintiffs' failure to establish standing should conclude this Court's inquiry. Even putting aside Plaintiffs' lack of standing, their claim that it would violate the federal constitution if Rhode Island's civil death statute were applied *by a state court* to prevent them from pursuing a *state law* negligence claim for damages *against the State* fails as a matter of law.[7]

1. Federal Courts Presume State Legislative Enactments Are Constitutional.

The starting point for analyzing the merits of Plaintiffs' claim is the canonical principle that federal courts presume that statutes enacted by state legislatures, like the longstanding state statute at issue here, are constitutional. A statute enacted by the Rhode Island General Assembly enjoys the "presumption of constitutional validity." *Rhode Island Medical Soc. v. Whitehouse*, 66

[5] The civil death statute has also been applied to restrict the ability of inmates sentenced to life to marry, but Plaintiffs do not allege that they wish to marry and the Rhode Island District Court for the District of Rhode Island has already upheld that application of the statute as constitutional, consistent with United States Supreme Court precedent. *See Ferreira v. Wall*, No. CV 15-219-ML, 2016 WL 8235110 (D.R.I. Oct. 26, 2016) (Lisi, J.).

[6] As discussed above, the facts Plaintiffs did plead regarding their hypothetical lawsuits are also insufficient to convey standing for the reasons discussed in Section A, *supra*.

[7] The State will not address the merits of Plaintiffs' contention that it would be unconstitutional if the civil death statute were applied to bar them from bringing a federal claim because Rhode Island courts have not interpreted the civil death statute to bar a federal claim.

F. Supp. 2d 288, 305-306 (D.R.I. Aug. 30, 1999); *see also Driver v. Town of Richmond ex rel. Krugman*, 570 F. Supp. 2d 269, 275 (D.R.I. Jul. 31, 2008). As the Seventh Circuit noted in *Planned Parenthood of Wisconsin v. Doyle*, "just like the state courts, we owe deference to the [state] legislature. Therefore we must first presume this statute to be constitutional, and if possible, interpret it so as to preserve its constitutionality. . . . [E]very presumption must be indulged to sustain the law if at all possible and, wherever doubt exists as to a legislative enactment's constitutionality, it must be resolved in favor of constitutionality. Thus, the plaintiffs must . . . overcome the legal presumption that the Act is constitutional." 162 F.3d 463, 473 (7th Cir. 1998) (internal citations and quotations omitted); *see also McDonald v. Bd. of Elec. Com'rs of Chicago*, 394 U.S. 802, 809 (1969) ("Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them."); *United States v. Davis*, 139 S. Ct. 2319, 2332 n.6 (2019) (recognizing the "presumption of constitutionality" canon of statutory construction, which is "[o]f long lineage [and] holds that courts should, if possible, interpret ambiguous statutes to avoid rendering them unconstitutional"); *Chacon v. Granata*, 515 F.2d 922, 925 (5th Cir. 1975) ("In reviewing enacted legislation, the courts presume, as a matter of construction, that the legislative body has acted with due regard for the constitutional rights of affected parties."); *Eaton v. Jarvis Products Corp.*, No. CIV. A. 89-A-2166, 1991 WL 17776, at *6 (D. Colo. Feb. 6, 1991), *aff'd,* 965 F.2d 922 (10th Cir. 1992) ("Federal courts must presume that state legislatures acted constitutionally in making a law. The party challenging a statute has the burden of establishing its unconstitutionality beyond a reasonable doubt.") (internal citation omitted); *cf. Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2617

(2012) ("In answering these questions, we presume the statute under review is constitutional and may strike it down only on a 'plain showing' that Congress acted irrationally.").

2. Rhode Island Gen. Laws § 13-6-1 Falls Squarely Within the State Legislature's Broad Discretionary Power to Sanction and Deter Serious Crime.

It is well settled that "[t]he State clearly has an interest in punishment and deterrence." *Bearden v. Georgia*, 461 U.S. 660, 671 (1983); *Mendez-Matos v. Municipality of Guaynabo*, 557 F.3d 36, 52 (1st Cir. 2009) (recognizing "legitimate state interests in the punishment and deterrence of unlawful conduct"); *see also Breest v. Helgemoe*, 579 F.2d 95, 101 (1st Cir. 1978) ("the state's interest in the imposition of the legislatively established punishment for this serious crime is strong."). Punishment is intended to advance the goals of deterrence and retribution, among others. *Simmons v. Galvin*, 575 F.3d 24, 44 (1st Cir. 2009) (noting "the traditional aims of punishment—retribution and deterrence"); *United States v. Cole*, 622 F. Supp. 2d 632, 637 (N.D. Ohio 2008) ("Courts . . . choose a sentence that reflects the seriousness of the offense (retribution), promotes respect for the law (retribution, general deterrence), provides just punishment for the offense (retribution), affords adequate deterrence to criminal conduct (general deterrence) . . . "); *cf. Price v. Wall*, 2013 WL 5423713, at *7 (D.R.I. Sept. 26, 2013) (affirming a 25-year sentence for criminal contempt, noting that "[t]he sentence imposed by the trial court served to advance the traditional sentencing goals of retribution and deterrence. It punished Price for behavior that posed a grave danger to the public, and it served as a deterrent to individuals who may face similar circumstances in the future.").

Courts "grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes." *Solem v. Helm,* 463 U.S. 277, 290 (1983). As the Rhode Island Supreme Court has recognized, the General Assembly "has the power to define criminal offenses, to prescribe sentences for the violation thereof, and to

provide for the imposition of such sentences and the methods of applying same. . . . The policy questions raised . . . and the question whether this statute is wise or unwise, are not for this court to determine." *Hazard v. Howard*, 290 A.2d 603, 606 (R.I. 1972).

The civil death statute at issue here has existed since 1909 and has been characterized by the Rhode Island Supreme Court as a "sanction," derived from a history of criminal punishment dating back to the Greeks. *Gallop*, 182 A.3d at 1140-41; *Bogosian*, 422 A.2d at 1254. When examining the civil death statute, the State Supreme Court remarked that "[t]he loss of civil status as a form of punishment is a principle that dates back to ancient societies. The ancient Greeks were among the first to divest criminals of their civil rights, including the right to appear in court, vote, make speeches, attend assemblies, and serve in the army. The rationale behind the enactment of civil death legislation was originally based on the principle that a person convicted of a crime was dead in the eyes of the law." *Gallop*, 182 A.3d at 1140–41 (internal citations and quotations omitted). Rhode Island's civil death statute falls squarely within the State Legislature's broad authority to sanction and deter serious crime.

3. Plaintiffs' Various Constitutional Claims Fail as a Matter of Law.

Plaintiffs broadly allege that applying the civil death statute to restrict an inmate sentenced to life from pursuing monetary damages in state court for a *state law* negligence claim would violate the First, Fifth, Seventh, Eighth, and Fourteenth Amendments of the United States Constitution. Plaintiffs do not plead *any* allegations regarding how this application of the civil death statute would violate the Fifth and Seventh Amendments. As such, Plaintiffs fail to plead a Fifth or Seventh Amendment claim. Plaintiffs' pleading regarding the other purported constitutional violations is nearly as sparse. The State will address each.

a. Plaintiffs Fail to State an Eighth Amendment Claim.

Plaintiffs plead that applying the civil death statute to bar a state law negligence action for damages violates the Eighth Amendment simply because, they contend, it "imposes an excessive and outmoded punishment." Compl. ¶ 36. Plaintiffs' conclusory allegation that the civil death statute constitutes an excessive punishment is insufficient to state a claim. In order to state a violation of the Eighth Amendment, the Plaintiff must establish that the prescribed penalty involves the unnecessary and wanton infliction of pain or is grossly out of proportion to the severity of the crime. *Gregg v. Georgia*, 428 U.S. 153, 173 (1976); *McQuoid v. Smith*, 556 F.2d 595, 597 (1st Cir. 1977) (plaintiff must establish that the punishment is "grossly disproportionate to the offense and hence violative of the eighth amendment."). "A finding of gross disproportionality is hen's-teeth rare, especially outside the capital punishment milieu." *United States v. Blodgett*, 872 F.3d 66, 72 (1st Cir. 2017) (internal quotation and citation omitted); *see also id.* ("Congress—not the judiciary—is vested with the authority to define, and attempt to solve . . . societal problems. When Congress has identified a societal problem and articulated a rational response, courts must step softly and cede a wide berth to the legislature's authority to match the type of punishment with the type of crime.") (internal quotations and citations omitted).

Plaintiffs in this case have both pled guilty to first degree murder and received the harshest sentence under Rhode Island law: life imprisonment. There is no question that the Plaintiffs have pled guilty to heinous crimes and have lawfully been sentenced to spend the rest of their lives in prison. Plaintiffs do not allege that they suffer any pain as a result of not being able to pursue a negligence claim for damages in state court. Indeed, they do not allege that they suffer any affirmative harm or loss at all, except the inability to pursue a monetary gain. The civil death statute only applies to inmates who have received life sentences; Plaintiffs do not identify any

precedent that restricting the ability of this narrow group of inmates to pursue monetary damages for a negligence claim constitutes cruel and unusual punishment. These Plaintiffs have already lawfully received a far harsher sentence for their crimes, i.e., the loss of their liberty for the rest of their lives. Indeed, in other states individuals who have committed similar crimes are subject to the death penalty. If a sentence to life in prison (or even a death sentence) is not grossly disproportionate to the crime of first-degree murder, neither can it be said that the far lesser restriction of not being able to pursue monetary damages in a negligence action is grossly disproportionate to their crimes. As noted *supra*, the Rhode Island Supreme Court has characterized the civil death statute as a sanction on inmates sentenced to life, and one that is firmly grounded in history and tradition dating back to the Greeks. *See supra* Section C.2. The Legislature's limitation on this narrow group of inmates' ability to profit from negligence lawsuits while serving their sentences is easily justified as a means of imposing punishment and deterrence that is squarely within the broad authority of the Legislature and cannot be said to be grossly disproportionate to Plaintiffs' grievous crimes.

b. Plaintiffs Fail to State a First Amendment or Due Process Claim.

Plaintiffs do not plead how the civil death statute supposedly violates the First Amendment or the Due Process Clause of the Fourteenth Amendment. For that reason alone, Plaintiffs fail to state a claim. Regardless, it is also apparent that Plaintiffs' claim fails when Rhode Island's statute is analyzed under these constitutional provisions. Read with an extremely generous gloss, Plaintiffs' allegation can be read as asserting that inmates sentenced to life have some type of First Amendment or substantive due process right to access state courts to pursue a state law negligence claim. There is no binding authority recognizing any such right.

The Due Process Clause protects "those fundamental rights and liberties which are,

objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal quotations and citations omitted). The United States Supreme Court has "required in substantive-due-process cases a careful description of the asserted fundamental liberty interest." *Id.* at 721 (internal quotations and citation omitted). Here, Plaintiffs offer no such "careful description" of any asserted interest that meets this standard.

Even if a state law tort claim may be viewed as a species of "property" interest that implicates the Due Process Clause, the United States Supreme Court has held that "it would remain true that the State's interest in fashioning its own rules of tort law is paramount to any discernible federal interest, except perhaps an interest in protecting the individual citizen from state action that is wholly arbitrary or irrational." *Martinez v. State of Cal.*, 444 U.S. 277, 282 (1980). In *Martinez*, the United States Supreme Court had "no difficulty in accepting California's conclusion that there is a rational relationship between the state's purposes and the statute" that provided absolute immunity to parole officers. *Id.* The Supreme Court continued: "Whether one agrees or disagrees with California's decision to provide absolute immunity for parole officials in a case of this kind, one cannot deny that it rationally furthers a policy that reasonable lawmakers may favor. As federal judges, we have no authority to pass judgment on the wisdom of the underlying policy determination. We therefore find no merit in the contention that the State's immunity statute is unconstitutional when applied to defeat a tort claim arising under state law." *Id.* Similarly, in another case, the United States Supreme Court held that "when state law creates a cause of action, the State is free to define the defenses to that claim, including the defense of immunity." *Ferri v. Ackerman*, 444 U.S. 193, 198 (1979); *cf. McBurney v. Young*, 569 U.S. 221 (2013) (no federal

fundamental right to obtain documents under a state's FOIA laws). The same considerations apply here with even more force because Rhode Island's statute implicates both state tort law and the Legislature's broad authority to sanction the State's worst criminals. Rhode Island's decision to restrict inmates sentenced to life from pursuing certain *state law* actions is a state policy decision well within the province of the State Legislature.

It is also notable that the Plaintiffs' challenge to the civil death statute is based on their desire to sue the State (RI DOC) for a tort. At common law, the State enjoyed sovereign immunity from tort suits until 1970 when Rhode Island passed R.I. Gen. Laws § 9-31-1, which allowed the State to be held liable in tort actions in the same manner as a private individual or corporation, subject to a statutory limitation on damages. *Torres v. Damicis*, 853 A.2d 1233, 1237 (R.I. 2004); *Graff v. Motta*, 695 A.2d 486, 489 (R.I. 1997). The State's historical sovereign immunity and its implementation of the tort cap demonstrate that the ability to sue the State for a tort is not a right that is fundamental or deeply rooted in our nation's history, and not even a right that existed when the Fourteenth Amendment was passed. *See Glucksberg*, 521 U.S. at 720-21. Plaintiffs cannot coherently argue that they have a fundamental federal right to sue the State for a tort in state court when for most of its history, the State was recognized as having sovereign immunity for such claims filed by *any* person, and the waiver of this immunity is a matter of state law. This history also further demonstrates that the question of civilly dead inmates' ability to *sue the State* in *state court* for a cause of action that derives from *state law* is a matter of state law and policy.

Plaintiffs also cannot establish that curtailing their right to pursue a state tort claim in state court infringes on any fundamental federal right to access the courts. Although the United States Supreme Court recognized *some* federal right to access the courts in the line of cases associated with *Bounds v. Smith,* 430 U.S. 817 (1977) (abrogated in part), the Supreme Court has recognized

that "[n]early all of the access-to-courts cases in the *Bounds* line involved attempts by inmates to pursue direct appeals from the convictions for which they were incarcerated, or habeas petitions." *Lewis v. Casey*, 518 U.S. 343, 354 (1996) (internal citations omitted). The United States Supreme Court further noted that it has "extended this universe of relevant claims only slightly, to 'civil rights actions'—i.e., actions under 42 U.S.C. § 1983 to vindicate 'basic constitutional rights.'" *Id.*

Plaintiffs fail to establish that inmates sentenced to life have a similar fundamental federal constitutional right to have effective and meaningful access to state courts to bring a state common law negligence claim and seek monetary damages. Indeed, the United State Supreme Court was careful to cabin the right of access to courts to habeas petitions and actions to vindicate basic constitutional rights, neither of which is implicated by a common law negligence case. *See id.* at 355 ("*Bounds* does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip-and-fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration.").

The the activity at issue does not implicate a fundamental right deeply rooted in our nation's history and tradition, and neither can Rhode Island's longstanding statute be said to be irrational. *Glucksberg*, 521 U.S. at 728. As discussed *supra* in Section C.2, Rhode Island's civil death statute is a sanction on the State's worst criminals that is well within the Legislature' broad discretionary authority to punish and deter crime. As applied by the Rhode Island Supreme Court in *Gallop*, Rhode Island General Laws § 13-6-1 imposes upon inmates sentenced to life a loss of the ability to bring a negligence claim in state court for monetary damages. Such a restriction can

reasonably be regarded as a sanction that further punishes these inmates who have received the state's harshest sentence and imposes an additional deterrent. It is exceedingly rational for the Legislature to determine that a criminal who committed murder or molested a child should not be permitted to collect monetary damages from the State for an alleged tort under state law that occurred while the inmate was being punished for his abhorrent offense. The Legislature was well within its bounds to impose this additional sanction on these inmates sentenced to life by establishing that in addition to their freedom, such criminals will also be deprived of their right to obtain monetary damages for common law torts under state law. *Cf. United States v. Blodgett*, 872 F.3d 66, 69 (1st Cir. 2017) ("Once a person has been convicted, . . . any punishment prescribed is consistent with the Due Process Clause as long as 'Congress had a rational basis for its choice of penalties' and the particular penalty imposed 'is not based on an arbitrary distinction.' . . . Rebutting this presumption is a daunting task, requiring the defendant to show the irrationality of any and all justifications potentially undergirding the challenged sentence.") (internal quotations and citations omitted). The wisdom of such punishment is not for Defendant or, respectfully, this Court, to question. It is enough that the restriction serves a punitive purpose and is rationally related to the State's undeniable interest in punishing and deterring serious crime. As the Rhode Island Supreme Court has recognized, "[r]epeal is the province of the Legislature." *Gallop,* 182 A.3d at 1141.

c. Plaintiffs Fail to State a Claim for Equal Protection.

i. R.I. Gen. Laws § 13-6-1 Rationally Sanctions the State's Worst Criminals.

Plaintiffs also assert that R.I. Gen. Laws § 13-6-1 violates the Equal Protection Clause of the Fourteenth Amendment. Plaintiffs do not plead any allegations supporting this assertion except to conclusorily state that the civil death statute denies inmates sentenced to life and imprisoned at

the ACI "all civil rights" while preserving the civil rights of "all other persons incarcerated by sentence of the State of Rhode Island," including those serving terms of 99 years and those serving a sentence at a prison other than the ACI. Compl. ¶ 34. For the reasons discussed above, Plaintiffs do not have standing and have not stated a claim pertaining to inmates being denied "all civil rights," and at most present an as-applied challenge related to Plaintiffs' allegation that they would not be permitted to pursue a state law negligence claim in state court.

The United States Supreme Court "has long held that a classification neither involving fundamental rights nor proceeding along suspect lines . . . cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Armour v. City of Indianapolis, Ind.*, 566 U.S. 673, 680 (2012) (internal quotations and citation omitted).

Subjecting inmates sentenced to life to the civil death statute does not create a suspect classification. A suspect classification arises when an enactment creates classifications and discriminates based on characteristics such as "race, alienage or national origin." *City of Cleburne v. Cleburn Living Center*, 473 U.S. 432, 440 (1985). An inmate is only sentenced to life imprisonment because he or she has been convicted of one of a narrow set of serious offenses, such as murder in the first degree, first-degree sexual assault, or first-degree child molestation. R.I. Gen. Laws §§ 11-23, 11-37-3, 11-37-8.2. Unlike suspect classifications, Plaintiffs are subject to the civil death statute because of what they *did*, not because of who they *are*. *See Michael H. v. Gerald D*, 491 U.S. 110, 131 (1989) (plurality) (rejecting argument that status of being an illegitimate child is a class entitled to strict scrutiny because "illegitimacy is a legal construct, not a natural trait").

Additionally, inmates sentenced to life do not have a fundamental right to unlimited access to state courts, including to file state law negligence actions, for the reasons discussed *supra* in Section C.3(b). The Supreme Court has not enumerated an exact list of fundamental rights, but they include the rights to privacy, travel, and freedom from restraint, none of which are implicated here. *See e.g. Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, n.3 (1976). Courts have also recognized that even if an inmate has a constitutional right, it can be curtailed if related to a rational penological reason. "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Price v. Johnston*, 334 U.S. 266, 285 (1948); *see also Turner v. Safley*, 482 U.S. 78, 89 (1987) (recognizing that fundamental constitutional rights can validly be restricted for inmates as long as the restriction is "reasonably related to legitimate penological interests"). "[W]hile persons imprisoned for crime enjoy many protections of the Constitution, it is also clear that imprisonment carries with it the circumscription or loss of many significant rights. These constraints on inmates, and in some cases the complete withdrawal of certain rights, are justified by the considerations underlying our penal system." *Hudson v. Palmer*, 468 U.S. 517, 524 (1984) (internal citations and quotations omitted). "[T]hese restrictions or retractions also serve, incidentally, as reminders that, under our system of justice, deterrence and retribution are factors in addition to correction." *Id.* For instance, an inmate is involuntarily detained and clearly does not have the right to travel at will. *Hudson v. Palmer*, 468 U.S. 517, 526 (1984). He is not permitted to vote. *Richardson v. Ramirez*, 418 U.S. 24 (1974). He has no legitimate expectation of privacy in his cell. *Hudson*, 468 U.S. at 530. Additionally, inmates are subject to the Prison Litigation Reform Act, which expressly imposes additional limits and conditions on the ability of *all* inmates to pursue lawsuits, and can even result in an inmate being completely barred from

bringing a federal constitutional claim. *See* 42 U.S.C. § 1997e; *see also Porter v. Nussle*, 534 U.S. 516, 524 (2002) (failure to exhaust administrative remedies requires dismissal of lawsuit).

As is the case here, if the statute does not involve either a fundamental right or a suspect classification, it is subject only to rational review. *Armour*, 566 U.S. at 680. The United States Supreme Court has been clear: "[w]hen the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. . . . One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." *Lindsley v. Nat. Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911); *see also McGowan v. State of Md.*, 366 U.S. 420, 425 (1961); *Bertelsen v. Cooney*, 213 F.2d 275, 277 (5th Cir. 1954) ("It has frequently been held that the equal protection clause of the Fourteenth Amendment does not preclude classification for the purpose of legislation even though some groups be differently affected from others. So long as the classification is reasonable, not arbitrary, and rests upon some logical ground of difference, having a fair and substantial relation to the objection of the legislation, it does not offend against equal protection."). As the First Circuit previously stated, "[u]nder the rational basis test, the classifications in [a state's] laws come[ ] to us bearing a strong presumption of validity . . . [e]ven foolish and misdirected provisions will be upheld." *Kittery Motorcycle, Inc. v. Rowe*, 320 F.3d 42, 47 (1st Cir. 2003) (internal quotations and citations omitted). Moreover, "[a] legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." *Id.* (quoting *Federal Communications Commission v. Beach Communications*, 508 U.S. 307, 315 (1993)). In order to establish an equal protection violation, a plaintiff must show state-imposed disparate

treatment compared with others similarly situated "in all relevant respects." *Barrington Cove Ltd. P'ship v. R.I. Hou. & Mortg. Fin. Corp.*, 246 F.3d 1, 8 (1st Cir. 2001).

As noted above, the Rhode Island Supreme Court has recognized that the civil death statute is a "sanction" and a "limitation on the assertion of any rights by a prisoner serving a life sentence." *Gallop*, 182 A.3d at 1140-41; *Bogosian*, 422 A.2d at 1254. Imposing such a sanction on criminals sentenced to life as further punishment is well within the Legislature's discretion and easily passes rational review. Inmates sentenced to life in prison are not similarly situated to individuals who have not committed a grievous crime and received a life sentence. Moreover, inmates who are sentenced to a term of years or who are incarcerated out of state are situated differently than Plaintiffs.

Plaintiffs plead that a Rhode Island inmate serving a life sentence is treated differently than a hypothetical inmate serving a 99-year sentence. Compl. ¶ 34. This allegation does not state an equal protection claim because the hypothetical inmates fundamentally received different sentences and, thus, are not similarly situated "in all relevant respects." *Barrington Cove Ltd.*, 246 F.3d at 8. A life sentence is Rhode Island's harshest punishment and is the designated penalty for what is commonly recognized as the State's worst criminal offense: first degree murder. *See State v. Carpio*, 43 A.3d 1, 7 (R.I. 2012) ("At the sentencing hearing, . . . the trial justice concluded that . . . life in prison is a fitting sentence. The trial justice imposed the harshest sentence under the law: life imprisonment without parole for the first-degree murder of a police officer . . . ."); R.I. Gen. Laws §§ 11-23-2. It is reasonable for the Legislature to apply the civil death statute to inmates

who receive the State's "harshest sentence under the law" and not to others who receive different sentences.[8]

A life sentence is a distinct, unique sentence. The Legislature made the choice to punish first degree murder with a life sentence instead of a sentence to a term of years. Similarly, "life" is the upper end of the punishment scale for egregious offenses like first degree sexual assault. *See* R.I. Gen. Laws § 11-37-3. A hypothetical inmate serving a 99-year sentence could have committed a variety of different offenses. By contrast, inmates serving life sentences have all been convicted of one of the State's most serious criminal offenses that carries with it that potential punishment. Those inmates are in a class of their own. Sentencing is inexact and the punishment designated for a particular crime is a matter of significant discretion. *Cf. Williamson v. Lee Optical of Oklahoma Inc.*, 348 U.S. 483, 489 (1955) ("The problem of legislative classification is a perennial one, admitting of no doctrinaire definition. Evils in the same field may be of different dimensions and proportions, requiring different remedies. Or so the legislature may think. Or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of one field and apply a remedy there, neglecting the others.") (internal citations omitted). The Legislature was well within its discretion to conclude that the civil death statute should apply to those who receive the State's "harshest punishment" of life imprisonment, but not to inmates who receive a terms of years, which can result from various circumstances and reach various lengths.

[8] Rhode Island's approach is consistent with how the civil death statute was historically applied. Historically, civil death was associated with capital punishment, but then came to be seen as an incident of life sentences in the wake of a shift away from employing capital punishment for felonies. *See Kanter v. Barr*, 919 F.3d 437, 459 (7th Cir. 2019) (Barrett, J., dissenting).

Similarly, Plaintiffs plead that inmates sentenced to life at the ACI are treated differently than "inmates incarcerated by sentence of the State of Rhode Island" but serving their sentence elsewhere because only inmates at the ACI are subject to the civil death statute. Compl. ¶ 34. As an initial matter, there is no authority holding that the civil death statute only applies to Rhode Island inmates physically located at the ACI. The Rhode Island Supreme Court has not yet had occasion to specifically interpret the language from the civil death statute regarding inmates "imprisoned in the adult correctional institutions for life" and whether the statute applies to Rhode Island inmates temporarily relocated to another facility. It is notable that when sentencing criminals, Rhode Island courts often specifically sentence the defendant to imprisonment "at the Adult Correctional Institutions." *See, e.g.*, *State v. Miguel*, 101 A.3d 880, 881 (R.I. 2014) ("The trial justice then sentenced defendant to life imprisonment *at the Adult Correctional Institutions*."); *State v. Garcia*, 883 A.2d 1131, 1135 (R.I. 2005 ("The defendant was convicted of murder in the first degree and, after her motion for a new trial was denied, defendant was sentenced to a mandatory term of life imprisonment *at the Adult Correctional Institutions*.") (emphases added). Accordingly, even if an inmate who received a life sentence is subsequently transferred or moved to another facility, the inmate was still sentenced to imprisonment in the ACI for life.

Notably, when the Supreme Court analyzed the civil death statue in *Gallop*, it broadly described it as applying to Rhode Island inmates serving a life sentence, without regard to where they were physically located. *See Gallop*, 182 A.3d at 1143. Under the Interstate Compact for adult offender supervision, even inmates transferred out of state remain Rhode Island inmates and may be returned to Rhode Island at Rhode Island's discretion. *See* R.I. Gen. Laws § 13-11-2, Article IV(c) ("Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state."), Article IV (f) ("In the event that a hearing

or hearings are held before officials of the receiving state, the governing law shall be that of the sending state . . . the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state."); *see also Commonwealth v. Gardner*, 480 Mass. 551, 559 (2018) (Rhode Island remained the "agency with jurisdiction" over the inmate even after he was transferred to Massachusetts' Department of Corrections). *Cf. Battista v. Kenton*, 312 F.2d 167, 169 (2d Cir. 1963) ("nor did not transfer itself effect any change in his status, since Alaska 'retains jurisdiction over' the prisoner transferred to the federal authority").

Accordingly, Plaintiffs' suggestion that Rhode Island inmates housed outside the ACI are not subject to the civil death statute is based on a dubious interpretation of the civil death statute, and one that Plaintiffs lack standing to ask this Court to decide since it is not relevant to them. This Court should not conduct an equal protection analysis based on an interpretation of the civil death statute that has never been adopted by a Rhode Island court.

Even assuming arguendo that the statutory language has the meaning Plaintiffs suggest, it would not violate equal protection for inmates housed outside the ACI to not be treated the same as inmates housed in state at the ACI. Inmates serving their sentence in a different state or in a federal facility are not similarly situated "in all relevant respects," *Barrington Cove Ltd.*, 246 F.3d at 8, with inmates incarcerated at the ACI. The Legislature very well may have determined that inmates housed at the state correctional facilities are more likely to attempt to file suit in Rhode Island, and that therefore it was most important for the statute to apply to them. The Legislature may have been concerned about conserving Rhode Island judicial resources and preventing inmates who have received the State's harshest punishment from filing tort suits during their imprisonment in Rhode Island, consuming State judicial resources and/or seeking damages from

the State. Similarly, the Legislature may have determined out of a sense of comity that it should be up to the state in which the inmate is incarcerated — or to the federal government if the inmate is incarcerated at a federal facility — to determine what rights an inmate incarcerated out of state or in federal facilities should have. For instance, the Rhode Island Legislature may not have felt that Rhode Island had an adequate interest in legislating whether a Rhode Island inmate incarcerated in Massachusetts who injures himself in Massachusetts could file a lawsuit against Massachusetts under Massachusetts tort law. In that situation, the inmate would be seeking to file suit and avail himself of a Massachusetts tort law; Rhode Island's tort law and policies would not apply. Inmates incarcerated out of state or in a federal facility are incarcerated in different locations and under different rules and conditions than an inmate incarcerated at the ACI. These inmates are not similarly situated.

ii. The Rhode Island Federal District Court Has Already Ruled that Applying Rhode Island's Civil Death Statute to Prevent Civilly Dead Inmates from Marrying Does Not Violate Equal Protection.

The United States District Court for the District of Rhode Island has already rejected an equal protection challenge to Rhode Island's civil death statute. The above-referenced inmate Zab (represented by the same counsel representing Plaintiffs in this matter) previously filed suit in federal court arguing that the civil death statute's prohibition on civilly dead inmates marrying violates equal protection. *See Ferreira v. Wall*, No. CV 15-219-ML, 2016 WL 8235110 (D.R.I. Oct. 26, 2016) (Lisi, J.). As the federal court summarized: "[t]he issue in this case is the constitutionality of Rhode Island's 'civil death' statute, R.I. Gen. Laws § 13-6-1." *Id.* at *1. The Rhode Island federal court rejected Zab's argument and determined that the civil death statute does not violate the Equal Protection Clause. In that case, the federal court recognized that "this Court must read Section 13–6–1 'in a light favorable to seeing it as constitutional.'" *Id.* at *2 (quoting

Rhode Island Medical Soc. v. Whitehouse, 66 F. Supp. 2d 288, 305–306 (D.R.I. Aug. 30, 1999)). The federal court noted that "[r]eviewing courts also must 'grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes.'" *Id.* (quoting *Solem v. Helm*, 463 U.S. 277, 290 (1983)).

Analyzing the civil death statute under that deferential standard, the federal court recognized that the civil death statute is a punishment within the Legislature's power to prescribe:

> Although there is no Rhode Island legislative history available that would shed light on the purpose of Section 13–6–1, the Supreme Court of Rhode Island has indicated that the provision "was intended to be a limitation on the assertion of any rights by a prisoner serving a life sentence." *Bogosian v. Vaccaro*, 422 A.2d 1253, 1254 (R.I. 1980). As an additional deprivation of rights for a specific class of prisoners, the Statute is within Rhode Island's authority to impose such punishment. *See Johnson v. Rockefeller*, 365 F. Supp. 377, 380 (S.D.N.Y. Oct. 9, 1973) aff'd without opinion sub. nom., *Butler v. Wilson*, 415 U.S. 958, 94 S.Ct. 1479, 39 L.Ed.2d 569 (1973) (noting that "deprivation of physical liberty is not the sole permissible consequence of a criminal conviction" and declining to "pass upon the wisdom of penal legislation aimed at deterrence or even retribution").

Ferreira, 2016 WL 8235110, at *2.

Additionally, the federal court noted that the civil death statute could only be held to violate equal protection if it was "repugnant to the Constitution":

> Generally, regulations that restrict otherwise constitutionally protected interests in the prison context are reviewed under a reasonableness standard. *Amatel v. Reno*, 156 F.3d 192, 196 (C.A.D.C. 1998) (quoting *Turner v. Safley*, 107 S.Ct. 2254, 2265, 482 U.S. 78, 89, 96 L.Ed.2d 64 (1987))(noting that courts are directed to "uphold a regulation, even one circumscribing constitutionally protected interests, so long as it 'is reasonably related to legitimate penological interests.'"). It is noted however, that the challenged prohibition against inmate marriages in *Safley* was a prison regulation, not a state statute and, as such, it did not enjoy the presumption of constitutionality accorded to statutes formally enacted by a state's legislature. In order to successfully mount a challenge of the Statute's constitutionality, the Plaintiffs have the burden to establish that the Statute is repugnant to the Constitution. *Eaton v. Jarvis Products Corp.*, 965 F.2d 922, 931 (10th Cir. 1992); *City of Pawtucket v. Sundlun*, 662 A.2d 40, 45 (R.I. 1995).

Ferreira, 2016 WL 8235110, at *3.

The Rhode Island District Court noted that "the Supreme Court concluded in *Safley* that a regulation impinging on inmates' constitutional rights is 'valid if it is reasonably related to legitimate penological interests.'" *Ferreira*, 2016 WL 8235110, at *3 (quoting *Safley*, 482 U.S. at 89). The federal court also recognized that "Section 13–6–1, Rhode Island's 'civil death' statute, which applies only to persons imprisoned at the ACI for life, imposes an additional punishment . . ." *Id.* at *4. Accordingly, the federal court upheld the civil death statute as constitutional and not violative of equal protection.

Notably, in *Ferreira* the federal court upheld the constitutionality of the civil death statute even though it impinged on the right to marry, which is a fundamental right.[9] *See Obergefell v. Hodges*, 135 S. Ct. 2584, 2604 (2015) ("the right to marry is a fundamental right inherent in the liberty of the person."). The right implicated by this case — to file a negligence claim against the State in state court seeking monetary damages — has received no such similar recognition as a fundamental human right. This is true especially because the State historically enjoyed sovereign immunity from being sued for a tort by *anyone*. If it is constitutional for the civil death statute to take away a "fundamental right inherent in the liberty of the person" as punishment for a crime, so much more so may the civil death statute constitutionally bar inmates sentenced to life from seeking monetary damages against the State in state court for common law negligence — a state-created "right" that has not been recognized as fundamental nor inherent.

[9] The United States Supreme Court also summarily affirmed a decision upholding the constitutionality of a civil death statute that barred inmates sentenced to life from marrying. *See Butler v. Wilson*, 415 U.S. 953 (1974). Accordingly, both the United State Supreme Court and a Rhode Island federal court have determined that the Legislature may constitutionally enact civil death statutes that bar inmates sentenced to life from marrying as an additional punishment for their crime, even though marriage is a fundamental right.

D. <u>This Court Should Abstain from Permitting This Case to Proceed Based on Plaintiffs' Conjecture about Questions of State Law.</u>

Although this lawsuit can and should be dismissed based on well-established case law demonstrating Plaintiffs' lack of standing and failure to state a claim, if this Court were inclined to permit this case to proceed, it would require this Court to pass on undecided questions of state law that implicate an appeal currently pending before the State Supreme Court; as such, it would be appropriate for this Court to abstain. Many of the reasons for abstention are also the reasons why Plaintiffs fundamentally lack a concrete injury and do not have standing. Of course, standing is a threshold inquiry that must be considered first and, if this Court agrees with the State that Plaintiffs lack standing to pursue part or all of their claim, then their claim should be immediately dismissed on that basis and the Court need not consider abstention. *See supra,* Sections A and B. Additionally, for the reasons articulated in Section C, *supra*, the State's Motion to Dismiss can and should be granted based on the current status of the law without needing to abstain.

The United States Supreme Court has recognized that "[a]mong those cases that call most insistently for abstention are those in which the federal constitutional challenge turns on a state statute, the meaning of which is unclear under state law." *Ford Motor Co. v. Meredith Motor Co.*, 257 F.3d 67, 71 (1st Cir. 2001) (quoting *Harris County Comm'rs Court v. Moore*, 420 U.S. 77, 84 (1974)). "Under the principle set forth in *Railroad Commission v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941), a federal court confronted with such circumstances 'should stay its hand in order to provide the state court an opportunity to settle the underlying state-law question and thus avoid the possibility of unnecessarily deciding a constitutional question.'" *Ford Motor Co.*, 257 F.3d at 71 (quoting *Harris County*, 420 U.S. at 84). "*Pullman* abstention thus 'serves a dual purpose: it avoid[s] the waste of a tentative decision as well as the friction of a premature constitutional adjudication.'" *Id.* (quoting *Guiney v. Roache*, 833 F.2d 1079, 1081 (1st Cir.1987)).

Abstention in these circumstances also "promot[es] the principles of comity and federalism by avoiding needless federal intervention into local affairs." *Id.* (quoting *Pustell v. Lynn Pub. Schs.*, 18 F.3d 50, 53 (1st Cir.1994)).

The First Circuit has considered several factors when determining whether *Pullman* abstention is appropriate: (1) whether there is substantial uncertainty over the meaning of the state law at issue; (2) whether a state court's clarification of the law would obviate the need for a federal constitutional ruling; (3) whether there is an action pending in state court that will likely resolve the state-law questions underlying the federal claim; and (4) whether there are federalism concerns that support abstention. *Ford Motor Co.*, 257 F.3d at 71-73.

Regarding factor one, Plaintiffs' lawsuit invites this Federal Court to strike down a longstanding state statute based on Plaintiffs' speculative supposition about how the Rhode Island Supreme Court would interpret the statute and rule on its constitutionality. No Rhode Island court has ever interpreted the civil death statute as barring a lawsuit based on a federal claim, let alone determined whether it would be constitutional if it did. Moreover, the Rhode Island Supreme Court has never *explicitly* determined whether it is constitutional for the civil death statute to bar a state law negligence action.

Regarding factor two, if the Rhode Island Supreme Court were to interpret the civil death statute as not barring civilly dead inmates from bringing federal claims, it would eliminate the need for this Court to determine whether that hypothetical application of the statute (that has never been applied by any Rhode Island court) violates federal law. Similarly, if the Rhode Island Supreme Court were to determine that the civil death statute is unconstitutional under either the state or federal constitution when applied to bar a civilly dead inmate from bringing a state or federal claim, it would resolve Plaintiffs' speculative concerns and obviate the need for this Court

to examine the state statute. As the United States Supreme Court has noted, "[a]nother important reason for abstention is to avoid unwarranted determination of federal constitutional questions. When federal courts interpret state statutes in a way that raises federal constitutional questions, 'a constitutional determination is predicated on a reading of the statute that is not binding on state courts and may be discredited at any time—thus essentially rendering the federal-court decision advisory and the litigation underlying it meaningless.'" *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 11 (1987) (quoting *Moore v. Sims*, 442 U.S. 415, 428 (1979)).

Regarding factor three, the *Zab* and *Rivera* appeals currently pending before the Rhode Island Supreme Court ask the Supreme Court to review a decision granting the defendants judgment on the plaintiffs' state law negligence claims based on the civil death statute. The plaintiffs in those cases explicitly raised arguments to the Superior Court regarding the constitutionality of the civil death statute under state and federal law. Here, Plaintiffs invite this Court to pass on the constitutionality of a longstanding state statute that is presently before the State Supreme Court in a matter where the plaintiffs raised to the trial court some of these very same arguments that Plaintiffs now make to this Court. Plaintiffs' invitation to this Court to short circuit the ongoing state court proceedings implicates significant concerns of comity and friction with the state courts. *See also Pennzoil Co., Inc.*, 481 U.S. at 11 (along with *Pullman* abstention, the United States Supreme Court's precedent "mandates application of *Younger* abstention not only when the pending state proceedings are criminal, but also when certain civil proceedings are pending, if the State's interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government").

Regarding factor four, it would serve the important principles of comity and judicial efficiency to allow the Rhode Island Supreme Court in the first instance to interpret this

longstanding state statute based on its rules of statutory interpretation. Given that both the civil death statute and the type of state law negligence claim it has been interpreted as barring are both state law creations, it is especially appropriate to allow the State Supreme Court to decide this issue in the first instance.

CONCLUSION

For the reasons set forth herein, the State requests that this Court grant its Motion to Dismiss and dismiss the Complaint with prejudice. Alternatively, the State requests that this Court abstain.

Respectfully submitted,

DEFENDANT,
GINA RAIMONDO, in her official capacity as Governor of the State of Rhode Island,

By:

PETER F. NERONHA
ATTORNEY GENERAL

/s/ Katherine Connolly Sadeck
Katherine Connolly Sadeck (8637)
Lauren E. Hill (9830)
Special Assistant Attorneys General
150 South Main Street
Providence, RI 02903
Tel: (401) 274-4400, Ext. 2480
Fax: (401) 222-2995
ksadeck@riag.ri.gov

CERTIFICATE OF SERVICE

I hereby certify that I filed the within document via the ECF filing system and that a copy is available for viewing and downloading by counsel of record for Plaintiff on this 3rd day of October, 2019.

/s/ Katherine Connolly Sadeck