STATE OF RHODE ISLAND **SUPREME COURT**

MICHAEL BENSON, et al.
Plaintiffs-Appellants,
v.

DANIEL McKEE, et al.
Defendants-Appellees.

SU-2020-0066-A
On appeal from the Superior Court
PC-2019-6761
(DARIGAN, J.)

BRIEF OF AMICUS CURIAE AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND IN SUPPORT OF DEFENDANTS-APPELLEES

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Interest of the American Civil Liberties Union of Rhode Island to Appear as Amicus Curiae

The American Civil Liberties Union of Rhode Island ("ACLU-RI" or "Amicus"), with over 5,000 members, is the Rhode Island affiliate of the American Civil Liberties Union, a nationwide, non-profit, nonpartisan organization. ACLU-RI, like the national organization with which it is affiliated, is dedicated to vindicating the principles of liberty embodied in the Bill of Rights to the United States Constitution, including the right to reproductive freedom as delineated in *Roe v. Wade*, 410 U.S. 113 (1973), and its progeny. In furtherance of that goal, ACLU-RI cooperating attorneys have, over the past 45 years, successfully challenged numerous attempts by the General Assembly to restrict that right. *See, e.g*, *Doe v. Israel*, 358 F. Supp. 1193 (D.R.I. 1973), *stay denied pending appeal*, 482 F.2d 156 (1st Cir. 1973), *cert. denied*, 416 U.S. 993 (1974); *Planned Parenthood v. Board of Medical Review*, 598 F. Supp. 625 (D.R.I. 1984); *Rhode Island Medical Society v. Whitehouse*, 66 F. Supp. 2d 288 (1999), *aff'd*, 239 F.3d 104 (1st Cir. 2001).

ACLU-RI testified before the 1986 Rhode Island Constitutional Convention on the constitutional amendment that revised Article 1, Section 2 of the Rhode Island Constitution, and which Plaintiffs-Appellants (hereinafter "Plaintiffs") claim invalidates the Reproductive Privacy Act. At the 1986 Convention, ACLU-RI also testified against another proposed constitutional amendment, known as Question 14. Question 14, if approved, would have explicitly banned abortion in Rhode Island

(subject to the demise of federal constitutional protections). ACLU-RI played a major role in a coalition effort that was successful in defeating Question 14 by an overwhelming 2 to 1 margin at the polls.

ACLU-RI was also an active participant in the coalition that successfully lobbied for passage of the Reproductive Privacy Act challenged here.

ACLU-RI has a strong, documented, and consistent record spanning nearly 50 years in obtaining and preserving the individual right of reproductive choice in Rhode Island. Because Plaintiffs' position, if accepted, would undermine the General Assembly's legitimate authority to legislatively safeguard those individual freedoms, as at least fourteen other state legislatures have done, ACLU-RI files this brief as amicus curiae in support of the Judgment below dismissing the complaint and in support of Defendants-Appellees (hereinafter "the State").

In this brief, ACLU-RI refutes several points made in error by Plaintiffs and amicus Thomas More Society ("TMS") in their briefs concerning the 1986 Constitutional Convention and the sound legal underpinning of the enactment of the Reproductive Privacy Act. It is not the goal of this amicus brief to present an argument on each of the issues raised by Plaintiffs. We leave that to the State.

All parties have consented in writing to the participation of ACLU-RI and filing of the within brief of amicus curiae.

Introduction

This appeal involves an attack upon the Rhode Island Reproductive Privacy Act ("RPA"), enacted and signed into law on June 19, 2019, 2019 Rhode Island Public Laws chapter 19-27, 2019 House bill 5125 Sub B.

The RPA was enacted in eleven sections. The affirmative provisions of the RPA, in section 1, are designed to codify the protections of reproductive choice to pregnant persons established by federal constitutional standards set forth in *Roe v. Wade, supra,* and later cases. Sections 2, and 4 through 8 effectuated those protections by formally repealing or modifying provisions of state law which were inconsistent with those protections, many of which had previously been declared unconstitutional and enjoined from enforcement by the federal courts. Sections 3, 9 and 10 amended existing laws to maintain consistency with the RPA, and section 11 provided that it would take effect upon passage.

The RPA, by its express terms, prohibits the state and its agencies and subdivisions from interfering with or restricting any pregnant person in commencing or continuing a pregnancy at any stage of gestation. R.I.G.L. §23-4.13-2(a)(1)-(2). Nothing in the RPA requires, nor could require, any pregnant person to terminate a pregnancy that they wish to continue. Nothing in the RPA requires, nor could require, pregnant Plaintiffs Rowley or Jane Doe to alter the course of their

pregnancy. The RPA, as a legislative enactment, does not amend the Rhode Island Constitution and does not create a constitutional right to terminate a pregnancy.

The Plaintiffs' assertions of standing fall into two categories. One category is represented by Plaintiffs Roe and Mary Doe and the organizational Plaintiff Catholics for Life, Inc., dba Servants of Christ for Life ("SOCL"). Roe and Doe are described as fetuses then at 15 and 34 weeks of gestation, respectively, at the time the complaint and amended complaint were filed, and that their suit, as minors, is brought by the pregnant mother of each. App.86-91. SOCL is described as entitled to asserting the interest of Roe and Doe "and others similarly situated." App.92.

The second category is represented by Plaintiffs Benson, Rowley and Jane Doe ("BRD"), who assert interference with their right to vote. App.82-86.

Below, the Superior Court concluded that all Plaintiffs lacked standing to pursue their purported claims. Amicus will defer to the State to address these arguments in detail.

However, as to the first category of Plaintiffs, amicus would respectfully observe that they simply did not, and do not, have standing to bring suit. The effort by Plaintiffs Roe and Mary Doe to challenge the constitutionality of the General Assembly's action quickly sinks under the weight of *Roe v. Wade* itself. In *Roe*, the Court specifically held that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." 410 U.S at 158.

As for SOCL's assertion of standing, Plaintiffs and amicus TMS acknowledge that it is wholly dependent upon the standing of fetuses Roe and Doe whose claims are simply not cognizable. In any event, ACLU-RI respectfully submits that SOCL's claim that it is entitled to assert the interest of then-fetuses Roe and Doe and others "similarly situated" has no basis in law.

In order to assert a basis for organizational standing, an organization asserts the interests, and stands in the shoes, of its members. There is no assertion, nor can one be imagined, that fetuses are members of SOCL. A party who seeks to assert the rights of others "similarly situated" speaks in the language of class action, but one must be a member of the class in order to represent it, *see* R. 23(a), Superior Court Rules of Civil Procedure, and no class action was asserted below. Nor does the fact that SOCL cares deeply about the abortion issue provide a basis for standing or to assert legal rights, if any exist, of an unrelated party. *See Diamond v. Charles,* 476 U.S. 54, 66-67 (1986) (physician and father, self-proclaimed "protector of the unborn," did not have standing to assert constitutional rights of an unborn fetus).

Moreover, whatever claimed "injuries" or threats of potential injury or diminution in status allegedly existed in 2019 as to Plaintiffs then-fetuses Roe and Doe, they are surely now moot, as must be the wholly derivative claim of SOCL. *See, e.g., National Education Association RI v. Town of Middletown,* 210 A.3d 421, 425–26 (R.I. 2019); *Boyer v. Bedrosian,* 57 A.3d 259, 271 (R.I. 2012) ("It is well

settled that [a plaintiff] must maintain a personal interest in the outcome throughout the course of the litigation or the controversy becomes moot and, therefore, stripped of justiciability, despite the court's retention of subject-matter jurisdiction." Citations omitted.)

A full term pregnancy is 39-42 weeks.[1] Every claim asserted as to Roe, Doe and SOCL depended upon Roe and Doe's status as a fetus. Unlike a pregnant individual, who may become pregnant again, thus presenting the classic case of "capable of repetition, yet evading review," then-fetuses Roe and Doe will never be faced with that status again.[2]

As to the second category of Plaintiffs, BRD, their sole basis for asserting standing is as voters. ACLU-RI respectfully submits that the BRD claims are no different than any other member of the voting public, without regard to whether one is in favor of or opposed to a particular candidate or ballot issue. Of course, there was no candidate or ballot issue at issue in 2019 denied, withheld, or diluted upon which a voter suppression case could be premised.

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[1] See, e.g., Committee Opinion, American College of Obstetricians and Gynecologists, November 2013. https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2013/11/definition-of-term-pregnancy.pdf, accessed 8/11/2021.

[2] *See Roe v. Wade, supra,* 410 U.S. at 125 (citations omitted)

I. Plaintiffs' Reliance on the 2019 Recollections of Non-delegates to the 1986 Convention Is No Substitute for Statutory Construction or Competent Evidence of Legislative Intent.

In Point I.C.A.3 of their Brief, Plaintiffs frame their claim as resting on the contention that the General Assembly had no authority to enact the RPA because Article 1, Section 2 of the Rhode Island Constitution adopted in 1986 expressly prohibited such action. In support of their argument, Plaintiffs refer to affidavits, executed in 2019, describing the recollections of the then-Speaker of the House and of the person who briefly served for a portion of the proceedings as General Counsel to the Constitutional Convention as to what Article 1, Section 2 was intended to mean, and that Article 1, Section 2 "place[d] an affirmative restraint against the General Assembly" prohibiting or divesting the General Assembly of any authority to enact the RPA.[3] Plaintiffs' Brief at 19, *also* 16-17, 19-22. The referenced

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[3] The language added to Article 1, Section 2 in 1986 is underlined below:

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

affidavits were attached as Exhibits 2 and 3 to the Amended Complaint. App. 95.[4]

Neither of the affiants were actual delegates to the 1986 Convention. Their recollections, made more than thirty years after the fact, have no evidentiary value.[5]

In their affidavits, Patrick Conley, who briefly served as "General Counsel to the President" of the 1986 Convention,[6] and Matthew Smith, who was Speaker of the House of Representatives at the time, claim to know the specific intent of the 1986 Convention delegates in approving the "abortion" proviso included in Article 1, Section 2: to "mandate that any establishment of a new Rhode Island 'fundamental right' to abortion, and the funding thereof, would require a proper amendment to the Rhode Island Constitution." Plaintiffs' Exhibit 2.

This characterization is nowhere to be found in the Committee Reports or proceedings from the 1986 Convention.[7]

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[4] Plaintiffs did not include any exhibits to the Amended Complaint in their Appendix. App. 69-120.

[5] Indeed, Speaker Smith's affidavit provides nothing more than "bolstering" of counsel Conley, since Smith states that whatever understanding he obtained came from discussions with Conley. Exhibit 3 to Amended Complaint.

[6] It is worth noting that Conley himself has described his tenure as General Counsel at the Convention as "short-lived." Patrick T. Conley, "Rhode Island in Rhetoric and Reflection." Rhode Island Publications Society, 2002, p. 188.

[7] Nor does Conley's Treatise on the Rhode Island Constitution, referenced in paragraph 6 of his Affidavit, Exhibit 2 to the Amended Complaint, provide any support for his claim. The "Treatise" simply mentions unexplained "concerns of

To the contrary, the report of the Citizens' Rights Committee, attached as Exhibit F to Exhibit 1 of the Amended Complaint, makes quite clear that the subject language was inserted not to affirmatively deny rights but to avoid a later claim that the inclusion of a ban on gender discrimination necessarily included protection of "abortion or homosexual rights." As the section labeled "Committee Intent" states:

> The committee recognizes the concerns of some of its members that language of this resolution may be interpreted by some to go far beyond its intended scope. Nothing contained in Resolution 86-00002, Sub. A, should be read to justify abortions or homosexual rights. Clearly, the word "gender" should not be interpreted as meaning sexual preference. Also, the prohibition of discrimination based on gender should not be read to permit abortion. Prohibition of abortion is a distinction made on the basis of when life begins, and is not a distinction based on gender.
> Amended Complaint, Ex. 1-F, excerpt appended hereto as Addendum 1.

By this language—"nothing shall be construed to grant or secure any right"—the Constitutional Convention intended to forestall any argument that the specific language that was being added to Article 1, Section 2 to prohibit discrimination on the basis of gender could be interpreted as establishing a constitutional right to an abortion. That language goes no further than denying a construction; it cannot be read to create a contrary construction, as Plaintiffs claim, as establishing a ban either

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some of the committee members" as the basis for the addition of this language. Patrick T. Conley and Robert G. Flanders, The Rhode Island State Constitution, Oxford University Press, 2011, page 56.

on abortion or on the General Assembly's authority to adopt legislation protecting that right.[8]

As further contemporaneous evidence that the Constitutional Convention did not intend or understand Article 1, Section 2 to prohibit abortions or to limit the General Assembly's legislative authority is the fact that the Constitutional Convention actually affirmatively adopted a *separate* provision explicitly intended to prohibit abortions in Rhode Island, in Question 14, which was defeated by the voters.

II. The 1986 Constitutional Convention Adopted an Explicit Abortion Ban for Inclusion in the Rhode Island Constitution in Question 14, But It Failed to Pass.

There actually *is* contemporaneous evidence of the Constitutional Convention's effort to ban abortions, but it is not in Article 1, Section 2 or the contemporaneous explanation and information provided to the voters in considering approval or rejection of Article 1, Section 2.

While Plaintiffs assert that the language added to Article 1, Section 2 was designed to bar the General Assembly from taking any action to protect abortion rights, the plain language of Section 2 does not contain any such language.

That is not surprising, since the members of the 1986 Convention indeed

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[8] The Court recently addressed Article 1, Section 2 and its legislative history in another context in *Doe v. Brown University,* 253 A.3d 389, 398-401 (R.I. 2021).

sought to include an express ban on abortions in the Rhode Island Constitution. But it was not contained in Article 1, Section 2. To the contrary, the 1986 Convention approved a *separate* constitutional amendment to achieve that very purpose—and to do so explicitly—but that amendment was overwhelmingly rejected by the voters.

In 1986, once the Constitutional Convention completed its work, the electorate was presented with fourteen proposed ballot questions containing a total of twenty-five proposed constitutional amendments. The summary of the fourteen questions, as drafted by the Convention, is appended to this brief as Addendum 2. The proposed amendment that was ultimately approved and incorporated in Article 1, Section 2 is listed as Question 8. Notably, in the list of ballot questions, Question 8 contained no reference to abortion or abortion funding. Add. 2; *see also* n. 9, *infra*.

The 1986 Convention separately approved and proposed Question 14 for approval by the voters. Question 14, if approved by the voters, would have accomplished directly and unambiguously what Plaintiffs claim is intended by the last sentence of Article 1, Section 2: the inclusion of a direct and absolute ban on abortion and abortion funding in the Rhode Island Constitution. Question 14 made its intention to impose an absolute constitutional ban on abortion rights unmistakable: by declaring a paramount right to life from moment of fertilization (section 1), imposing a prohibition on deprivation of unborn life except to prevent the death of the pregnant woman "as long as every reasonable effort was made to

preserve" both lives (section 2), imposing a prohibition on use of any government funds for abortion (section 3), and providing that these restrictions would not be enforced until a change in federal law (section 4). The full text of Question 14 is attached hereto as Addendum 3.[9]

If Question 14 had been approved, there would be no question that it constrained the legislature from enacting protections for reproductive choice contained in the RPA. However, it did not pass. It was resoundingly defeated by a margin of nearly 2 to 1 (101,252 approve; 191,730 reject). The election results report in the November 5, 1986 edition of the Providence Journal is attached hereto as Addendum 5.

III. Fourteen States, Including Rhode Island, and the District of Columbia Have Enacted Laws that Preserve Reproductive Freedom and Expand Abortion Access.

Thomas More Society, in its amicus brief, Brief at 13-14 nn. 7-8, noted that a number of states have preserved abortion bans that do not conform to *Roe* and still others have passed "trigger" bans to take effect if *Roe* is overruled. On the flip side are at least fourteen states, including Rhode Island, and the District of Columbia,

[9] In fact, in its listing of the constitutional questions in its pre-election voters' guides, the Convention provided no indication that any reference to abortion or abortion funding was included in the text of Question 8. See Question List, Addendum 2, and Voters Guide Excerpt, attached hereto as Addendum 4.

which have enacted legislation to ensure that the protections of reproductive rights articulated in *Roe* are preserved at the state level.

These statutes, and the date they were initially adopted[10] are:

California	Cal. Health & Safety Code §§ 123462, 123466 (2002)
Connecticut	Conn. Gen. Stat. Ann. § 19a-602(a) (1990)
Delaware	24 Del. Code § 1790 (2017)
Hawaii	Haw. Rev. Stat. § 453-16 (2006)
Illinois	775 Ill. Comp. Stat. 55/1-1, *et seq.* (2019)
Maine	Me. Rev. Stat. Ann. tit. 22, § 1598 (1993)
Maryland	Md. Code Ann., Health-Gen. § 20-209(b) (1991)
Massachusetts	Mass. General Laws c.112 § 12L (2020)
Nevada	Nev. Rev. Stat. Ann. 442.250 (1990)
New York	NY Pub. Health L. §§ 2599-aa, 2599-bb (2019)
Oregon	Or. Rev. Stat. 659.880 (2017)
Rhode Island	R.I. Gen. Laws § 23-4.13-2 (2019)
Vermont	18 Vt. Stat. Ann. § 9493 et seq. (2019)
Washington	Wash. Rev. Code Ann. §§ 9.02.100 et. seq. (1991)
Washington, D.C.	D.C. Code § 2-1401.06 (2020)

[10] Of these jurisdictions, the statutes in Maryland, Nevada and Washington state were ratified by the electorate.

The successful state codifications of the reproductive freedoms afforded by the United States Constitution provide persuasive evidence of states' prerogative to enact laws that preserve such protections. Other than the challenge at bar, amicus ACLU-RI found no reported decision addressing an attack on the legality or constitutionality of our sister states' codification of reproductive rights.

Conclusion

Amicus ACLU-RI respectfully prays that the Court affirm the Judgment below.

Respectfully submitted,

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

1. This brief contains 3,165 words, excluding the parts exempted from the word count by Rule 18(b).

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

/s/ Lynette Labinger
Signature of Filing Attorney

CERTIFICATE OF SERVICE

I hereby certify that, on September 20, 2021:

☑ I electronically filed and served this document through the electronic filing system.

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/s/ Lynette Labinger

STATE OF RHODE ISLAND

IN CONSTITUTIONAL CONVENTION

JANUARY SESSION, A.D. 1986

REPORT OF THE CITIZEN RIGHTS COMMITTEE ON EQUAL PROTECTION (RESOLUTION 86-00002, SUBSTITUTE A)

I. PUBLIC TESTIMONY

On Saturday, March 22, the Citizens' Rights Committee held a public hearing at Lincoln High School. Testimony was heard on the subjects of Handicapped Rights and the Equal Rights Amendment.

Mr. Bob Cooper, a member of President Reagan's National Council on the Handicapped and Executive Secretary of the Governor's Commission on the Handicapped, testified in favor of equal rights. Mr. Cooper urged the committee to put something before the voters, "so they can decide whether or not people with disabilities... on the basis of their gender or race, color, creed, country of ancestral origin, and other things can be protected from arbitrary action by the government, constitutional protection on the basis of anything, whether it's disability,

[* * * * * * * * * *

> "No otherwise qualified person shall, solely by reason of a condition of race or sex be subject to discrimination; by the state, its agents or any person or entity doing business with the state. Nothing in this section shall be construed to grant or secure any right relating to abortion or the funding thereof."

Some committee members expressed concern that the use of the word "sex" might carry implications for abortion funding and homosexual rights. It was proposed that the word "sex" be replaced with the word "gender." Delegate Alfred Gemma expressed strong opposition to this amendment . He argued that the resolution, as amended, would be the equivalent of a "watered-down equal rights amendment", and that the women of Rhode Island deserved a strong statement against discrimination. By a vote of 9 to 7, with one abstention, the term "sex" was replaced by the term "gender." Resolution 86-00002, Sub. A was then passed by a vote of 11-6.

III. COMMITTEE INTENT

In passing this resolution, the committee intends that the state should not permit discrimination, on the basis of gender or race, to exist. The committee finds that such discrimination can not be justified.

The committee recognizes the concerns of some of its members that the language of this resolution may be interpreted by some to go far beyond its intended scope. Nothing contained in Resolution 86-00002, Sub. A, should be read to justify abortions

or homosexual rights. Clearly, the word "gender" should not interpreted as meaning sexual preference. Also, the prohibition of discrimination based on gender should not be read to permit abortion. Prohibition of abortion is a distinction made on the basis of when life begins, and is not a distinction based on gender.

The committee recognizes that discrimination based on race and gender are pervasive in this country. Such discrimination is repugnant to one of the goals of the convention to ensure equal enforcement of constitutional rights. A stand against discrimination based on race and gender should be expressed in the fundamental law of the state.

IV. CONCLUSIONS

The Committee on Citizen Rights recommends passage of Resolution 86-00002, Sub. A, to ensure that the State will not tolerate discrimination based on gender or race.

RHODE ISLAND CONSTITUTIONAL CONVENTION

19 86

GET THE FACTS KNOW THE ISSUES

Shall the action of the Constitutional Convention in amending the Constitution in the following manner be ratified and approved?

1 REWRITE OF THE PRESENT CONSTITUTION

☐ YES ☐ NO

Shall the Constitution of 1843 and the 44 amendments ratified since then be adopted as rewritten, in proper order, with annulled sections removed? Shall the Constitutional Convention publish the Constitution in proper form, including new amendments, if they are approved by the voters? (Resolution 86-00042 B)

2 JUDICIAL SELECTION AND DISCIPLINE

☐ YES ☐ NO

Shall a non-partisan, independent commission be established to nominate judges for appointment by the general assembly in the case of supreme court vacancies and for appointment by the governor in the case of vacancies in other courts? Shall the commission have authority to discipline or remove all judges? Shall judges appointed hereafter be required to retire at 72 years of age? Shall the duty of the supreme court to give advisory opinions be abolished? (Resolution 86-00080 A)

3 LEGISLATIVE PAY AND MILEAGE

☐ YES ☐ NO

Shall the daily pay of general assembly members be established at a sum equal to the average weekly wage of Rhode Island manufacturing workers, divided by a four-day legislative week (about $76), the speaker receiving twice that amount; and shall mileage compensation be equal to the rate paid U.S. government employees, such pay and mileage to be limited to 60 days per year? (Resolution 86-00094 B)

4 FOUR-YEAR TERMS AND RECALL

☐ YES ☐ NO

Beginning in 1988, shall the governor, lieutenant governor, secretary of state, attorney general, general treasurer and members of the general assembly be elected to four-year terms and be subject to recall by voters? (Resolution 86-00028 A)

5 VOTER INITIATIVE

☐ YES ☐ NO

Shall voters be empowered to petition certain laws and/or constitutional amendments onto the ballot for voter approval or rejection? Shall future constitutional convention candidates be elected on a non-partisan basis? (Resolutions 86-00001 B, 86-00136)

6 ETHICS IN GOVERNMENT

☐ YES ☐ NO

Shall more specific impeachment standards be established? Shall an ethics commission be established with authority to adopt a code of ethics and to discipline or remove public officials and employees found in violation of that code? Shall the general assembly adopt limits on campaign contributions and shall the general assembly enact a voluntary system of public campaign financing, coupled with limitations on total campaign spending by participating candidates? (Resolutions 86-00047 A, 86-00060 A, 86-00145 A)

7 BUDGET POWERS AND EXECUTIVE SUCCESSION

☐ YES ☐ NO

Shall the governor be constitutionally empowered to present an annual budget? Shall the speaker of the house become governor if both the governor and lieutenant governor die or are unable to serve? (Resolutions 86-00222, 86-00246)

8 RIGHTS OF THE PEOPLE

☐ YES ☐ NO

Shall free speech, due process and equal protection clauses be added to the Constitution? Shall the state or those doing business with the state be prohibited from discriminating against persons solely on the basis of race, gender or handicap? Shall victims of crime have constitutionally endowed rights, including the right to compensation from perpetrators? Shall individual rights protected by the state constitution stand independent of the U.S. Constitution? (Resolutions 86-00033, 86-00032, 86-00140, 86-00002 B, 86-00171)

9 SHORE USE AND ENVIRONMENTAL PROTECTION

☐ YES ☐ NO

Shall rights of fishery and privileges of the shore be described and shall the powers of the state and local government to protect those rights and the environment be enlarged? Shall the regulation of land and waters for these purposes not be deemed a public use of private property? (Resolutions 86-00003, 86-00004A)

10 FELON OFFICE HOLDING AND VOTING

☐ YES ☐ NO

Shall felons' voting rights, removed upon conviction, be restored upon completion of sentence and probation or parole? Shall felons and certain misdemeanants be banned from holding office for three years after completion of sentence and probation or parole? (Resolutions 86-00149 A, 86-00025 B)

11 LIBRARIES

☐ YES ☐ NO

Shall it be a duty of the general assembly to promote public libraries and library services? (Resolution 86-00098)

12 BAIL

☐ YES ☐ NO

Shall the courts be authorized to deny bail to persons accused of the unlawful sale or distribution of controlled substances punishable by a sentence of ten years or more? (Resolution 86-00153 B)

13 HOME RULE

☐ YES ☐ NO

Shall cities and towns with charters have more authority over local affairs, within the limits of the General Laws, including the power to tax and borrow with local voter approval (unless overridden by a three-fifths vote in the general assembly); to protect public health, safety, morals and the environment; to regulate local businesses and local planning and development? Shall new or increased tax exemptions pertaining to cities and towns be subject to local voter approval? Shall cities and towns be reimbursed for certain state-mandated programs? Shall charter adoption and amendment procedures be simplified? (Resolution 86-00196 B)

14 PARAMOUNT RIGHT TO LIFE/ABORTION

☐ YES ☐ NO

To the extent permitted by the U.S. Constitution, shall all persons, including their unborn offspring, without regard to age, health, function, or condition of dependency, be endowed with an inalienable and paramount right to life; and to the extent permitted by the U.S. Constitution, shall abortion be prohibited, except that justified medical procedures to prevent the death of a pregnant woman shall be permitted? Shall the use of government monies to fund abortions be prohibited by the Constitution? (Resolution 86-00212 A)

VOTE

ON THE CONSTITUTIONAL QUESTIONS

TUESDAY, NOVEMBER 4th

ADDENDUM 2

Keven A. McKenna, President

BALLOT POSITION NO. 14

PARAMOUNT RIGHT TO LIFE

STATE OF RHODE ISLAND

IN CONSTITUTIONAL CONVENTION

JANUARY SESSION, A.D. 1986

RESOLUTION NO. 86 - 00212 (SUB A), As Amended

Title: A RESOLUTION RELATING TO THE PARAMOUNT RIGHT TO LIFE

Convention History:

Recommended for First Passage by Committee on Citizens Rights

First Passage: June 3, 1986

Recommended for Second Passage (as amended) by the Committee on Style and Drafting

RESOLVED: The Rhode Island Constitutional Convention of 1986 hereby approves Resolution No. 86-00212 (SUB A), to be included in the proposed constitutional rewrite, Resolution No. 86-00042 (Sub B), as amended, as follows:

SECTION 1. (A) Resolution No. 86-00212 (SUB A) shall take its place as a new article of the proposed rewrite, as follows:

"ARTICLE XVI

"THE PARAMOUNT RIGHT TO LIFE

"We, the people, declare:

"Section 1. All human beings, including their unborn offspring at every stage of their biological development beginning with fertilization, are persons who are protected in their inalienable and paramount right to life, without regard to age, health, function, or condition of dependency.

"Section 2. No unborn person shall be deprived of life by any person; provided, however, that nothing in this amendment shall prohibit the justified use of only those medical procedures required to prevent the death of either the pregnant woman or her unborn offspring as long as every reasonable effort was made to preserve the life of each.

"Section 3. No governmental funds from whatever source and whether held in trust or otherwise, shall be appropriated or expended for the performance, funding, facilitation, or promotion of induced abortion.

"Section 4. Until the unborn person is protected or allowed to be protected as a person with regard to the right to life under the Constitution of the United States either by its amendment or by federal judicial decision, conduct that is in conflict with sections 1, 2 or 3 of this article is covered by those sections only if the state is permitted by that Constitution to regulate that conduct.

"Section 5. The provisions of this article shall be enforced to the maximum extent consistent with the supreme law of the land.

"Section 6. If any part, clause or section of this article shall be declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remaining provisions, parts or sections shall not be affected."

(B) If the proposed rewritten constitution is not approved, then said Resolution No. 86-00212 (SUB A) shall be added to the existing Constitution as an article of amendment

thereto, and all provisions of the Constitution inconsistent therewith would be annulled.

SECTION 2. This Resolution shall take effect upon voter approval.

****
86-212B *
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CONVENTION ALERT

RHODE ISLAND CONSTITUTIONAL CONVENTION 1986

VOTERS' GUIDE

TO FOURTEEN BALLOT QUESTIONS FOR CONSTITUTIONAL REVISION

ELECTION DAY
November 4, 1986

THERE WILL BE NO MASTER LEVER
EACH QUESTION MUST BE VOTED ON SEPARATELY

ADDENDUM 4

5

Keven A. McKenna
Convention President

BALLOT QUESTION NO. 8

RIGHTS OF THE PEOPLE

8 Shall the action of the Constitutional Convention in amending the Constitution in the following manner be ratified and approved?

RIGHTS OF THE PEOPLE

Shall free speech, due process and equal protection clauses be added to the Constitution? Shall the state or those doing business with the state be prohibited from discriminating against persons solely on the basis of race, gender or handicap? Shall victims of crime have constitutionally endowed rights, including the right to compensation from perpetrators? Shall individual rights protected by the state constitution stand independent of the U.S. Constitution?
(Resolutions 86-00033, 86-00032, 86-00140, 86-00002-B, 86-00171)

THE CONSTITUTION NOW:

A. The Constitution does not now contain a free speech or a due process and equal protection clause as does the U.S. Constitution.

B. There is no direct reference to discrimination on the basis of race, gender or handicap.

C. There are no provisions in the Constitution for victims of crime, although some laws on victims' rights do exist.

D. There is no statement in the Rhode Island Constitution that the rights guaranteed in it stand independent of the federal Constitution.

HOW IT WOULD CHANGE:

A. No law could be passed restricting the freedom of speech, and the due process and equal protection clause of the federal Constitution would be added to the R.I. Constitution, declaring that no one can be denied life, liberty or property without due process of law.

B. The state and persons doing business with the state would be prohibited from discriminating solely on the basis of race, gender or handicap.

C. Victims of crime would be guaranteed certain rights, including the right to compensation from perpetrators for injury or loss, and the right to speak in court before sentencing.

D. Rights protected by the R.I. Constitution would stand independent of the U.S. Constitution.

CONVENTION ACTION:

Resolution 86-00033, Free Speech, passed 96-0.
Resolution 86-00032, Due Process, passed 96-0.
Resolution 86-00140, Victims of Crime, passed 93-1.
Resolution 86-00002-B, Discrimination, passed 59-35.
Resolution 86-00171, Independent Standing, passed 87-6.

BALLOT QUESTION NO. 14

PARAMOUNT RIGHT TO LIFE/ ABORTION

14 Shall the action of the Constitutional Convention in amending the Constitution in the following manner be ratified and approved?

PARAMOUNT RIGHT TO LIFE/ABORTION

To the extent permitted by the U.S. Constitution, shall all persons, including their unborn offspring, without regard to age, health, function or condition of dependency, be endowed with an inalienable and paramount right to life; and to the extent permitted by the U.S. Constitution, shall abortion be prohibited, except that justified medical procedures to prevent the death of a pregnant woman shall be permitted? Shall the use of government monies to fund abortions be prohibited by the Constitution? (Resolution 86-00212-A)

THE CONSTITUTION NOW:

The Constitution makes no reference to a "paramount right to life" or to abortion. It does not mention public funding of abortions, although an executive order now prohibits the use of state funds to pay for abortions.

HOW IT WOULD CHANGE:

To the extent permitted by the U.S. Constitution, all persons, including the unborn, would be protected in their inalienable and paramount right to life, "without regard to age, health, function or condition of dependency."

To the extent permitted by the U.S. Constitution, the amendment would prohibit abortions except that the justified use of medical procedures to prevent the death of a pregnant woman or her unborn offspring would be permitted.

The ban on abortions would not become effective unless the U.S. Supreme Court altered its 1973 decision that permitted abortions (Roe Vs. Wade), or unless the U.S. Constitution were amended.

The use of government funds to finance abortions would be prohibited.

CONVENTION ACTION:

Resolution 86-00212-A, Paramount Right to Life, passed 52-44.

The Providence Journal
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Question 14 fails

Joy, tears greet abortion amendment's fall

By RANDALL RICHARD
and RICHARD C. DUJARDIN
Journal-Bulletin Staff Writers

Rhode Island voters said "no" by a substantial margin yesterday to a proposed constitutional amendment that would have put the state on record as opposing all abortions except those necessary to save the life of a pregnant woman.

With nearly 95 percent of the votes counted, Question 14 was going down to defeat by a margin of 65.3 percent to 34.6 percent.

Only two communities in the state, Central Falls and Woonsocket, voted in favor of the amendment.

The mood at STOP 14 headquarters last night was one of jubilation, with Mary Ann Sorrentino, co-chairman of the coalition, declaring that results were "everything that we could have hoped for . . . a statement by the people of Rhode Island that they hold dear their rights to privacy."

Those who favored the abortion ban, she declared, "had everything going for them .... They outspent us 3 to 1. They controlled the language of the amendment" and yet the people of Rhode Island "believed what we believed."

Sorrentino added, however, that the battle is not yet over:

"I'm not naive. I don't think this is the last time we're ever going to discuss this issue. But it's going to be a very different kind of battle. Now, we're going to have a lot of legislators who are going to say . . .'Look, I'm not going to waste my time anymore on something that's clearly not what the people want.' "

Reciting the rosary

At the Cranston Knights of Columbus Hall on Park Avenue, supporters of the amendment gathered to learn that they were losing by at least a 2-to-1 margin. After that, Roman Catholic Bishop Louis E. Gelineau led them in a recitation of the rosary.

Earlier in the evening, the bishop said he was "very disappointed" in the results, saying that "I had real hope that the educational efforts conducted by supporters would have paid off."

He said he thought that if the amendment had been worded differently — to allow abortions in the case of incest, for example — the results would have been no different.

"It's not the end," the bishop said, "Someday, somehow people are going to see how horrible a crime abortion is, and like many other time-tested movements, we will see a victory."

"This is just one skirmish. As much as we would like to win," said Anna Sullivan, leader of the Coalition for Question 14. "The most disappointing part is to lose for the unborn. That's what hurts the most.

"I think the press has battered on us these past two weeks. I don't pretend to blame that on the vote, but it certainly didn't help."

According to exit polls, conducted for WJAR-TV by Alpha Research Associates, younger and wealthier voters, Democrats and Protestants were most likely to oppose the amendment.

Voters identifying themselves as Catholic also voted against the amendment, but by a smaller margin, according to the exit polls.

Of the first 287 voters identifying themselves as Catholic, 53 percent said they voted against the amendment and 47 percent said they voted for it.

The exit polls showed also that those most likely to vote in favor of the amendment were French-Canadians, Portugese, Republicans and low income and elderly voters.

Even before the polls opened yesterday, members of the coalition supporting the anti-abortion amendment acknowledged that Question 14 appeared to be headed for defeat.

Although there were anti-abortion referendums under consideration yesterday in four other states, Rhode Island's was deemed the most restrictive. It would have banned all abortions, except for those necessary to save the life of the pregant woman, but would not have taken effect without either a change in the philosophy of the U.S. Supreme Court or passage of a similar federal constitutional amendment.

QUESTION 14
PARAMOUNT RIGHT
TO LIFE / ABORTION

	YES	NO
Barrington	1596	4978
Bristol	2285	3222
Burrillville	1482	1932
Central Falls	1744	1569
Charlestown	350	1370
Coventry	2768	6154
Cranston	9016	18981
Cumberland	3550	5444
East Greenwich	994	2507
East Providence	4840	9994
Exeter	104	392
Foster	258	935
Glocester	761	1873
Hopkinton	465	1285
Jamestown	504	1480
Johnston	3371	5574
Lincoln	2314	4512
Little Compton	325	932
Middletown	1319	3011
Narragansett	1234	3341
Newport	1869	4188
New Shoreham		
North Kingstown	1893	5809
North Providence	4362	7199
North Smithfield	1470	2008
Pawtucket	7846	12017
Portsmouth	1499	3348
Providence	12938	25626
Richmond	318	1154
Scituate	858	2450
Smithfield	1976	4123
South Kingstown	1180	4903
Tiverton	1641	2280
Warren	1276	2014
Warwick	9149	21710
Westerly	2214	3180
West Greenwich	272	868
West Warwick	2886	4704
Woonsocket	8347	4672
TOTALS	101252	191730

It was an expensive campaign for both sides. Reports filed last week showed that more than $300,000 had been spent in media advertising by both groups, $229,000 of that by the Pro-14 forces.

In spite of this, exit polling suggested strongly that many voters were confused by the wording of the amendment, with as many as 24 percent of those voting for Question 14 saying that they did so mainly because they believed a woman should have a choice on the issue.