HEARING DATE: November 27, 2019

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, S.C. **SUPERIOR COURT**

Michael Benson,	:	
Nichole Leigh Rowley,	:	
Nichole Leigh Rowley, as parent	:	
and next friend of Baby Roe,	:	
Jane Doe,	:	
Jane Doe, as parent	:	
and next friend of Baby Mary Doe,	:	
Catholics for Life, Inc., dba	:	
Servants of Christ for Life,	:	
PLAINTIFFS	:	
	:	
v.	:	
Gina M. Raimondo, in her official	:	
capacity as Governor for the State	:	**C.A. No. 2019-6761**
of Rhode Island and Providence	:	
Plantations,	:	
Dominick J. Ruggerio, in his official	:	
capacity as President of the Rhode Island	:	
Senate,	:	
Nicholas A. Mattiello, if his official	:	
capacity as Speaker of the Rhode Island	:	**PLAINTIFFS'**
House of Representatives,	:	**MEMORANDUM OF LAW**
Peter F. Neronha, in his official capacity	:	**IN SUPPORT OF THEIR**
as Attorney General for the State of	:	**OBJECTION TO**
Rhode Island and Providence	:	**DEFENDANTS'**
Plantations,	:	**MOTION TO DISMISS -**
Francis McCabe, in his official capacity	:	**PURSUANT TO R.I. SUPERIOR**
as Clerk, of the Rhode Island	:	**COURT RULES OF CIVIL**
House of Representatives	:	**PROCEDURE, RULE 12(b)(6)**
Representatives,	:	
John Doe #1, in his official capacity	:	
as a clerk/page, of the Rhode Island	:	
House of Representatives	:	
Representatives,	:	
Robert L. Ricci, in his official capacity as	:	
Secretary of the Rhode Island Senate,	:	
JOHN DOE#2, in his official capacity as	:	
a clerk/page of the Rhode Island	:	
Senate	:	
DEFENDANTS		

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ARGUMENT

INTRODUCTION

I. Defendants' Motion To Dismiss Fails.

"All have recognized, as must we, that the states are bound by the decisions of the United States Supreme Court." Sweeney v. Notte, 183 A.2d 286, 300 (R.I. 1962); See also, Cooper v. Aaron, 358 U.S. 1 (1958).

In order for Defendants to prevail on their motion here, this Honorable Court must: (1) reject the truth of Plaintiffs' allegations in their pleading; (2) impermissibly consider matters outside of Plaintiffs' pleading; (3) improperly engage in consideration and determination of the underlying "issues" in Plaintiffs' pleading; (4) wrongly resolve all doubts in Defendants' favor; (5) wrongly afford Defendants all reasonable inferences; (6) disregard Rhode Island law regarding "notice pleading;" and, (7) ignore relevant state and federal precedent as to the standard of review for a Rule 12(b)(6) motion - - brought at the pleading stage of litigation. This Honorable Court must not do so. To do, would be clear error.

Defendants prematurely argue against the merits of Plaintiffs' case. (APP.ExD.Mem.5-14).[1] Defendants spend the first ten (10) pages of their "argument," arguing under-lying "issues" of Plaintiffs' case; challenging the truth of Plaintiffs' allegations; engaging in statutory and constitutional construction; and, offering hypotheticals to justify their "conclusions" - - all of which are wholly inappropriate in the context of a Rule 12(b)(6)[2] motion, **brought at the pleading stage of litigation**. Plaintiffs will specifically address Defendants' arguments, relative

[1] Plaintiffs attach an Appendix of exhibits and incorporate by reference said Appendix herein. Defendants' memorandum of law is attached hereto as Appendix Exhibit D, and is cited herein as ("APP.ExD.Mem.page).

[2] See, *Rhode Island Superior Court Rules of Civil Procedure*, Rule 12(b)(6).

to the underlying "issues;" but, do not concede any appropriateness of their placement here. Defendants' arguments on the underlying "issues" are misplaced, Plaintiffs object to their presence here, and this Honorable Court must disregard them.

Moreover, a Rule 12(b)(6) motion is not the proper occasion for this Honorable Court to be stepping outside Plaintiffs' pleading, and into the realm of statutory and constitutional construction - - as Defendants furtively attempt to lead this Honorable Court. (APP.ExD.Mem.5-14). A Rule 12(b)(6) motion is confined to an examination of the sufficiency of Plaintiffs' First Amended Complaint[3] only, within the strictures of Rhode Island Supreme Court and United States Supreme Court precedent.

This is not a simple taxpayer suit. Plaintiffs do not seek some nebulous ruling that our State Government must generally comply with the laws. Nor are Plaintiffs relying on non-particularized injuries, as mis-characterized by Defendants. Plaintiffs allege sufficient facts to support their claims of federal and state violations of the Due Process and Equal Protection clauses of the Constitution of the State of Rhode Island and Providence Plantations ("Rhode Island Constitution") and the Constitution of the United States of America ("United States Constitution"), for example. And, Plaintiffs further allege that they are entitled to relief under the Uniform Declaratory Judgments Act ("UDJA"), based on their "privileged status."

Critically, Defendants fail to understand and apply the state and federal law relative to a "standing" challenge **brought at the pleading stage** - - which undergirds their present

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[3] Plaintiffs' First Amended Complaint is attached hereto as Appendix Exhibit A. Any reference herein to "Plaintiffs' First Amended Complaint" or Plaintiffs' "pleading," is understood to mean Plaintiffs' First Amended Complaint, including exhibits; and, is cited herein (APP.ExA.Complaint.paragraph number) or (APP.ExA.Complaint.page number).

Rule12(b)(6) motion. "The requirement that Plaintiffs adequately allege an injury in fact 'serves to distinguish a person with a direct stake in the outcome of a litigation - - even though small - - from a person with a mere interest in the problem.' United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 690 n.14 (1973) (citing, *inter alia*, Kenneth C. Davis, *Standing: Taxpayers and Others*, 35 U. Chi. L. Rev. 601, 613 (1968) ('[A]n identifiable trifle is enough for standing to fight out a question of principle.')). Citizens for Responsibility and Ethics in Washington, et al. v. Trump, United States Court of Appeals, Case No. 18-474 (2d Cir. Sept. 13, 2019) at p.16. Specifically, "[b]ecause this [case] arises **at the pleading stage**, general factual allegations of injury resulting from the defendant's conduct may suffice, for **on a motion to dismiss [as here], we 'presume that general allegations embrace those specific facts that are necessary to support the claim**.'" Id. at 16-17 (quoting, Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 2137 (1992) (citing, Lujan v. National Wildlife Federation, 497 U.S. 871, 889 (1990)) (emphasis supplied). The allegations and claims in Plaintiffs' First Amended Complaint adequately satisfy the state and federal mandates crucial to Defendants' "standing" challenge, at this stage of the litigation.

Defendants' instant motion ultimately fails, because Defendants fail to sustain their paramount burden of proving "beyond a reasonable doubt" that there are **no** circumstances, whatsoever - - within the corners of Plaintiffs' pleading - - that could support Plaintiffs' claims. Under state and federal legal precedent, Plaintiffs do not have to "prove" standing, or the ultimate facts and legal theories of their case, when opposing Defendants' Motion To Dismiss. In a motion to dismiss, only a slight burden of production lay on the Plaintiffs, whereas, the law sets the ultimate burden of proof upon the shoulders of the proponent of the motion to dismiss - -

in this case, the Defendants. Significantly, Rhode Island is a "notice pleading" state. Defendants raise no Rule 8 challenge, as to the sufficiency of notice Plaintiffs' pleading gives Defendants regarding the type of claims being asserted against them. See, *Rhode Island Superior Court Rules of Civil Procedure*, Rule 8.

In Defendants' scant six (6) page "standing" argument, they cite to only seven (7) of Plaintiffs' 210 allegations. (APP.ExD.Mem.15, 19, 20). Notably, Defendants offer no challenge to Plaintiffs' allegations and claims under the Rhode Island Uniform Declaratory Judgments Act. See, R.I. Gen. Laws § 9-30-1, *et seq*.

Defendants, instead, wrongly offer a hodge-podge of arguments, characterizations, and precatory analysis more appropriate to a closing argument at a trial on the merits.[4] But, such arguments, mis-characterizations, and analysis, have no place here. The bar Plaintiffs must clear, in Defendants' limited Rule 12(b)(6) procedural motion here, is very low at this pleading stage.

It is erroneous for this Honorable Court, at this juncture, to weigh the allegations in Plaintiffs' First Amended Complaint (including affidavits), or to make credibility determinations thereto, or to undertake constitutional construction of the underlying "issues." That is simply not the proper legal standard here. The Rhode Island Supreme Court mandates that this Honorable

[4] Defendants' motion is not even ripe for summary judgment disposition, based on Plaintiffs' pleading alone. There is nothing in the record of this case outside Plaintiffs' pleading. Notwithstanding, at best, Defendants' arguments raise genuine issues of material fact in dispute here; when all is viewed in the "light most favorable to the non-moving party [Plaintiffs]," with all reasonable inferences afforded the non-moving party; that would warrant this Honorable Court's denial of any such motion. Moreover, the motion justice's duty on summary judgment is only one of "issue finding," not "issue determination." See, Capital Properties, Inc. v. State, 749 A.2d 1069 (R.I. 1999). Plaintiffs reserve the right to further argument and briefing on this issue should this Court convert Defendants' Rule 12(b)(6) motion into a Rule (56) motion - - which Plaintiffs deem inappropriate here.

Court accept all allegations and claims in Plaintiffs' First Amended Complaint as true.

Even if this Honorable Court were to hold Defendants carried their heavy burden at this pleading stage, Plaintiffs set forth sufficient allegations and claims that place this case squarely (if not specifically) within the narrow exception to the standing requirement, as adopted by the Rhode Island Supreme Court. Because, this case presents the first ever constitutional challenge to portions or Article I and Article VI of the Rhode Island Constitution, which are of "substantial public interest." Defendants fail to reconcile this pointed exception - - ignoring the controlling precedent within the very cases upon which they rely. This case presents a first impression conflict implicating specific provisions of the Rhode Island Constitution that, to date, have not been reviewed or interpreted by the Rhode Island Supreme Court. Plaintiffs' case presents the very kind of narrow exception wherein the Rhode Island Supreme Court has waived the general standing requirement, invoked the "substantial public interest" exception, and considered the merits of the case.

Conclusively, in lieu of filing a responsive Answer to Plaintiffs' First Amended Complaint, Defendants chose, instead, to file the instant motion to dismiss. This Honorable Court is now bound, therefore, to hold Defendants to the proper legal standard for said motion. Plaintiffs do not have to "prove" standing in their pleading, nor must they plead the ultimate facts or legal theories of their case here.

This Honorable Court must sustain Plaintiffs' Objection and deny Defendants' motion to dismiss - - as Defendants fatally confused legal standards, failed to consider all Plaintiffs' allegations and claims, and ultimately failed to carry their heavy burden of proof "beyond a reasonable doubt." Plaintiffs' fifty-two (52) page First Amended Complaint (with exhibits)

alleges sufficient facts that, when presumed true, set forth cognizable claims in this court. Plaintiffs have satisfactorily cleared the procedural hurdle of justiciability, at this pleading stage of the litigation. Even so, the "substantial public interest" exception applies here. Plaintiffs are entitled to be heard on the merits of their case. This Honorable Court must deny Defendants' motion.

RELEVANT TRAVEL

II. Relevant Overview of the "Reproductive Privacy Act," and Plaintiffs' Pleading.

On June 19, 2019, the Rhode Island General Assembly's Senate and House of Representatives passed legislation known as the Reproductive Privacy Act, Chapter 4.3 of Title 23.[5] Later that evening, Governor Raimondo signed the RPA in to law.[6]

On June 19, 2019, prior to the passage and signing of the RPA, Plaintiffs filed their Complaint, seeking, generally, (1) a declaration of status, rights and obligations of the parties under Rhode Island General Laws § 9-30-1 *et seq.*, Uniform Declaratory Judgements Act ("UDJA"), and (2) a determination of the constitutionality of the RPA, under the Rhode Island Constitution and under the United States Constitution. (APP.ExA.Complaint at pp.48-50).

On June 19, 2019, Plaintiffs additionally filed Motions for a Temporary Restraining Order, Preliminary Injunction, Permanent Injunction, and For A Special Assignment of the case.

On June 19, 2019, Associate Justice Melissa A. Long denied Plaintiffs' Motion For A

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[5] Plaintiffs' First Amended Complaint references "H-5125B" which references the Rhode Island General Assembly House Bill 2019 - - H 5125 Substitute B which, after Governor Raimondo signed it into law, is now referred to, and cited herein, as the Reproductive Privacy Act ("RPA"). Plaintiffs cite said bill/law interchangeably with identical reference.

[6] The full copy of the RPA is attached hereto and cited herein as (APP.ExA.Complaint at Exhibit 4).

Temporary Restraining Order. The remaining motions are still pending.

On June 26, 2019, pursuant to Rule 15(a) of the Rhode Island Superior Court Rules of Civil Procedure, Plaintiffs filed their First Amended Complaint to reflect passage of the RPA. (App.ExA.Complaint). On August 27, 2019, in lieu of a responsive Answer, Defendants filed the instant motion.

Plaintiffs file their Objection to Defendants' Motion To Dismiss, along with their supporting memorandum of law herein. It is Defendants' Rule 12(b)(6) Motion To Dismiss, and Plaintiffs' Objection thereto, that is now before this Honorable Court for oral argument, consideration, and decision.

PLAINTIFFS' PLEADING

III. Plaintiffs' First Amended Complaint.

A. Plaintiffs' pleading alleges and claims the protection of the state and federal "due process" and "equal protection" clauses; and, the Rhode Island Uniform Declaratory Judgments Act ("UDJA").

The allegations and claims for relief, in Plaintiffs' First Amended Complaint, raise both state and federal questions of law. First, Plaintiffs' allegations and claims for relief are rooted in the "due process" and "equal protection" clauses of the Rhode Island Constitution and the United States Constitution. (i.e. APP.ExA.Complaint ¶¶ 96, 98, 101, 104, 129, 131, 134, 139, 153, 155, 163, 183, 194, 193, 194, 207, 208, 209).

Second, each plaintiff here alleges that Defendants' conduct/State action changed each Plaintiffs' "rights" and "status," under the UDJA, "within the meaning of R.I. Gen. Laws § 9-30-2." (APP.ExA.Complaint ¶¶ 7, 8, 17, 18, 27, 28, 31, 37, 43, 45, 46, 51, 58-63). Third, each seeks the relief of a "declaration of [his/her] rights and status," relative to the RPA, " within the

meaning of R.I. Gen. Laws § 9-30-2." (APP.ExA.Complaint ¶¶ 7, 8, 17, 18, 27, 28, 145, 169, 171, 192, 210). Plaintiffs allege their pleading sufficiently sets forth a "real and actual controversy" under R.I. Gen. Laws §9-30-1 et seq. "to allow this Honorable Court to decide." (APP.ExA.Complaint ¶ 210).

Finally, only as an alternative argument, Plaintiffs claim, and seek relief, for denial of their general constitutional "right to vote." (i.e. APP.ExA.Complaint ¶¶ 141, 165, 183, 184, 185, 186, 187); (APP.ExA.Complaint p. 50, ¶¶ 10, 11). Plaintiffs' First Amended Complaint does not raise any claims based on Plaintiffs' individual taxpayer status, nor are Plaintiffs seeking the non-specific relief that their Government generally abide by the law.

1. Plaintiffs, Michael Benson, Nichole Rowley, and Jane Doe allege violations of the "equal protection" clauses of the Rhode Island Constitution and the United States Constitution.

a. Plaintiffs' allegations and claims for relief are based on "voter suppression" of their negative vote and, alternatively, on the deprivation of their "right to vote."

Plaintiffs, Michael Benson, Nichole Leigh Rowley, and Jane Doe (collectively, "Plaintiffs BRD") claim their Rhode Island Constitution, Article I, Section 2 ("Article I, Section 2"), "due process" and "equal protection" rights, reserved for the "people of the State of Rhode Island and Providence Plantations." (APP.ExA.Complaint ¶ 129). Plaintiffs BRD allege their legal status as "registered voters" in the State of Rhode Island and Providence Plantations ("Rhode Island"), as the foundation for their equal protection right to have their negative vote, against the RPA, not impaired by State action. (APP.ExA.Complaint ¶¶ 1, 2, 11, 12, 21, 22).

Plaintiffs BRD allege that each has voted in the past, without State interference, and

desires to vote "on whether Rhode Island should 'codify' an abortion right like *Roe v. Wade* and its progeny." (APP.ExA.Complaint ¶¶ 3, 13, 23). Plaintiffs BRD understand that the purpose of the RPA was to "establish a new Rhode Island fundamental right to abortion and the funding thereof." (APP.ExA.Complaint ¶¶ 4, 5, 14, 15, 24, 25). Moreover, Plaintiffs allege that the Rhode Island Constitution mandates that their negative votes be counted. (APP.ExA.Complaint ¶¶ 5, 15, 25, 99, 103, 134, 158, 180).

Further, Plaintiffs BRD allege, supported by the affidavit of General Counsel to the President of the 1986 Rhode Island Constitutional Convention, Patrick T. Conley ("General Counsel Conley"), that Article I, Section 2, places an affirmative restraint against the General Assembly, relative to any new law "granting" or "securing" a "right to abortion" in Rhode Island. (APP.ExA.Complaint ¶¶ 85-108). Specifically, Plaintiffs allege myriad facts, supported by the affidavits of General Counsel Conley and the then-Speaker of the Rhode Island House of Representatives, Matthew J. Smith ("Speaker Smith"), that claim: (1) that the intent and scope of Article I, Section 2, was that the Rhode Island General Assembly lacked the constitutional authority to pass the RPA; (2) that the RPA is "inconsistent" and "void" under Article I, Section 2, and Article VI, Section 1 of the Rhode Island Constitution; (3) that the Rhode Island Constitution mandates that the creation of a new individual "right" to abortion in Rhode Island must comport with the Rhode Island Constitution, Article XIV, Constitutional Amendments and Revisions requirements; and, (4) that the RPA violates the Rhode Island Constitution and the United States Constitution. (APP.ExA.Complaint ¶¶ 85-108).

Pointedly, Plaintiffs allege that the General Assembly and the Governor lacked the proper authority, under the Rhode Island Constitution, to take the unilateral State action of passing and

signing in to law the RPA. (APP.ExA.Complaint ¶¶ 132, 133, 140, 156, 164, 184, 191). Plaintiffs BRD allege that had each been allowed to vote, without the impairment of Defendants' State action, "would have voted against [the RPA]," and, against "any new 'right' to abortion in Rhode Island." (APP.ExA.Complaint ¶¶ 5, 15, 25).

Specifically, Plaintiffs BRD allege that Defendants' conduct impaired each one's individual "no" vote, on the issue of whether to allow a new individual fundamental right to abortion in Rhode Island - - "amount[ing] to [an] unconstitutional **suppression of his [/her] vote**." (APP.ExA.Complaint ¶¶ 9, 19, 29). Plaintiffs BRD rely on their claim of their right to equal protection under the law, guaranteed each Plaintiff under the Rhode Island Constitution, and under the United States Constitution. (APP.ExA.Complaint ¶¶ 129, 153, 178). This allegation is unique and specific to each plaintiff - - of Plaintiffs BRD. Significantly, Plaintiffs, here, do not claim that Defendants' conduct was an unconstitutional suppression of every Rhode Islander's vote, but specifically, allege a **suppression of his/her individual "no" vote,** relative to the RPA. (APP.ExA.Complaint ¶¶ 5, 15, 9, 19, 29).

Alternatively, as a separate and distinct allegation, Plaintiffs BRD also allege that Defendants' conduct, "immediately, irrevocably, and permanently deprives [each one] of [his/her] constitutional right to vote on the issue of establishing a new Rhode Island 'right' to abortion and the funding thereof." (APP.ExA.Complaint ¶¶ 10, 20, 30). Plaintiffs BRD further allege, as a secondary claim thereto, that there are many other Rhode Island "citizens" that suffer the same injury attendant to their right to vote. (APP.ExA.Complaint ¶¶ 158, 180).

Significantly, Plaintiffs' cite to the sections of the Rhode Island Constitution, unchallenged by Defendants here, in support of Plaintiffs BRD's constitutional right to have the

effectiveness of their "no" vote maintained - - specifically, Plaintiffs' allege that Article I, Section 1 of the Rhode Island Constitution "requires that the Rhode Island Constitution can only be changed by an 'explicit and authentic act of the whole people.'" (APP.ExA.Complaint ¶ 87). Plaintiffs allege that the current Article I, Section 2, in its title and relevant text, mandates that the due process and equal protection clauses of said Article I, Section 2, shall not "be construed to grant or secure any right relating to abortion or the funding thereof." (APP.ExA.Complaint ¶¶ 93, 94).

b. Plaintiffs allege that Defendants' conduct changed Plaintiffs BRD's "status," within the meaning of the UDJA.

In addition to Plaintiffs' allegations setting forth each one's claim of violation of his/her constitutional "equal protection" guarantee - - to have their negative vote relative to the RPA unimpaired or suppressed - - Plaintiffs BRD claim a change in their "status" as a validly registered voter entitled to vote on the issue of whether to amend the Rhode Island Constitution in order to establish a new Rhode Island "right" and/or "privacy guarantee" to abortion and the funding thereof." (APP.ExA.Complaint ¶¶ 6, 16, 26). Plaintiffs BRD allege that each one's "right" and "status" have changed within the meaning of the UDJA, under R.I. Gen. Laws ¶ 9-30-2. (APP.ExA.Complaint ¶¶ 7, 17, 27). Plaintiffs BRD's allegations seek, as part of this distinct claim apart from any constitutional challenge, the separate relief of "obtain[ing] a declaration of his[/her] rights and status," relative to the RPA, "within the meaning of R.I. Gen. Laws § 9-30-2." (APP.ExA.Complaint ¶¶ 8, 18, 28).

c. Plaintiffs BRD allege "but for" causation and actual injury as a result of Defendants' wrongful conduct.

Plaintiffs BRD allege injuries that are actual, not imminent or future.

(APP.ExA.Complaint ¶¶ 6, 10, 16, 20, 26, 30). And, Plaintiffs' pleading alleges that Defendants' unauthorized and wrongful conduct was the direct cause of their injuries. (APP.ExA.Complaint ¶¶ 6, 10, 16, 20, 26, 30).

d. Plaintiffs BRD's set forth, generally, four (4) separate claims for relief.

(1) Plaintiffs BDR's fundamental claim for relief is for that relief necessary to remediate the disadvantage to Plaintiffs BRD, caused by Defendants' debasement of each plaintiffs' negative vote - - via voter suppression. (APP.ExA.Complaint ¶¶ 195-210). Specifically, Plaintiffs BRD seek a declaration of their "rights" and "status" under the Rhode Island Constitution, the United States Constitution; and, further seek a UDJA declaration of the "duties and obligations" of Defendants, - - and, determination of the validity and construction - - relative to Defendants' promulgation of the RPA. (APP.ExA.Complaint ¶¶ 195-210); (APP.ExA.Complaint at pp. 48-50);

(2) Distinct from Plaintiffs BRD's prayer for a declaration of rights, duties and obligations of the parties, resulting from Plaintiffs BRD's "status" change under the UDJA, all Plaintiffs additionally seek a declaration as to whether the RPA is "void" under the Rhode Island Constitution. (APP.ExA.Complaint ¶ 5). Plaintiffs' allege a real and actual controversy exists between the parties, under R.I. Gen. Laws § 9-1-30 *et seq.,* to be decided by this Honorable Court. (APP.ExA.Complaint ¶ 210);

(3) Plaintiffs BRD pray for a declaration of whether the RPA violates the Rhode Island Constitution and the United States Constitution's "due process" and "equal protection" clauses. (APP.ExA.Complaint ¶¶ 6, 7); and,

(4) Plaintiffs' claim preliminary and permanent injunctive relief, seeking suspension of the effective date of the RPA. (APP.ExA.Complaint at p.49 ¶¶ 4, 5).

2. Affidavits of General Counsel, Patrick T. Conley, and Matthew J. Smith are presumed to be true for purposes of Defendants' narrow Rule 12(b)(6) Motion To Dismiss.

Plaintiffs set forth in their pleading the affidavits of General Counsel Conley and Speaker Smith. (APP.ExA.Complaint ¶¶ 85-108). Specifically, Plaintiffs allege that General Counsel to the President of the 1986 Rhode Island Constitutional Convention - - wherein the current Article I, Section 2 was drafted, adopted, and promulgated - - swore that Article I, Section 2, "was meant as a restraint against any unilateral effort by the Rhode Island General Assembly to create a *Roe v. Wade*-type 'abortion right,' - - absent a proper amendment in accordance with the provisions of Rhode Island Constitution, Article XIV - Constitutional Amendments and Revisions." (APP.ExA.Complaint ¶ 103); See also, (APP.ExA.Complaint ¶¶ 95-105). Plaintiffs further allege that any attempt to "codify" *Roe v. Wade* outside the amendment process provided for in Article XIV of the Rhode Island Constitution is "facially in violation" of Article I, Section 2, and "shall be void." (APP.ExA.Complaint ¶¶ 107-108); (APP.ExA.Complaint ¶ 106).

Specifically, Plaintiffs BRD dually allege that each one's "constitutional right to vote, through the Article XIV Constitutional Amendments and Revisions, on the issue of whether to 'grant' 'secure' or 'fund' 'any right relating to abortion,' has been unconstitutionally," (1) **"suppressed**," and, (2) **"denied,"** by Defendants." (APP.ExA.Complaint ¶¶ 139, 163, 183) (emphasis supplied). Plaintiffs BRD "asserts his[/her] intent, and desires his[/her] constitutional right to vote on whether to 'grant' 'secure' or 'fund' a new 'right relating to abortion' in the State

of Rhode Island." (APP.ExA.Complaint ¶¶ 142, 143, 144, 166, 167, 168, 185, 186, 187).

Plaintiffs BRD allege that there are many other Rhode Island "citizens" who share the same injuries as Plaintiffs BRD, but are not claiming any general public right, relative to the suppression of Plaintiffs' BRD's individual negative votes. (APP.ExA.Complaint ¶ 134, 158, 180).

Finally, Plaintiffs allege that the "Rhode Island General Assembly lacked and abused its legislative powers, under the Rhode Island Constitution, in passing" the RPA. (APP.ExA.Complaint ¶ 191).

3. Plaintiffs allege that Defendants' promulgation of the RPA constitutes a violation of Baby Roe and Baby Mary Doe's rights under the "Due Process" Clauses of the Rhode Island Constitution and the United States Constitution. And, constitutes a permanent change in their individual "rights" and "privileged status."

a. Plaintiffs, Baby Roe and Baby Mary Doe, claim Defendants' wrongful conduct deprived them of specific "legal rights" and "privileged status."

Plaintiffs, Baby Roe and Baby Mary Doe, claim their Article I, Section 2, "due process" and "equal protection" rights reserved for the people of Rhode Island. (APP.ExA.Complaint ¶ 129). Specifically, Plaintiffs' pleading alleges facts and claims that both, Baby Roe and Baby Mary Doe, fall within the specific definition of "person" under the UDJA. (APP.ExA.Complaint ¶¶ 31, 32, 37, 45, 46, 51).

In particular, Plaintiffs, Baby Roe and Baby Mary Doe both separately allege facts that support six (6) distinct claims: (1) a claim of the "privileged status" of "person" under state and federal law, (2) a claim of the "legal rights" of a "person," under state and federal law; (3) the immediate, irrevocable and permanent deprivation of said "privileged status" and "legal rights,"

under the due process and equal protection clauses of the Rhode Island Constitution, and the United States Constitution, (4) a claim of "privileged status" of "person" under the UDJA; (5) a claim of the "legal rights" of a "person," under the UDJA; and (6) a claim of "person" within the meaning of R.I. Gen. Laws § 9-30-2, "whose rights, status, or other legal relations are affected by a statute," and claim each one "may have determined any question of construction or validity arising under the ...statute ... and obtain a declaration of rights, status, or other legal relations thereunder." (APP.ExA.Complaint ¶¶ 34, 35, 36, 37, 40, 41, 48, 49, 50, 51, 54, 55).

Separately, Plaintiffs, Baby Roe and Baby Mary Doe, claim that Rhode Island law conferred on each of them the legal "status" of "person" within R.I. Gen. Laws § 11-3-1, which provides, "that human life begins at the instant of conception and that said human life at said instant of conception is a person within the language and meaning of the fourteenth amendment of the constitution of the United States." (APP.ExA.Complaint ¶¶ 33, 47). Plaintiffs, Baby Roe and Baby Mary Doe, allege that the RPA strips each one of their privileged "status." (APP.ExA.Complaint ¶¶ 36, 40, 41, 48-50, 54, 55). Plaintiffs, Baby Roe and Baby Mary Doe, allege that the RPA changed each one's "status" and "legal rights" by Defendants' promulgation of the RPA. (APP.ExA.Complaint ¶¶ 42, 61).

Plaintiffs, Baby Roe and Baby Mary Doe claim that "but for" Defendants' passage and signing of the RPA, each one would not have been deprived of their individual and separate "privileged status" as a "person"; nor, deprived of their individual and separate "legal rights" as a "person" under the meaning and language of the fourteenth amendment of the United States Constitution," and under the UDJA, and under the "due process" clause of the Rhode Island Constitution. (APP.ExA.Complaint ¶¶ 43, 56, 62, 193).

b. Plaintiff, Baby Mary Doe, alleges a separate and distinct individual claim for deprivation and permanent stripping of her "rights" and "status" as a "quick child."

Distinctly, in addition to claiming her federal and state status as "person," Baby Mary Doe alleges facts, and claims her status, as a "quick child" under R.I. Gen Laws § 11-23-5. Baby Mary Doe further alleges that her "legal rights" and "privileged status," as a "quick child," was "immediately, irrevocably, and permanently," stripped by Defendants' wrongful conduct. (APP.ExA.Complaint ¶¶ 45-63).

Baby Mary Doe further alleges that, "but for" Defendants' promulgation of the RPA, "the death of Baby Mary Doe would be an actionable crime." (APP.ExA.Complaint ¶¶ 59, 62). Baby Mary Doe alleges that the RPA "immediately, irrevocably, and permanently deprived [her] of her ... Rhode Island Constitutional right to due process and equal protection, and of the right to sue for her injury or death." (APP.ExA.Complaint ¶ 60).

Baby Mary Doe alleges that she falls within the specific definition of "person" set forth within the meaning of the UDJA. (APP.ExA.Complaint ¶ 51).

Finally, Baby Mary Doe alleges that a determination that the RPA is "unconstitutional, ... will immediately restore Baby Mary Doe's legal rights and privileged status of a 'quick child.'" (APP.ExA.Complaint ¶ 63).

c. Plaintiffs, Baby Roe and Baby Mary Doe, allege actual harm and "but for" causation.

Baby Roe and Baby Mary Doe allege that "but for" Defendants' improper and unlawful State action in passing and enacting the RPA, their "status" as "person" - - and as to Baby Mary Doe, her status as "quick child," - - would remain intact, with all the legal rights inuring thereto.

(APP.ExA.Complaint ¶¶ 43, 56, 62).

d. Baby Doe and Baby Mary Doe allege claims for relief necessary to remedy each one's allegations of state and federal violations under the law.

Baby Roe and Baby Mary Doe, seek separate claims for relief, specific to their individual claims: (1) a determination that each one is a "person" withing the specific wording of the UDJA, alone; (2) a determination of each one's individual "rights" and "status" pursuant to state and federal law; (3) a determination of each one's individual "rights" and "status" under the UDJA, including a determination and "construction of validity arising under," the RPA.

This primary remedy sought, under the UDJA, is not contingent on this Honorable Court's determination as to whether or not the RPA is unconstitutional. Notwithstanding, Baby Roe and Baby Mary Doe, also seek a determination of the constitutionality of the RPA. (APP.ExA.Complaint ¶¶ 44, 63). Finally, Plaintiffs, Baby Roe and Baby Mary Doe, claim the same additional prayers for relief as Plaintiffs BRD, set forth above.

4. Plaintiff, Catholics For Life, Inc., d.b.a. Servants of Christ for Life ("SOCL") allege "status," and claims for relief under the UDJA, individually and derivatively.

a Plaintiff, SOCL alleges facts and claims sufficient for individual and third-party standing.

SOCL, is a Rhode Island non-profit corporation with a stated purpose to "advocate for, represent, and support the legal rights of the unborn...," like Baby Roe and Baby Mary Doe. (APP.ExA.Complaint ¶¶ 65, 68, 69, 70). SOCL "advocates, serves, and represents the interests of individual Rhode Island unborn children that fall within the definition of 'person,' ... and 'quick-child.'" (APP.ExA.Complaint ¶ 70).

Plaintiff SOCL's claims allege "but for" causation, specifically that Defendants' wrongful conduct caused SOCL direct and immediate injury to its "legal relations" and "status" as advocates for the unborn. (APP.ExA.Complaint ¶ 73). SOCL claims specific relief under the UDJA. (APP.ExA.Complaint ¶ 74).

5. Plaintiffs allege Defendants' conduct lacked constitutional authority, and that Defendants abused their power, under the Rhode Island Constitution, in promulgating the RPA.

All Plaintiffs allege that Defendants lacked proper authority, under the Rhode Island Constitution to assert any "plenary" or "reserved" powers, as a basis for their unilateral State action - - in the passage and signing of the RPA. (APP.ExA.Complaint ¶¶ 109-114). Specifically, Plaintiffs "contend that the Rhode Island General Assembly has no "residual powers" or "plenary powers" upon which to rely as a basis of authority to pass the RPA. (APP.ExA.Complaint ¶ 205). Plaintiffs allege that the RPA was "void" upon passage by the General Assembly - - being in violation of the supremacy clause of the Rhode Island Constitution. (APP.ExA.Complaint ¶¶ 107, 108, 109-114, 132, 133, 140, 164, 179, 184, 188). Further, Plaintiffs allege that Defendants' passage, of the RPA, was an abuse of legislative power. (APP.ExA.Complaint ¶¶ 149, 173, 191).

STANDARDS OF REVIEW

IV. The Legal Standard this Honorable Court must apply at the pleading stage, under Rule 12(b)(6), is very narrow and sets a very low procedural hurdle, for Plaintiffs to clear.

A. Rhode Island Jurisprudence must not contradict the United States Supreme Court precedent relative to the legal doctrine of justiciability (specifically, standing), and judicial review.

Marbury v. Madison, 5 U.S. 137 (1803) was the first landmark case of the United States

Supreme Court regarding judicial review. Marbury was also the first United States Supreme Court decision to strike down an act of Congress as unconstitutional. Chief Justice John Marshall, writing for the United States Supreme Court, delivered the landmark edict that, "It is emphatically the province and duty of the Judicial Department to say what the law is." Marbury v. Madison, 5 U.S. 137, 177 (1803). Chief Justice Marshall, for the High Court, further expounded,

> "Why does a judge swear to discharge his duties agreeably to the Constitution of the United States if the Constitution forms no rule for his government? If it is closed upon him and cannot be inspected by him?
>
> If such be the real state of things, this is worse than solemn mockery. To prescribe or to take this oath becomes equally a crime.
>
> It is also not entirely unworthy of observation that, in declaring what shall be the supreme law of the land, the Constitution itself is first mentioned, and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.
>
> Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument." Id. at 180.

Article VI Section 1 of the Rhode Island Constitution, like the United States Constitution, sets forth that the Rhode Island Constitution is the "supreme law of the state," and any law passed in derogation of said Constitution shall be "void." Constitution of the State of Rhode Island and Providence Plantations, Article VI, Section 1. The fundamental principles set down by the United States Supreme Court, as penned by Chief Justice John Marshall, are pointedly applicable to the "Judicial Department" of Rhode Island. The Rhode Island Supreme Court holds

that it recognizes and follows United States Supreme Court precedent regarding the legal doctrine of justiciability - - specifically, the procedural hurdle of "standing." See e.g., Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008).

1. The legal doctrine of "justiciability" sets only procedural barriers.

Whether or not a particular court can hear a particular case implicates the doctrine of justiciability. "For a claim to be justiciable, two elemental components must be present." N & M Properties, LLC v. Town of West Warwick, 964 A.2d 1141, 1145 (R.I. 2009). First, a plaintiff needs the "requisite standing" to bring suit. Id. (citations omitted). Second, the plaintiff must have "some legal hypothesis which will entitle the plaintiff to real and articulable relief." Ibid. (citations omitted). Significantly, a justiciability challenge, as here, is not a consideration of the merits of the case.

A Motion To Dismiss, pursuant to Rule 12(b)(6), is a justiciability challenge only, and, "[t]he sole function of a subdivision (b)(6) motion is to challenge the sufficiency of a complaint. Palmigiano v. State, 387 A.2d 1382, 1384 (R.I. 1978) (citations omitted). "In testing whether a complaint ... can survive a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, ... we apply the guides established in the federal courts for the construction of their rules upon which ours have been modeled." Bragg v. Warwick Shopper's World, Inc., 227 A.2d 582, 584 (R.I. 1967) (citations omitted).

2. In opposing a Rule 12(b)(6) Motion To Dismiss, based on plaintiff's pleading alone, plaintiffs do not have to "prove" anything.

a. Plaintiffs, here, only carry a slight burden of production, wherein, Defendants carry the ultimate burden of proof.

A proper understanding of the method and manner of advancing Defendants' narrow

challenge, at the pleading stage of litigation, is critical to this Honorable Court's determination of the height of the procedural barrier Plaintiffs must clear. " [O]ur guiding light has ever been the principle that a motion to dismiss should not be granted unless it appears **beyond a reasonable doubt** that the plaintiff would not entitled to any relief no matter what state of facts **could be proved** in support of plaintiff's claim." Goldstein v. Rhode Island Hosp. Trust Nat'l Bank, 296 A.2d 112, 115 (1972) (emphasis supplied). "In determining whether there is such a doubt as will warrant the termination of litigation **in the pleading stage**, we are bound to resolve all doubts in the plaintiff's favor and accept all his allegations as true." Id. (citations omitted) (emphasis supplied). A dismissal under Rule 12(b)(6) is to be granted only in the unusual instance in which a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." Ibid. (citations omitted).

Further, "[i]n determining whether there is such a doubt or lack of certainty as will justify a termination of litigation at this stage of pleadings, we follow the federal rule as stated by the present Chief Justice when he sat as a federal district judge before coming to the bench in this state, and we construe the complaint 'in the light most favorable to the plaintiff with all doubts resolved in his favor and the allegations accepted as true.'" Bragg v. Warwick Shoppers World, Inc., 227 A.2d 582, 584 (R.I. 1967) (quoting, Garcia v.Hilton Hotels International, Inc., D.C., 97 F.Supp. 5,8 (citations omitted)). "In addition, vagueness, lack of detail, conclusory statements, or failure to state facts or ultimate facts, or facts sufficient to constitute a cause of action are no longer in and of themselves fatal defects." Id. (citations omitted); See also, Forecaster of Boston, Inc. v. Woonsocket Sponging Co., 505 A.2d 1379, 1380 (R.I. 1986).

Plaintiffs bear only a slight burden of production, as supported by the allegations in their

pleading. See, Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 2137 (1992). "The requirement that Plaintiffs adequately allege an *injury in fact* 'serves to distinguish a person with a direct stake in the outcome of a litigation - - even though small - - from a person with a mere interest in the problem.' United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 690 n.14 (1973) (*citing, inter alia*, Kenneth C. Davis, *Standing: Taxpayers and Others*, 35 U. Chi. L. Rev. 601, 613 (1968) ('[A]n identifiable trifle is enough for standing to fight out a question of principle.'))." Citizens for Responsibility and Ethics in Washington, et al. v. Trump, United States Court of Appeals, Case No. 18-474 (2d Cir. Sept. 13, 2019) at p.16.

Specifically, "[b]ecause this [case] arises at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for **on a motion to dismiss [as here], we 'presume that general allegations embrace those specific facts that are necessary to support the claim**.'" Id. at 16-17 (quoting, Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130, 2137 (1992) (citing Lujan v. National Wildlife Federation, 497 U.S. 871, 889 (1990)) (emphasis supplied). Defendants, here, carry the heavy burden of proof - - that of, "beyond a reasonable doubt."

"In ruling on a motion to dismiss for failure to state a claim, the trial justice must look **no further than the complaint**, **assume the truth of all the allegations therein and resolve any doubts in the plaintiff's favor**." Thompson v. Thompson, 495 A.2d 678, 680 (R.I. 1985) (emphasis supplied); See also, Romanello v. Maguire, 404 A.2d 833, 835-36 (1979). This standard, when plaintiff's "standing" is challenged, also includes the trial justice's application of **all reasonable inferences in plaintiff's favor**. See, Rhode Island Ophthalmological Society v.

Cannon, 317 A.2d 124, 130 (R.I. 1974) (emphasis supplied). More pointedly, no complaint should be dismissed unless it appears to be a **"certainty"** that the plaintiff will not be entitled to relief under any set of circumstances which might be proved in support of the claim. Bragg v. Warwick Shoppers World, Inc., 227 A.2d 582, 584 (1967); Rosen v. Restrepo, 380 A.2d 960, 962 (1977); Forecaster of Boston, Inc. v. Woonsocket Sponging Co., 505 A.2d 1379, 1380 (R.I. 1986) ("[n]o complaint will be deemed insufficient unless it is clear beyond a reasonable doubt that the plaintiff will be unable to prove his, her, or its right to relief, that is to say, unless it appears to a certainty that he, she, or it will not be entitled to relief under any set of facts that might be proved in support of the plaintiff's claims.").

b. The legal standard for a Rule 12(b)(6), Motion To Dismiss, in the context of the Rhode Island Uniform Declaratory Judgments Act.

It is not necessary for this Honorable Court to determine whether the RPA is unconstitutional in order to determine the parties' rights and obligations under the UDJA. "The Superior Court has the power to construe a statute and to declare the rights and obligations of the parties." P.J.C. Realty, Inc. v. Barry, 811 A.2d 1202, 1207 (R.I. 2002). Rhode Island General Laws 1956, " § 9-30-12 states that the Uniform Declaratory Judgments Act is to be 'liberally construed and administered.'" Taylor v. Marshall, 376 A.2d 712, 717 (R.I. 1977).

The Uniform Declaratory Judgments Act ("UDJA") "vests the Superior Court" with the "power to declare [a 'person's'] rights, status, and other legal relations whether or not further relief is or could be claimed." N & M Properties, LLC v. Town of West Warwick, 964 A.2d 1141, 1144 (R.I. 2009) (quoting, [R.I. Gen. Laws] §9-30-1)." Key v. Brown University, Nos. 2015-4-Appeal, 2015-110-Appeal, Rhode Island Supreme Court, June 27, 2017 at p. 3. Where

the trial court granted a subdivision (b)(6) motion to dismiss a declaratory judgment action, exercising its discretion under § 9-30-6 to hold that the matter was not ripe for determination, the subdivision (b)(6) dismissal was reversed on appeal, both because it found a substantial controversy to exist, and because the trial judge failed to apply the proper test under subdivision (b)(6), that is, whether it was clear beyond a reasonable doubt that plaintiff was not entitled to relief under any set of facts that might be proved. See, Redmond v. Rhode Island Hosp. Trust Nat'l Bank, 386 A.2d 1090 (1978).

The discretionary nature of a declaratory judgment action "rests in the area of whether relief will be granted, not whether the court will entertain the motion," and, where "the trial justice erred in not affording the plaintiffs a full opportunity to be heard on the merits of their requests," "... the dismissal of the declaratory judgment count was erroneous." Perron v. Treasurer of the City of Woonsocket, 403 A.2d 252, 255 (1979) (citations omitted).

ARGUMENT

V. Defendants wrongly argue, outside of Plaintiffs' pleading, the underlying "issues" of this case; and, this Honorable Court must disregard those arguments.

A. Defendants wrongly rely on matters outside of Plaintiffs' pleading to support their arguments, in derogation of the Rule 12(b)(6) standard.

The majority of Defendants' arguments require this Honorable Court to impermissibly consider matters outside of Plaintiffs' First Amended Complaint. (APP.ExD.Mem.5-14); (Pl.Mem. pp. 20-24); See also, Forecaster of Boston, Inc. v. Woonsocket Sponging Co., 505 A.2d 1379, 1380 (R.I. 1986) ("Under this rigorous standard, it is apparent that the trial justice could not take into account matters raised by the defendant that were not disclosed on the face of the complaint. Such assertions ... cannot be inserted into the record by means of counsel's

representations."). An error in the beginning, is an error indeed - - and, proves fatal to Defendants here.

Defendants cite no legal authority upon which this Honorable Court can rely to veer far afield from Plaintiffs' pleading and to entertain Defendants' arguments, challenging the truth of Plaintiffs' allegations, and regarding constitutional construction and interpretation. (APP.ExD.Mem.5-14). Neither do Defendants cite legal authority to argue as to: the suitability of Defendants' conduct and actions in promulgating the RPA; the sufficiency of Plaintiffs' affidavits; or, the weight and truth of Plaintiffs' allegations. (APP.ExD.Mem.5-14). Again, Rhode Island is a "notice pleading" state, and this Honorable Court must recognize that the legal standard of review, relative to Defendants' motion to dismiss, at the pleading stage, is not the same as if it was based on stipulated facts or at a trial on the merits. (Pl.Mem.18-24).[7]

Specifically, Defendants exhaust ten (10) pages of their memorandum arguing that, (1) "Article I, Section 2, Does Not Prohibit the General Assembly From Enacting the Reproductive Privacy Act," (2) "The Submission of Affidavits Cannot Alter the Plain Meaning of Article I, Section 2," and (3) "The General Assembly Has The Legislative Authority to pass the Reproductive Privacy Act;" which have nothing to do with a **proper sterile analysis**, required by the Rhode Island Supreme Court and the United States Supreme Court, of the sufficiency Plaintiffs' First Amended Complaint. (APP.ExD.Mem.5, 9, 11); (Pl.Mem.18-24).

Tellingly, in those ten pages, Defendants reference only five (5) allegations, of the two hundred ten (210), in Plaintiffs' pleading. (APP.ExD.Mem.5-14). Defendants fail completely to

[7] Plaintiffs references to internal portions of this memorandum of law are cited herein as ("Pl.Mem.page number").

prove "to a certainty" and "beyond a reasonable doubt" that, accepting all 210 of Plaintiffs' allegations as true, as this Honorable Court must, there are **no circumstances whatsoever** wherein Plaintiffs **"may"** advance their claims. (Pl.Mem.18-24). Defendants failure to follow the proper legal standard here is fatal. (Pl.Mem.18-24). And, this Honorable Court's approving of Defendants' failure would be clear error of law.

Defendants' first argument is that Plaintiffs are wrong on the "issues" of statutory and constitutional construction, relative to Defendants' promulgation of the RPA - - relying solely on Defendants' prohibited interpretations and characterizations of Plaintiffs' allegations in their pleading. (APP.ExD.Mem.5-9). Defendants proffer no authority to undergo, or to expect this Honorable Court to undergo, such analysis at this pleading stage. They are simply wrong.

This Honorable Court is bound to accept all the allegations in Plaintiffs' First Amended Complaint as true (including the incorporated by reference affidavits and exhibits), and further, to resolve all doubts and accord all reasonable inferences in favor of Plaintiffs. (Pl.Mem.18-24). Moreover, Plaintiffs are free to plead in the alternative here. See, Haley v. Town of Lincoln, 611 A.2d 845, 848 (R.I. 1992) ("The plaintiff is not required to plead the ultimate facts that must be proven in order to succeed on the complaint. The plaintiff is also not obligated to set out the precise legal theory upon which his or her claim is based. All that is required is that the complaint give the opposing party fair and adequate notice of the type of claim being asserted.").

Under the established rules of justiciability, Defendants tacitly concede Plaintiffs' standing when they engage in a discussion of the underlying "issues." (Pl.Mem.18-20). It is reversible error for this Honorable Court to entertain and rule on any of Defendants' grossly misplaced arguments, relative to the "merits" of Plaintiffs' underlying claims, because such

determination patently ignores the proper legal standard in a 12 (b)(6) motion to dismiss - - at the mere pleading stage. (Pl.Mem.18-24). Again, Plaintiffs are not required here to set forth the ultimate facts or legal theories of their case, which Plaintiffs must prove at trial. Haley v. Town of Lincoln, 611 A.2d 845, 848 (R.I. 1992).

B. Defendants' arguments fail to meet the proper legal standard for a Rule 12(b)(6) motion at the pleading stage of litigation.

1. Defendants impermissibly argue "issues" that go to the underlying merits of the case - - which are outside the mandated confines of Plaintiffs' pleading.

This Honorable Court must discard Defendants' arguments, based on "counsel's representations," that challenge the truth or wisdom of Plaintiffs' allegations. (APP.ExD.Mem.5-14). See, Forecaster of Boston, Inc. v. Woonsocket Sponging Co., 505 A.2d 1379, 1380 (R.I. 1986); (Pl.Mem.24). For purposes of this limited procedural motion, **all of Plaintiffs' allegations are presumed true**. (Pl.Mem.19-24). Plaintiffs further enjoy, under the law, the resolution of all doubts and reasonable inferences to their favor. (Pl.Mem.19-24). Ultimately, Defendants' impermissible arguments on the underlying "issues" of this case break down as follows:[8]

(a) Defendants' argument that,"Plaintiffs badly and fundamentally misconstrue Article I, Section 2 [of the Rhode Island Constitution]," is repugnant to the applicable legal standard here, without merit, and must be rejected by this Honorable Court. (APP.ExD.Mem.5).

[8] Plaintiffs renew their objection to Defendants' first ten (10) pages of "Argument" as being improper in this Rule 12(b)(6) motion to dismiss at the pleading stage of litigation. We reserve and preserve all objections to said arguments' inclusion here; and, to this Honorable Court's consideration and/or determination thereon.

This Honorable Court must accept as true: the allegations in Plaintiffs' pleading that state that the specific language of Article I, Section 2, "was meant as a restraint against any unilateral effort by the Rhode Island General Assembly to create a *Roe v. Wade*-type 'abortion right,' - - absent a proper amendment in accordance with the provisions of Rhode Island Constitution, Article XIV - Constitutional Amendments and Revisions." (APP.ExA.Complaint ¶ 103); See also, (APP.ExA.Complaint ¶¶ 95-105). This Honorable Court is prohibited from "applying the plain language rule" analysis proffered by Defendants - - at this pleading stage - - as to the construction of Article I, Section 2. (APP.ExD.Mem.5-14); (Pl.Mem.18-24). Trial on the merits is where Defendants get the chance to present their case in opposition to Plaintiffs'. Not here.

Because Plaintiffs are not required to plead the ultimate facts of their case, at the pleading stage of litigation, they need "prove" nothing now. Haley v. Town of Lincoln, 611 A.2d 845, 848 (R.I. 1992). It is Defendants who bear the ultimate burden of proof. And, they have failed.

Even worse, Defendants advance, and ask this Honorable Court to accept and rule on, Defendants' precatory interpretation of Article I, Section 2. (APP.ExD.Mem.6). At best, when Defendants' arguments are juxtaposed to Exhibit 1 of Plaintiffs' First Amended Complaint (wherein a counter constitutional construction argument is advanced), Defendants' arguments on this point raise genuine issues of material fact to be determined at trial. (APP.ExA.Complaint.Exhibit 1). Even so, when simply juxtaposed with Plaintiffs' First Amended Complaint itself. (APP.ExA.Complaint).

(b) Defendants' argument that, "Article I, Section 2 is clear and free of ambiguity * * * [and] while Article I, Section 2 may not be construed 'to grant or secure any

right relating to abortion or the funding thereof,' since this limitation applies 'only in this section,' Article I, Section 2 cannot otherwise restrict the General Assembly's granting or securing of rights relating to abortion or the funding thereof through other constitutional or statutory provisions," is repugnant to the applicable legal standard here, without merit, and must be rejected by this Honorable Court. (APP.ExD.Mem.7).

This Honorable Court must accept as true: the allegation in Plaintiffs' pleading that the "section" which Article I, Section 2, refers back to, is the due process and equal protection clauses of Article I, Section 2, and, that "[t]he specific wording of Article I, Section 2,'Nothing in this section shall be construed to grant or secure any right relating to abortion or the funding thereof [ ]', was rooted in the concern that the Rhode Island Constitution, as amended, should not leave open the door for establishment, by the Rhode Island General Assembly, of a fundamental right to abortion - - similar to Roe v. Wade, 410 U.S. 113 (1973), - - in the event the U.S. Supreme Court overturned Roe v. Wade, or Congress narrowed its definition of the Fourteenth Amendment to the United States Constitution." (App.ExA.Complaint ¶98).

Even if this Honorable Court impermissibly engages in constitutional construction, at this pleading stage, on less than all the facts, Plaintiffs enjoy the "reasonable inference" that the relevant language in Article I, Section 2, was intentionally placed as a safeguard against the possibility that the Rhode Island electorate would vote, in 1986, against the Paramount Right To Life amendment [Question 14] - - to allow for the proverbial "second bite at the apple" later on, down the road, when public sentiments may change. See, Rhode Island Ophthalmological Society v. Cannon, 317 A.2d 124, 130 (R.I. 1974).

For argument sake only[9], bolstering Plaintiffs' constitutional construction of an Article I, Section 2 "second bite at the apple" strategy, of the members of the 1986 Constitutional Convention Committee On Citizens Rights are the following facts: (1) The "Committee On Citizens Rights" sought to absolutely prohibit abortion in Rhode Island, but Resolution 86-00123, "Abortion shall be prohibited in the State of Rhode Island" was "tabled" by vote at the 1986 Constitutional Convention; (2) separately, the "Committee On Citizens Rights" sought to establish an "Paramount Right To Life" amendment; (3) The "Paramount Right To Life" Amendment was placed at Question 14 on the 1986 Ballot; and (4) Question 14 failed to pass in 1986. (APP.ExE; APP.ExF).[10] It is a "reasonable inference" that the same committee that drafted Question 14 (Committee on Citizens Rights) - - so ardently pro-life - - also drafted Article I, Section 2 of the Rhode Island Constitution in such a way as to restrain the General Assembly from unilaterally establishing a "right" to abortion - - in the event the electorate voted against the amendment [Question 14], establishing a "paramount right to life." (Pl.Mem.18-24).

More than an inference, Plaintiffs' allege that "Mary Batastini ... was the duly appointed chairwoman of the 1986 Constitutional Convention Citizens Rights Committee."

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[9] Plaintiffs renew their objection to Defendants' first ten (10) pages of "Argument" as being improper in a Rule 12(b)(6) motion to dismiss at the pleading stage of litigation. We reserve and preserve all objections to said arguments' inclusion here; and, to this Honorable Court's consideration and/or determination thereon.

[10] The Rhode Island American Civil Liberties Union ("RI ACLU") submitted an amicus curiae brief here, cited herein as ("APP.ExE.page"), engaging in the same parochial analysis as Defendants, relative to the underlying "issues" of this case. We raise the same objections to the impropriety of the contents of the amicus curiae brief, as being outside the parameters of a Rule 12(b)(6) motion presented at the pleading stage. Plaintiffs attach Appendix Exhibit F ("APP.ExF.page") and Appendix Exhibit G ("APP.ExG.page") in response to the brief of the amicus curiae, and reserve and preserve all objections to the contents of the RI ACLU amicus brief and any of its attached materials.

(APP.ExA.Complaint ¶ 90). The RI ACLU filed a thin argument relating to "legislative intent" at the 1986 Constitutional Convention. (APP.ExE at pp.3-4). In response, Plaintiffs attach hereto the **full** Citizens Rights Committee Report on "Right To Life," and a Memorandum for a "Legal Opinion" requested at the 1986 Constitutional Convention by Chairperson, Mary Batastini.[11]

In a March 3, 1986, Memorandum, to "Mary Batistini, Chairperson, Citizens Rights Committee" from "Convention Legal Service," "RE: DUE PROCESS CLAUSE;" and, in direct response to Chairperson Batastini's specific request for a legal opinion "on what effect (positive and negative) a 'due process' clause would have on the state Constitution," Convention Legal Service said,

> "Approximately 35 state constitutions contain guaranties [sic] securing due process. It has been held that a state adopting the language of the 14th amendment due process clause in its own state constitution adopts it with the interpretation it has received (Walters vs. Blackledge, 220. Miss. 485); however, the federal question and state question are not necessarily the same, **the state clause having no purpose other than to check the general assembly, as representing the majority for the time being, from encroaching upon this reserved right of the minority individual**. State vs. Henry, 37 NM 536." (APP.ExG at page 2) (emphasis supplied).

This legal opinion leaves no doubt that the 1986 Constitutional Convention's adoption of the "due process" clause, in to the Rhode Island Constitution, was for the purpose of acting as a "check [on] the general assembly;" and the operative clause of Article I, Section 2, prohibiting the use of anything "in this section [Article I, Section 2]," - - specifically, the "due process clause" and "equal protection clause" - - from being used by the current General Assembly, "as

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[11] The Report of the Citizens Right Committee is attached hereto, and incorporated by reference, and cited herein as (APP.ExF.page). The Internal Memorandum for Chairperson, Mary Batastini, is attached hereto, and incorporated by reference, and cited herein as (APP.ExG.page).

[arguably] representing the majority for the time being, [to] encroach[ ] upon the reserved right of the minority or of the individual [represented by Plaintiffs, here]. This Honorable Court must afford Plaintiffs this more than reasonable inference. See, Rhode Island Ophthalmological Society v. Cannon, 317 A.2d 124, 130 (R.I. 1974).

Defendants fail to conceive that Plaintiffs may, in fact, call Ms. Batastini, at trial, where she may fully corroborate Plaintiffs' allegations, and leave no doubt as to the purpose of Article I, Section 2. Legislative "intent" is always relevant in a statutory or constitutional construction case. As evidenced by our United States Supreme Court's regular examination of the Federalist Papers. Again, however, Plaintiffs are not required to prove the ultimate facts of their case, or to fully articulate their legal theories here. But, this significant glimpse is sufficient to entitle Plaintiffs to be heard on, and mandate this Honorable Court to hear, the merits of Plaintiffs' case. See, Perron v. Treasurer of the City of Woonsocket, 403 A.2d 252, 255 (1979). See also, Baker v. Carr, 396 U.S. 186, 208 (1962).

This Honorable Court must accept Plaintiffs' allegations that the Committee On Citizens Rights discussed their concerns about Roe v. Wade, and that Article I, Section 2, was drafted with those concerns in mind. (APP.ExA.Complaint ¶¶85-108); (APP.ExA.Exhibit 1). And, that there is, at least, one conceivable circumstance that would support Plaintiffs' claims for relief - - through Ms. Batastini's testimony. Defendants must prove "beyond a reasonable doubt," and "to a certainty," that there are no circumstances whatsoever where Plaintiffs may advance their claims. (Pl.Mem.18-24). Defendants failed.

Vital to a proper understanding of the 1986 Constitutional Convention is the fact that the Citizens Rights Committee put forth a bill that would have specifically prohibited all abortion in

Rhode Island; but then "tabled it." (APP.ExG.12). And, that the "right to life" question on the 1986 Ballot (Question 14) was not the same as the proposed - - then "tabled" - - total abolition of abortion in Rhode Island. This is a difference with a real distinction.

The RI ACLU is wrong in its sparse argument that characterizes the defeated Question 14 as the same as this "tabled" "full prohibition of abortion" resolution. (APP.ExE.4-7). The Report of the Citizens Rights Committee reveals the precise distinction, manifested by two separate resolutions. (APP.ExF). The RI ACLU's argument in this regard evaporates. Any argument that the Rhode Island electorate wholesale voted against the prohibition of all abortion in Rhode Island, by voting down Question 14, is disingenuous, at best. And, certainly provides no foundation upon which to build a constitutional construction argument, the likes of Defendants' and the RI ACLU's.

It is notable that the RI ACLU did an analysis - - *contemporaneous* with the 1986 Constitutional Convention - - entitled, "Some Pesky Facts About The 1986 Convention," concluding that, "While the amendment [Question 14 - Pro-Life Amendment] was ultimately defeated, a **stealth** amendment [Question 8 - Due Process/Equal Protection/Individual Rights Amendment] was approved, **barring certain constitutional protections [i.e. due process and equal protection clauses] from being used to protect abortion rights.**" (APP.ExA.Complaint at Exhibit 1). The RI ACLU would like this Honorable Court to apply the "plain meaning" rule here, except when the "plain meaning" weighs against them. (APP.ExE). Of course the RI ACLU knows, for example, that when a cause of action is "barred" by the statute of limitations, it is prohibited from going any further. Just so, with the restrictive language of Article I Section 2, in relation to Defendants' lack of proper authority to promulgate the RPA. Defendants can go

no further in establishing a new fundamental "right" to abortion without the proper amendment to the Rhode Island Constitution. (Pl.Mem.18). The RI ACLU's arguments, respectfully, are fanciful.

Moreover, this Honorable Court must resolve any doubt as to the restrictive meaning of Article I, Section 2, in favor of Plaintiffs - - as bolstered by the RI ACLU's contemporaneous understanding of the restrictive nature of the "due process" and "equal protection" clauses in the Article I, Section 2 amendment, that resulted from the electorates approval of Question 8 in 1986. The "plain meaning" of the word "barring," in the RI ACLU's "Pesky Facts" article is restrictive and prohibitive - - supporting Plaintiffs' argument, not Defendants. This reasonable inference, which this Honorable Court must accord Plaintiffs, is also consistent with the legal opinion obtained by Chairperson Batastini during the 1986 Constitutional Convention, as discussed above. When this Honorable Court affords Plaintiffs these reasonable inferences and the benefits of all doubts, Defendants' arguments fail.

To deny Plaintiffs this reasonable, and supported, inference relative to their "second bite at the apple" argument would be clear error, under the proper standard of review. (Pl.Mem.18-24). Defendants fail to prove "beyond a reasonable doubt" and "to a certainty" how Plaintiffs' allegations, in no way whatsoever, could support their claims that Defendants lacked proper authority, under the Rhode Island Constitution, to pass and sign the RPA. Defendants' arguments fall flat and this Honorable Court must reject them.[12]

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[12] At best, Defendants' arguments on the construction of the RPA, and Defendants' arguable authority to promulgate it, raise genuine issues of material fact to be determined at trial - - when, this Honorable Court acknowledges the possible, (if not, highly probable) nature of Plaintiffs' "second bite at the apple" argument above.

This Honorable Court must further accept as true: the allegation in Plaintiffs' First Amended Complaint that, [i]t was the intent of Article I, Section 2, to mandate that any establishment of a new Rhode Island fundamental individual "right" to abortion, and the funding thereof, would require a proper amendment to the Rhode Island Constitution, pursuant to Article XIV of the Rhode Island Constitution." (App.ExA.Complaint ¶ 99).

This Honorable Court must also accept as true: the myriad allegations in Plaintiffs' pleading, supported by the affidavits of General Counsel to the President of the 1986 Rhode Island Constitutional Convention, and as understood by the then-Speaker of the Rhode Island House of Representatives, that allege Defendants lacked constitutional authority to pass and sign the RPA - - absent a proper constitutional amendment process provided for in the Rhode Island Constitution. (APP.ExA.Complaint ¶¶ 85-114). Defendants bear the ultimate burden of proof here. And, failed.

(c) Defendants' argument that: "Plaintiffs also misconstrue the plain language and effect of the operative sentence as a limitation on legislative power, as opposed to a limitation on individual rights, *i.e.* the rights recognized in *Roe v. Wade*," is repugnant to the applicable legal standard here, without merit, must be rejected by this Honorable Court, and, moreover, shows a complete lack of knowledge and understanding of who confers these "individual rights," in a constitutional democratic republic - - namely, the Government! (APP.ExD.Mem.7-8). Moreover, Defendants' specific argument flies in the face of the actual committee report and written legal opinion provided to the Chairperson Mary Batastini. See, (APP.ExF); See also, (APP.ExG).

This Honorable Court must accept as true: all the allegations in Plaintiffs'

pleading that allege the Rhode Island Constitution's Article VI, Section 1, relative to Legislative Power, subordinates all the powers of the legislative branch of the Rhode Island General Assembly to the Rhode Island Constitution, itself, as the "supreme law of the state." (APP.ExA.Complaint ¶¶ 107, 190, 191). This Honorable Court must also accept as true that the RPA establishes an absolute "fundamental" right to abortion - - i.e. establishes a new "individual right." (i.e. APP.Ex.A.Complaint ¶¶ 135-138). Moreover, Defendants' argument on this point makes no rational sense when the language of the RPA itself states that it is attempting to establish the same fundamental rights set forth in Roe v. Wade, 410 U.S. 113 (1973). (APP.ExA.Complaint ¶¶ 115).

Misuse of the "due process" and "equal protection" clauses of the Rhode Island Constitution, as alleged by Plaintiffs' in their pleading, squarely points to the operative clause in Article I, Section 2, that forbids the General Assembly from using anything "in this section" (i.e. the due process and equal protection clauses) as a basis to "grant" or "secure" a right to abortion. (i.e. APP.ExA.Complaint ¶¶ 93, 94, 131, 153-155). And, if we accept the parochial rules of constitutional construction advanced by Defendants here, this Honorable Court must accept that the placement of two (2) words in the operative clause mean two (2) separate things (i.e. no "grant" of the right in 1986, nor may it be used to "secure" a future right - - like the RPA does.). See, (APP.ExA.Complaint.Exhibit 1).

Even if this Honorable Court does not discard Defendants' arguments on this issue, their arguments still fail, when a precise application of the complete rules of constitutional construction are followed. See, (APP.ExA.Complaint.Exhibit 1). Defendants bear the ultimate burden of proof here. And, fail on this argument.

(d) Defendants final argument, still impermissibly engaging in an analysis (hypothetical even) of Plaintiffs' allegations and claims in their pleading, is: "[I]f the Framers intended this last sentence to affirmatively prohibit or restrain legislative action - as Plaintiffs contend - one would have expected such a restraint to be worded differently and to appear in the articles pertaining to legislative power....", (APP.ExD.Mem.8), is repugnant to the applicable legal standard here, spurious, without merit, and must be rejected by this Honorable Court. (Pl.Mem.18-24).

This Honorable Court must accept as true: Plaintiffs' allegations and claims that Defendants lacked proper constitutional authority to pass and sign the RPA. (i.e. APP.ExA.Complaint ¶¶ 179, 191-92). And, this Honorable Court must accept that the supremacy clause of the Rhode Island Constitution, declaring any laws in violation, thereof, appears in the first section the Article VI directly titled, Legislative Power - - acting as a direct restraint against "legislative action." (APP.ExA.Complaint ¶¶ 107, 109-114, 179, 191-92). Defendants have failed to carry their heavy burden of proof, and, this Honorable Court must deny Defendants' motion.

2. Under the applicable legal standard for a 12(b)(6) motion at the pleading stage, all affidavits and exhibits attached to Plaintiffs' First Amended Complaint must be accepted as true.

This Honorable Court's rejection of the affidavits in Plaintiffs' pleading, is to impermissibly deny the presumption of truth due Plaintiffs on a motion to dismiss at the pleading stage of litigation. (Pl.Mem.18-24). Attached to Plaintiffs' pleading, and incorporated by reference therein, are the sworn affidavits of Patrick T. Conley and Matthew J. Smith. (APP.ExA.Complaint). For purposes of Defendants' instant motion, this Honorable Court must

accept as true both affidavits; and, all allegations in Plaintiffs' pleading based thereon. (Pl.Mem.18-24). Foremost, in order for this Honorable Court to consider this particular argument of Defendants, it would have to first, reject the truth of Plaintiffs' allegations; then impermissibly engage in an analysis of matters outside Plaintiffs' pleading; and, finally adopt the constitutional construction of Defendants - - which they concede is, "a contrary interpretation of Article I, Section 2...," from Plaintiffs'. (APP.ExD.Mem.9). The ladder grows ever taller upon which this Honorable Court must ascend, by each prohibited rung, to get to Defendants' desired destination.

If this Honorable Court accepts Defendants' proposition that "Plaintiffs urge a contrary interpretation," of constitutional construction of Article I, Section 2, and legislative power, then under the applicable legal standard here, all doubts are to be resolved and reasonable inferences accorded, in Plaintiffs' favor. (Pl.Mem.18-24). Applying the proper standard, this Honorable Court must reject Defendants' futile argument.

3. Defendants' arguments that the General Assembly has absolute and unrestricted legislative power to pass laws is without merit, and improperly advanced at this pleading stage of the litigation.

Curiously, Defendants make no argument against Plaintiffs' allegations that the Rhode Island Constitution, Article VI, Section 10, created a further obstacle to Defendants' claim of power to pass the RPA. (APP.ExA.Complaint ¶¶ 147, 164, 174, 184). Instead, Defendants attempt to create some plenary authority for the General Assembly, by a tortured interpretation of a section of the Rhode Island Constitution relating to the establishment of the separate "houses" of the Legislature. (APP.ExD.Mem.11-14). Moreover, they completely ignore the very first section of the Rhode Island Constitution, Article VI, which subordinates all legislative actions to

all restrictive provisions within the entire Rhode Island Constitution. See, *Rhode Island Constitution*, Article VI, Section 1. (APP.ExA.Complaint ¶¶107, 133). And, for purposes of the instant motion, this Honorable Court must accept as true all Plaintiffs' allegations that claim so. (i.e. APP.ExA.Complaint ¶¶107, 133). The power of the Rhode Island General Assembly is not absolute, under either the Rhode Island Constitution or under Rhode Island Supreme Court jurisprudence. See, *supra*.

Here, again, Defendants devote all their efforts to a discussion on the underlying merits of Plaintiffs' case, and lose sight of the motion before this Honorable Court - - the narrow Rule 12(b)(6) procedural motion constrained to Plaintiffs' pleading alone. (Pl.Mem.18).[13] Defendants, again, wrongly attempt to shift the burden of proof to Plaintiffs here. (APP.ExD.Mem.11-14).

Remarkably, Defendants concede that in 2006 our Supreme Court held, that the General Assembly's "broad and plenary power to make and enact law," is, in fact, restricted by "textual limitations * * * that are specified in the Federal or State Constitutions." (APP.ExD.Mem.13); See, East Bay Community Development Corporation v. Zoning Board of Review of the Town of Barrington, 901 A.2d 1136, 1150 (R.I. 2006). Plaintiffs exactly allege that the General Assembly "abused" its "power" when it abrogated the "restrict[ions]" and "textual limitations" set forth in Article I, Section 2 of the Rhode Island Constitution. (i.e. APP.ExA.Complaint ¶¶ 107, 109-114, 153-56, 162, 179, 191-92). It is not for Defendants to challenge those allegations here. And, this Honorable Court must accept them as true. (Pl.Mem.18-24).

To the contrary, the Rhode Island Supreme Court made clear in East Bay Community

[13] Plaintiffs reserve and preserve all their objections to the inappropriateness of Defendants arguments in this section relative to Legislative power and present counter arguments, for arguments' sake only.

Development Corporation that the General Assembly's power to legislate is not absolute. Id. Far from "disposing" of Plaintiffs' claims, East Bay Community Development Corporation bolsters Plaintiffs' allegations and claims. (APP.ExD.Mem.13). Defendants attempt to glean universal, unbridled, legislative power, in a mere structural provision [i.e. the establishment of two houses and the nomenclature of the legislature] of the Rhode Island Constitution, and a misinterpretation of controlling Supreme Court law on the limits of legislative power in Rhode Island, cripples Defendants' argument. Moreover, this Honorable Court would be in error if it were to engage in an analysis that challenges Plaintiffs' pleading - - as Defendants' arguments would force here. The burden of proof, "beyond a reasonable doubt," is Defendants. They have failed. This Honorable Court must discard Defendants' misplaced and haphazard arguments, relative to the notion that the Rhode Island Legislature has absolute power, as being inappropriately advanced here, at best; and, ultimately without merit.

Defendants' remaining six (6) pages of their memorandum, in support of their Rule 12(b)(6) motion, raises "standing" challenges that fall into two categories:

1. Plaintiffs BRD "lack standing" because the RPA "does not require them to do anything or to refrain from anything," therefore "no personal injury" is alleged; and

2. Plaintiffs, Baby Roe and Baby Mary Doe "lack standing," because United States Supreme Court stare decisis does not hold a "fetus" is a "person;" and, because Baby Roe and Baby Mary Doe lack standing, SOCL lacks standing. (APP.ExD.Mem.15, 19).

VI. Defendants fail to carry their burden of proof on their "standing" challenges, when this Honorable Court applies the proper 12(b)(6) standard, at this pleading stage; taking in to account that Rhode Island is a notice pleading State.

Defendants' "standing" arguments fail because Defendants mis-state and misunderstand the legal standard, this Honorable Court is bound to apply here; relative to a standing challenge **raised at the pleading stage.** (APP.ExD.Mem.15-21). "'When standing is at issue, the focal point shifts to the claimant, not the claim, and a court must determine if the plaintiff "whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable" or, indeed, whether or not it should be litigated.' Watson v. Fox, 44 A.3d 130, 135 (R.I. 2012) (quoting, McKenna v. Williams, 874 A.2d 217, 226 (R.I. 2005))." Key v. Brown University, Nos. 2015-4-Appeal, 2015-110-Appeal, Rhode Island Supreme Court, June 27, 2017 at p. 5.

The hurdle of justiciability, at the pleading stage, is at its lowest. See, Lujan v. Defenders of Wildlife, 112 S.Ct. 2130, 2137 (1992). Specifically, "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss, we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" Id. (quoting, Lujan v. National Wildlife Federation, 497 U.S. 871, 889 (1990)). In Lujan, the United States Supreme Court specifically recognized that plaintiff's burden of proof is contingent on "the manner and degree of evidence required at the successive stages of the litigation." Lujan v. Defenders of Wildlife, 112 S.Ct. 2130, 2136 (1992); See also, Lujan v. National Wildlife Federation, 497 U.S. 871, 883-889 (1990); See also, Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 114-115, and n. 31. Defendants fail to appreciate this binding precedent, and fatally fail to address it. Defendants, instead, wrongly engage in a merits discussion, and attempt to shift the burden of proof to Plaintiffs here. (APP.ExD.Mem.15-21). It would be clear error of law for this Honorable Court to impose a higher burden on

Plaintiffs here, than our state and federal precedent require.

More pointedly, "[t]he requirement that Plaintiffs adequately allege an injury in fact 'serves to distinguish a person with a direct stake in the outcome of a litigation - - even though small - - from a person with a mere interest in the problem.' United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 690 n.14 (1973) (*citing, inter alia*, Kenneth C. Davis, *Standing: Taxpayers and Others*, 35 U. Chi. L. Rev. 601, 613 (1968) ('[A]n identifiable trifle is enough for standing to fight out a question of principle.')). Citizens for Responsibility and Ethics in Washington, et al. v. Trump, United States Court of Appeals, Case No. 18-474 (2d Cir., September 13, 2019) at p.16. Plaintiffs' allegations and claims here even surpass this liberal standard, as they specifically allege individual claims of due process and equal protection violations under the Rhode Island Constitution and the United States Constitution; along with allegations and claims of denial of statutory "privileged status," - - all resulting directly from Defendants' wrongful conduct. (Pl.Mem.7-18). This Honorable Court cannot question the truthfulness of Plaintiffs' allegations - - but, must accept them. (Pl. Mem.18-24).

Defendants rest their entire "standing" challenge on four (4) Rhode Island cases, and, focus on only one (1), alternative, allegation in Plaintiffs' pleading - - specifically, that Defendants' conduct "denied" Plaintiffs BRD the "right to vote" on whether to empower the General Assembly to pass a law like the RPA; and, on only (1) allegation of Baby Roe and Baby Mary Doe. (APP.ExD.Mem.15-21).

First, Defendants misconceive the standing requirement under the law when they argue that because, "this legislation does not require [Plaintiffs] to do anything or to refrain from

anything," they allege no injury. (APP.ExD.Mem.15). Specifically, Defendants' argument that it "is important for standing purposes [that] the Reproductive Privacy Act does not require Plaintiffs (or any person) to choose to end a pregnancy [or] * * * does not require them to do anything or to refrain from anything," is incongruent with both the prevailing "standing" law and the allegations in Plaintiffs' pleading. (APP.ExD.Mem.15);(Pl.Mem.7-18, 18-24, 40-42). The Rhode Island Supreme Court "laid out our principles for the standing requirement in Rhode Island Opthalmological Society v. Cannon, in which the Rhode Island Supreme Court adopted the principles employed by the United States Supreme Court. N & M Properties, LLC v. Town of West Warwick, 964 A. 2d 1141, 1145 (R.I.2009) ("It is our belief that standing can now be determined by our adoption of the first of the [Association of Data Processing Service Organizations, Inc. v. Camp, 39 U.S. 150, 153-54, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970)] criteria. See also, Rhode Island Opthalmological Society v. Cannon, 317 A.2d 124, 129 (R.I. 1974). "The question is whether the person whose standing is challenged has alleged an injury in fact resulting from the challenged statute. If he has, he satisfies the requirement of standing." Id. Defendants' articulated "test" for "standing" (that Plaintiffs must prove that the RPA requires him/her "to do" or "refrain" from doing something) is not the standard for "injury-in-fact," under the relevant law, and this Honorable Court must not apply it here.

Defendants conspicuously ignore and fail to challenge the remaining allegations supporting Plaintiffs' claims that Defendants' conduct: (1) directly caused immediate injury to each one's due process and equal protection clause guarantees, under the Rhode Island Constitution and the United States Constitution; and (2) Plaintiffs' allegations in support of their claims that "but for" Defendants' conduct, Plaintiffs' "privileged" "status" would remain intact.

(Pl.Mem.7-18). Even if this Honorable Court found Defendants' standing arguments dispositive, this Honorable Court still must deny Defendants' Motion To Dismiss, because, Plaintiffs' remaining unchallenged allegations and claims are sufficient to entitle Plaintiffs to be heard on the merits of their case. See, Rhode Island Superior Court Rules of Civil Procedure, Rule 8(e) ("[a] party may set forth two (2) or more statements of a claim or defense alternatively or hypothetically, either in one (1) count or defense or in separate counts or defenses. When two (2) or more statements are made in the alternative and one (1) of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of the one (1) or more of the alternative statements.")

A. Defendants' arguments against Plaintiffs BRD are without merit and mandate this Honorable Court deny their Motion to Dismiss.

Defendants rank first the case of Rhode Island Ophthalmological Society v. Cannon, 317 A.2d 124, 129 (R.I. 1974), as representative of Rhode Island's general rule regarding the "modern standing doctrine." (APP.ExD.Mem.15). Defendants focus on the requirement of "injury in fact, economic or otherwise," relying on the Rhode Island Supreme Court's reference to the United States Supreme Court decision of Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 152 (1970). Yet, Defendants ignore critical portions of Association of Data Processing Service Organizations, Inc. v. Camp, to which this Honorable Court is bound.

Specifically, the United States Supreme Court holds that standing rests on the "inva[sion] [of] a legal right - - one of property, one arising out of contract, one protected against tortious invasion, **or one founded on a statute which confers a privilege**." Id. at 153 (emphasis

supplied). Plaintiffs pleading plainly sets forth allegations and claims of denial of the statutory "privileged status" of "person," "quick child," and "voter" (Pl.Mem.7-18). Defendants' chronic failure to consider all of Plaintiffs' allegations, in Plaintiffs' First Amended Complaint, further impales Defendants' "standing" arguments. Specifically, Defendants failed to challenge those allegations supporting denial of each Plaintiff's "privileged status," and violations of the state and federal Due Process and Equal Protection Clauses - - allegations that place Plaintiffs BRD squarely "within the zone of interests to be protected or regulated by the statute **or constitutional guarantee in question**." Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 152 (1970) (emphasis supplied).[14] See, (Pl.Mem.7-18).

There is no doubt that Plaintiffs' pleading implicates the state and federal "constitutional guarantee[s]" of due process and equal protection under the law. (Pl.Mem.7-18). And, further no doubt that, prior to the RPA, Baby Roe and Baby Mary Doe enjoyed the "privileged status" of "person" and "quick child" under specific Rhode Island statutes. (Pl.Mem.7-18). This Honorable Court is bound to accept all of Plaintiffs' allegations as true and view all the allegations and claims in the "light most favorable to [Plaintiffs]." Bragg v. Warwick Shoppers World, Inc., 227 A.2d 582, 584 (R.I. 1967) (quoting, Garcia v.Hilton Hotels International, Inc., D.C., 97 F.Supp. 5,8 (citations omitted)). Further, this Honorable Court must accept Plaintiffs' claims of "status" and "constitutional guarantees," and, the stripping of them by the RPA, as true. Plaintiffs plead more than an "identifiable trifle." (Pl.Mem.7-18). Defendants' refusal to meet these allegations

[14] The plaintiff in the recent Superior Court case of Harrop v. The Rhode Island Division of Lotteries, et al., C.A. PC-2019-5273, Bench Decision dated September 9, 2019 is distinguishable from Plaintiffs here, in that Plaintiffs here allege a separate and distinct right of equal protection under the law (i.e. state and federal equal protection violations), while Harrop relied solely on a "general right to vote."

head on renders Defendants' arguments unfit, and this Honorable Court must reject them.

B. Defendants' arguments against Plaintiffs BRD are without merit and mandate this Honorable Court deny Defendants' motion as to Plaintiffs BRD.

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 163 (1803). "Chief Justice Earl Warren of the United States Supreme Court noted that standing is one of the 'most amorphous [concepts] in the entire domain of public law' and is 'surrounded by the same complexities and vagaries that inhere to justiciability.'" Key v. Brown University, Nos. 2015-4-Appeal, 2015-110-Appeal, Rhode Island Supreme Court, June 27, 2017 at p. 5 (quoting, Flast v. Cohen, 392 U.S. 83, 98-99 (1968)). The Rhode Island Supreme Court embraced the United States Supreme Court precedent on "standing," particularly at the pleading stage, and, therefore, this Honorable Court is duty bound to apply it here.

C. Plaintiffs BRD each have suffered an injury held by the United States Supreme Court, and Rhode Island Supreme Court, to be concrete, individual and particularized in nature.

Defendants failure to address all of Plaintiffs' allegations, that support violations of the state and federal due process and equal protection clauses, abrogates their claim that Plaintiffs BRD suffered no "concrete" "injury-in-fact." Defendants sole argument in support of their motion, relative to Plaintiffs BRD's standing, is that they allege only the general "right to vote" which is a common injury to the general public-at-large. (APP.ExD.Mem.17-19).

When Plaintiffs' pleading is read in its entirety, however, Plaintiffs BRD, "are asserting 'a plain, direct and adequate interest in maintaining the effectiveness of their votes,' Coleman v. Miller, 307 U.S. at 438, not merely a claim of 'the right, possessed by every citizen, to require

that the Government be administered according to the law....' Fairchild v. Hughes, 258 U.S. 126, 129; compare Leser v. Garnett, 258 U.S. 130." Baker v. Carr, 396 U.S. 186, 208 (1962).

Colegrove v. Green, 328 U.S. 549 (1946), "squarely held that voters who allege facts showing disadvantage to themselves as individuals have standing to sue." See, Baker v. Carr, 396 U.S. 186, 206 (1962). Plaintiffs BRD's pleading alleges such disadvantage, specifically, that Defendants wrongly "suppressed" their negative vote against Defendants' passage and signing of the RPA. (APP.ExA.Complaint ¶¶ 129, 139, 163, 183, 207). This Honorable Court must accept all of Plaintiffs' allegations as true. (Pl.Mem.18-24).

As recent as this past United States Supreme Court term, the United States Supreme Court held that it has, "long recognized that a person's right to vote is 'individual and personal in nature.' Reynolds v. Sims, 377 U.S. 533, 561 (1964). Thus, 'voters who allege facts showing disadvantage to themselves as individuals have standing to sue' to remedy the disadvantage.' Baker v. Carr, 369 U.S., at 206, 82 S.Ct. 691." Gill v. Whitford, 138, S.Ct. 1916, 1929 (2018) (the Court in Gill held that Plaintiffs had suffered a particularized injury to their **equal protection rights**). Plaintiffs BRD similarly allege. (Pl.Mem.7-18).

Moreover, "[a] citizen's right to a vote **free of arbitrary impairment by state action** has been judicially recognized as a right secured by the [United States] Constitution when such impairment resulted from dilution by a false tally, cf. United States v. Classic, 313 U.S. 299; or by a refusal to count votes from arbitrarily selected precincts, cf. United States v. Mosley, 238 U.S. 383, or by a stuffing of the ballot box, cf. Ex parte Siebold, 100 U.S. 371; United States v. Saylor, 322 U.S. 385." Id. at 208. Every one of these cases represents a heinous form of "voter suppression" - - which is precisely the same kind of allegation made by Plaintiffs BDR.

(Pl.Mem.7-13).

Defendants' reliance on Burns v. Sundlun in support of their motion here is misplaced. Significantly, in Burns, the Rhode Island Supreme Court was reviewing a decision of the lower court, **after a hearing on the merits** - - not at the pleading stage - - wherein, at trial, Plaintiffs bear the ultimate burden of proof on the issue of standing. Burns v. Sundlun, 617 A.2d 114, 116 (R.I. 1992). And, the only injury asserted in Burns was a general right to vote. Here, at the mere pleading stage, Defendants bear the burden of proof. (Pl.Mem.18-24). Moreover, the Burns holding is significantly distinguishable, as Plaintiffs' here plead alternatively - - including in their pleading the allegations of due process and equal protection violations. See, Rhode Island Superior Court Rules of Civil Procedure, Rule 8.

And, Plaintiffs BRD are noticeably dissimilar from the plaintiff in the recent Superior Court case of Harrop v. The Rhode Island Division of Lotteries, et al. There, plaintiff, Harrop, only "assert[ed] that he has standing to challenge the State's enactment of sports wagering and online sports wagering because he has been deprived of his [general] constitutional right to vote." Harrop v. The Rhode Island Division of Lotteries, et al., C.A. PC-2019-5273, Bench Decision dated September 9, 2019, at page 9.[15] Not so here. Plaintiffs BRD's allegations are far more detailed and specific to each individual - - and, rest on each one's guarantee of equal protection under the law, under the Rhode Island Constitution and the United States Constitution. Unlike the plaintiff in Harrop v. The Rhode Island Division of Lotteries, et al., C.A. PC-2019-5273, Bench Decision dated September 9, 2019, at page 9, where plaintiff there stood on the shoulders

[15] A transcript from Superior Court Associate Justice Brian Stern's Bench decision is attached hereto as Appendix B and cited herein as ("App.ExB").

of all Rhode Island voters, Plaintiffs BRD's allegations stand on their own merit.

Like the prior mistake Defendants made in their analysis and reliance on Burns v. Sundlun, Bowen v. Mollis, 945 A.2d 314 (R.I. 2008) does not provide dispositive support for Defendants' instant motion. Again, Plaintiffs BRD allege much more than their mere "right" to vote. (Pl.Mem.7-13). And, Bowen offers this Honorable Court no guidance relative to a pleading, like Plaintiffs', that, alternatively, allege violations of each one's individual state and federal constitutional guarantee of due process and equal protection. Bowen is simply a general taxpayer suit - - unlike Plaintiffs' suit here. Specifically, the plaintiff in Bowen contended that he had standing because, as a taxpayer, "who must pay to the state his proportionate share of the expense of 'a constitutionally-justifiable ballot.'" Bowen v. Mollis, 945 A.2d 314 (R.I. 2008). Nowhere in Plaintiffs' pleading do they make a similar allegation. Bowen is distinctly dissimilar on the facts here.

Bowen does, however, offer support for Plaintiffs' argument that once an individual particularized injury is alleged, it is no obstacle to the sufficiency of their pleading that other citizens ("public at large") may also share the same injury. Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008).

Specifically, Plaintiffs' claim that "Article I, Section 2, of the Rhode Island Constitution establishes a 'due process' and 'equal protection' right for the 'people of the State of Rhode Island and Providence Plantations." (APP.ExA.Complaint ¶129). Plaintiffs BRD aver sufficient facts, when accepted as true and resolving all doubts and inferences in favor of Plaintiffs BRD, to find that Plaintiffs claim each one's vote has been "so debased as to be subject to invidious discrimination." Sweeney v. Notte, 183 A.2d 286, 300 (R.I. 1962) (i.e. suppression of Plaintiffs'

negative votes here "diluted" any opposition to the RPA, "refused" opposition votes, and effectively "stuffed" the ballot box with only favorable considerations).

Accepting as true, as this Honorable Court must, Plaintiffs BRD allege that they enjoy state and federal "equal protection" under the law; that the General Assembly lacked and therefore abused its power in passing the RPA; and, that a Constitutional Amendment is necessary to "grant," "secure," or "fund" abortion in the State of Rhode Island. (Pl.Mem.7-18).

The final case Defendants rely upon for their standing challenge, against Plaintiffs BRD, is merely a regurgitation of the law and facts similar to the first three cases Defendants cite. (APP.ExD.Mem.18-19). Watson v. Fox, 44 A.3d 130 (R.I. 2012), reiterates the general rule that the doctrine of standing requires a "concrete" "particularized" injury, distinct from the "public at large." Id. at 135. Watson, like Bowen, was a simple taxpayer suit - - wherein Defendants concede that "the plaintiff [in Watson] sought a declaratory judgment as a private taxpayer." (APP.ExD.Mem18) (citing Watson v. Fox, 44 A.3d 130, 137 (R.I. 2012)). Not so here. The terminal infirmity with Watson, like the prior three cases, is that it offers no sword against Plaintiffs BRD's alternative allegations of violations of state and federal equal protection clauses. (Pl.Mem.7-13).

"It is [this Honorable Court's] function to examine the complaint to determine if plaintiffs are entitled to relief **under any conceivable set of facts**." Watson v. Fox, 44 A.3d 130, 135 (R.I. 2012) (citations omitted) (emphasis supplied). Plaintiffs here allege sufficient facts to (1) claim their state and federal due process and equal protection constitutional guarantees, and (2) claim Defendants, through State action, impaired the effectiveness of their votes and debased their individual negative votes through voter suppression. (Pl.Mem.7-24). Defendants have put forth

no arguments to suggest that the above circumstances, "beyond a reasonable doubt," could not support Plaintiffs BRD's claims. Defendants have failed. As the Rhode Island Supreme Court stated, "Indeed, there is a strong implication that recourse to the state judiciary by an elector complaining that his vote has been so debased as to be subject to invidious discrimination will, unless the state courts fail to respond, forestall federal intervention." Sweeney v. Notte, 95 R.I. 68; See also, Harrop v. The Rhode Island Division of Lotteries, et al., C.A. PC-2019-5273, Bench Decision dated September 9, 2019, at page 10-11.

Further, it is not necessary for this Honorable Court "to decide whether [Plainitffs BRD's] allegations of impairment of their [negative] votes [by the RPA enactment as such] will ultimately entitle them to any relief in order to hold that they have standing to seek it." Baker v. Carr, 396 U.S. 186, 208 (1962). Accordingly, "[Plaintiffs BRD] are entitled to a hearing and to the [Superior Court's] decision on their claims." Baker v. Carr, 396 U.S. 186, 208 (1962). Defendants' motion fails.

D. Plaintiffs seek the relief of a determination of the rights and obligations of the parties, not merely a declaration that RPA is unconstitutional.

A critical distinction between a general taxpayer suits, like Bowen, Watson, and Harrop, and Plaintiffs here is the relief sought by the plaintiffs. General taxpayer suits seek only to have the court mandate their government conduct themselves in accordance with the general laws. Here, however, Plaintiffs seek specific remedies to address the disadvantage laid upon them by Defendants' equal protection violation - via suppression of their votes against the RPA. (Pl.Mem.7-18).

Key to standing relative to an equal protection challenge of voter suppression is that the

relief sought will redress or cure the disadvantaged position of plaintiffs. Thus, "voters who allege facts showing disadvantage to themselves as individuals have standing to sue" to remedy the disadvantage. See, Baker v. Carr, 396 U.S. 186, 206 (1962). Further, the Plaintiffs seek from this Honorable Court, not just a declaration that the RPA is unconstitutional under the Rhode Island Constitution and the United States Constitution (APP.ExA.Complaint at p. 49 ¶ ¶ 6, 7); but, more pointedly, Plaintiffs seek a declaration of rights and status of the parties under the UDJA, and a determination of the construction and validity of the RPA under the UDJA. (APP.ExA.Complaint at pp. 49-50 ¶ 8, 9, 10, 11). Harrop sought only a general determination that the defendants in that case follow the State law on the "sports betting" issue and failed to allege any specific relief that would remedy any individual injury. See, (APP.ExB). Plaintiffs injuries here (i.e. the debasement of their "no" votes and invidious discrimination under the equal protection clause) would be sufficiently remedied by a determination from this Honorable Court that Defendants' had a duty and obligation, under the Rhode Island Constitution and the United States Constitution's due process and equal protection clauses, to obtain proper authority to promulgate the RPA.

Defendants offered no argument against Plaintiffs BRD's allegations of "voter suppression" of each one's individual negative vote - - in relation to the equal protection clauses of the Rhode Island and United States Constitutions. It is their burden, beyond a reasonable doubt, and this Honorable Court must find to a certainty, that there are no circumstances based on the allegations in Plaintiffs' pleading, alone, that would support standing in relation to Plaintiffs' allegations supporting equal protection clause violations. Defendants' failure to even advance a challenge to these allegations leaves them in a vacuum.

E. Plaintiffs pleading alleges sufficient facts to sustain cognizable claims of Baby Roe and Baby Mary Doe, including their claim to the status of "person" within the limited context of the UDJA.

Defendants' argument that Plaintiffs, Baby Roe and Baby Mary Doe, [16] lack standing are incomplete, ignore critical allegations in Plaintiffs' pleading, avoid prevailing Rhode Island law, and fail to sustain Defendants' heavy burden of proof. (APP.ExD.Mem.19-21). Baby Roe and Baby Mary Doe claim relief not only under state and federal "due process" and "equal protection" law, but, also seek a judicial determination relative to the word "person" in the narrow context of the UDJA; specifically, they seek relief as "any **person** ... whose rights, status, or other legal relations are affected by a statute ... [who] may have determined any question or construction of validity arising under the ... statute ... and obtain a declaration of rights, status, or other legal relations thereunder." R. I. Gen Laws § 9-30-2. (emphasis supplied) (Pl.Mem.7-18). Defendants fail to acknowledge that the Rhode Island Supreme Court has already extended the status of "person" to both a pre- and post-viability fetus, under certain Rhode Island laws. Moreover, it is uncontroverted that the Rhode Island Supreme Court has held that a post-viability fetus is a "person" for purposes of the "quick child" statute.

1. The Rhode Island Supreme Court has recognized the rights of a pre- and post-viability fetus within the law.

Defendants fail to realize the nature and extent of Plaintiffs' pleading relative to Baby

[16] To the extent that either Baby Roe or Baby Mary Doe are actually born during the pendency of this case, the justiciability doctrine of mootness poses no obstacle because, as set forth first in Roe v. Wade, Plaintiffs, Baby Roe and Baby Mary Doe's, claims are "capable of repetition yet evading review." See, Roe v. Wade, 410 U.S. 113 (1973). Defendants have not raised the defense of mootness here, but, Plaintiffs reserve the right to further brief this legal argument should Defendants later raise the defense of "mootness." And, Baby Roe now qualifies as a "quick child." Plaintiffs intend to amend their complaint to include a new count, for Baby Roe, as "quick child," similar to Baby Mary Doe.

Roe and Baby Mary Doe - - leading them to proffer an argument which misses the critical mark. (APP.ExD.Mem.19-21). Baby Roe and Baby Mary Doe seek a determination of rights and status, and relief, under the UDJA - - which has nothing to do with Defendants' primary cases of Roe v. Wade or Doe v. Israel. (APP.ExD.Mem.13-14, 19-21).

Baby Roe and Baby Mary Doe seek a very narrow ruling from this Honorable Court relative to their claims for relief - - namely, whether they are a "person" within the limited meaning of the UDJA. (Pl.Mem.7-18). Plaintiffs do not seek, as Defendants mistakenly argue, a determination of "person" for all purposes. (APP.ExD.Mem.13-14, 19-21). They seek to have their "rights" and "status" determined and, within that limited scope, claim the relief afforded by the UDJA relative to the RPA. (Pl.Mem.7-18).

Plaintiffs, Baby Roe and Baby Mary Doe's, individual rights - - that flow from the status of "person" - - emanate from the due process clauses of the Rhode Island Constitution and the United States Constitution, Fourteenth Amendment. Like Rhode Island, the United States Supreme Court precedent, relative to the construction of the word "person" in the 14th Amendment is not confined only to the issue of abortion, to which Defendants have limited their arguments here. (APP.ExD.Mem.13-14, 19-21). To the contrary, Baby Roe and Baby Mary Doe's claims of "privileged status" as "person" here is not premised on "abortion," but on statutory and constitutional construction of the RPA, under the UDJA. (Pl.Mem.7-18). Defendants' failure to see the distinction is fatal.

Defendants limit their arguments against Baby Roe and Baby Mary Doe's claims of the "status" of "person," to the United States Supreme Court decisions insinuating that a "fetus" is not a "person" under Roe v. Wade and its progeny. (APP.ExD.Mem.13-14, 19-21). Yet, when

all of Plaintiffs' allegations and claims are examined, Plaintiffs' pleading extends far beyond the confines of the abortion issue. (Pl.Mem.7-18); (APP.ExA.Complaint).

The pro-abortion nature of the RPA is not the focal point of Baby Roe and Baby Doe's claims, but, instead, that Defendants' promulgation of the RPA stripped them of their "privileged status" of "person" within the UDJA. (Pl.Mem.14-17); (APP.ExA.Complaint). And, because of Defendants' stripping of that "privileged status," Baby Roe and Baby Mary Doe are entitled to be heard on the merits of their claims.; namely, to have this Honorable Court render a determination as to "any question or construction of validity arising under ... the statute [RPA]... and obtain a declaration of rights, status, or other legal relations thereunder." (APP.ExA.Complaint ¶ 31); See, Baker v. Carr, 396 U.S. 186, 206 (1962); See also, Perron v. Treasurer of the City of Woonsocket, 403 A.2d 252, 255 (1979). For Defendants to succeed on their motion relative to Baby Roe and Baby Mary Doe's claims, they would have to prove, "to a certainty," that our Rhode Island Supreme Court has never conferred the status of "person" on an unborn fetus (pre- or post-viability). They cannot. See, Bragg v. Warwick Shoppers World, Inc., 227 A.2d 582, 584 (1967); Rosen v. Restrepo, 380 A.2d 960, 962 (1977); Forecaster of Boston, Inc. v. Woonsocket Sponging Co., 505 A.2d 1379, 1380 (R.I. 1986) .

There is nothing novel, in Rhode Island law, that would prohibit this Honorable Court from finding that, for the purposes of the UDJA, Baby Roe and Baby Mary Doe fall under the term "person," therein. Rhode Island grants rights to the unborn in the following areas: (1) wrongful death claims, See, R.I. Gen. Laws § 10-7-1; (2) intestacy inheritance rights, See, R.I. Gen. Laws § 33-1-1 and R.I. Gen. Laws §15-8-3; (3) fetal death registration, See, R.I. Gen. Laws § 23-3-17; (4) until the promulgation of the RPA, to a statutory "quick child." See,

(APP.ExA.Complaint ¶ 31); and, (5) "Representation of unborn, unascertained, and incompetent persons." See, R.I. Gen. Laws § 33-22-17; See also, (APP.ExA.Complaint ¶¶ 38, 42). At no time has any court declared any of the above statutes "unconstitutional." As there are various conceivable sets of circumstances wherein Plaintiffs, Baby Roe and Baby Mary Doe, can seek relief, this Honorable Court must deny Defendants' motion. (Pl.Mem.18-24).

Notwithstanding Defendants' claim that R.I. Gen. Laws § 11-3-1, et seq., were deemed "unconstitutional," they remained a part of the general laws, otherwise, they would not have needed to be repealed by the RPA. (APP.ExA.Complaint at Exhibit 4). Regardless, it is not the constitutionality of that statute that is relevant here, it is the fact that the statute conferred a "privileged status," stripped by Defendants' conduct, that places Baby Roe and Baby Mary Doe within the available remedies of the UDJA. Even if this Honorable Court accepts Defendants' arguments that the United States Supreme Court decisions relative to abortion, create an insuperable barrier to Baby Roe and Baby Mary Doe's relief, their pleading survives based on the unambiguous holding of the Rhode Island Supreme Court in Miccolis v. Amica Mutual Insurance Company, 587 A.2d 67 (R.I. 1991), *infra*.

Conclusively, the Rhode Island Supreme Court has conferred the "status" of "person" on plaintiffs similar to Baby Roe and Baby Mary Doe; and, that status has now been wholesale denied by the promulgation of the RPA. Said denial of each one's "status" is a very real, individual, and particularized injury.

Critically, and dispositively, Defendants wholly fail to acknowledge or argue against Plaintiff, Baby Mary Doe's, allegations that support her standing, under the "privileged status" conferred upon her by R.I. Gen. Laws § 11-23-5, as a "quick child." (Pl.Mem.14-17). At no time

has any court declared R.I. Gen. Laws § 11-23-5 "unconstitutional."

2. The Rhode Island Supreme Court has held that a "quick child," like Baby Mary Doe, is a "person."

Defendants unmistakably fail to challenge the sufficiency of Plaintiff, Baby Mary Doe's, allegations that support a "concrete" "particularized" injury, distinct from the "public at large," based on her privileged status as a "quick child." See, Watson v. Fox, 44 A.3d 130, 135 (R.I. 2012). Baby Mary Doe's claims survive based on the rule set forth in Miccolis v. Amica Mutual Insurance Company, 587 A.2d 67 (R.I. 1991). Defendants do not challenge Baby Mary Doe's "quick child" allegation. (APP.ExA.Complaint ¶ 58). And, this Honorable Court must accept it.

In deciding whether to extend the Rhode Island wrongful death statute's reference of "person" to a non-viable fetus, Justice Weisberger, in Miccolis, surveyed other jurisdictions. Specifically, Justice Weisberger noted, "The court in Humes [v. Clinton, 246 Kan. 590, 792 P.2d 1032 (1990)] recognized that a viable fetus is capable of independent existence and is rightfully recognized as a separate entity capable of maintaining its own cause of action." Miccolis v. Amica Mutual Insurance Company, 587 A.2d 67, 70 (R.I. 1991). The Rhode Island Supreme Court held that only a viable fetus was deemed a "person" within the meaning of Rhode Island's wrongful death statute. Id. at 71. Defendants failed to show, or even advance, any argument that would negate Baby Mary Doe's state and federal, statutory and constitutional, "status" as a "viable" fetus, and "quick child." See, (Pl.Mem.14-17); (APP.ExD.Mem.19-21). Under this binding precedent, and based on Plaintiffs' pleading, Baby Mary Doe, as a "quick child," is a "person," entitled to seek relief, and have the merits of her case heard. See, Perron v. Treasurer of the City of Woonsocket, 403 A.2d 252, 255 (1979).

A dismissal under Rule 12(b)(6) is to be granted only in the unusual instance in which a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." Goldstein v. Rhode Island Hosp. Trust Nat'l Bank, 296 A.2d 112, 115 (1972) (citations omitted). Specifically, Defendants fail to challenge Plaintiffs' pleading of: (1) Baby Mary Doe's claim of privileged status as a "quick child," as defined under R.I. Gen. Laws § 11-23-5; (2) fail to provide any historical or present challenge to the constitutionality of R.I. Gen. Laws § 11-23-5; (3) fail to challenge Baby Mary Doe's claims of protection of the due process and equal protection clauses of the Rhode Island Constitution and United States Constitution - - that inure to Baby Mary Doe as a result of her "privileged status" as a "quick child"; and (4) fail to cite to any state or federal law that derogates Baby Mary Doe's claims under the UDJA's right to have her "rights" determined, relative to the RPA's stripping of her "privileged status" as a "quick child." Defendants absolutely fail to argue how this is not more than a "trifle,"of an injury-in-fact; but, in fact, a significant, plausible and probable basis for real relief in this case. See, Citizens for Responsibility and Ethics in Washington, et al. v. Trump, United States Court of Appeals, Case No. 18-474 (2d Cir. Sept. 13, 2019) at p.16.

More particularly, Plaintiffs' allegations and claims in their pleading support the proposition that Baby Mary Doe's standing rests on the "inva[sion] [of] a legal right ... **one founded on a statute which confers a privilege**." Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 153 (1970) (emphasis supplied). Defendants unauthorized promulgation of the RPA "immediately and irrevocably" "invaded" the "legal right" of Baby Mary Doe, relative to her statutorily conferred "status" as a "quick child." (APP.ExA.Complaint ¶¶ 45-63). Defendants cannot refute these alleged facts, and this

Honorable Court must accept them as true. (Pl.Mem.18-24).

Defendants failed to prove "to a certainty" that there are no circumstances whatsoever wherein Baby Mary Doe would be entitled to relief. Accordingly, "[Plaintiff Baby Mary Doe] is entitled to a hearing and to the [Superior Court's] decision on [her] claims." Baker v. Carr, 396 U.S. 186, 208 (1962). This Honorable Court must deny Defendants' motion to dismiss as to Baby Mary Doe's claims.

F. Plaintiffs' allegations support an individual "injury-in-fact" to SOCL.

Defendants' argument that SOCL's claims are derivative of Baby Roe and Baby Mary Doe, and, because they "lack standing," SOCL lacks standing, is without merit based on, at least, the unchallenged status of Baby Mary Doe as a "quick child." See, *infra*.

Plaintiffs' pleading alleges that, "but for" Defendants' wrongful conduct they would not be deprived of their right to advocate for unborn "persons," nor would their "legal relations" with Baby Roe and Baby Mary Doe have been changed. (APP.ExA.Complaint ¶¶ 68-74). SOCL claims its interest falls within the UDJA and that it is entitled to the relief therein. (APP.ExA.Complaint ¶ 74). Plaintiffs' pleading sets forth sufficient allegations to support that their standing is more than an "abstract concern." Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 40 (1976) (citations omitted). They are entitled to be heard on the merits of their claims. See, Baker v. Carr, 396 U.S. 186, 208 (1962). This Honorable Court must deny Defendants' motion.

VII. The "Substantial Public Interest" Exception Applies Here.

A conclusion by this Honorable Court that certain plaintiffs lack standing, "does not , however, require [this Honorable Court] to dismiss plaintiff's case." Burns v. Sundlun, 617 A.2d

114, 116 (R.I. 1992). If this Honorable Court determines that Defendants have carried their heavy burden, "beyond a reasonable doubt," and, "to a certainty," that there are **no circumstances whatsoever**, within Plaintiffs' First Amended Complaint, that Plaintiffs can advance their claims, this Honorable Court must deny Defendants' Motion To Dismiss because Plaintiffs' case falls within the "substantial public interest" exception to the general standing rules.

"On rare occasions this court has overlooked the standing requirement to determine the merits of a case of substantial public interest. Sennott v. Hawksley, 103 R.I. 730, 731-32, 241 A.2d 286, 287 (1968) (allowing taxpayer standing because of the substantial public interest raised by the case)." Id. The Rhode Island Supreme Court, "noted the tendency of [the] court to confer standing liberally in matters involving substantial public interest." Ibid. In Burns the Rhode Island Supreme Court conferred standing because the "plaintiff raise[d] a question of statutory interpretation of great importance to citizens in localities that could become home to gambling facilities seeking to simulcast and invite wagering of out-of-state events [and] conclude[d] that the question of whether the public has a right to vote at a public referendum on this issue should be heard by this court." Burns v. Sundlun, 617 A.2d 114, 116 (R.I. 1992). Far greater than mere statutory construction, this case raises issues of construction of the Rhode Island Constitution.

More specifically, Plaintiffs' case raises claims that implicate two sections of the Rhode Island Constitution that, to date, have not been interpreted by the Rhode Island Supreme Court. First, whether Article I, Section 2's limitation on the use of its due process and equal protection clauses, acts as a judicial restraint on the Defendants' legislative power. And, second, whether,

as Article VI, Section 1 makes the Rhode Island Constitution the "supreme law of the state," this Honorable Court must, like in Burns, conclude that "the public has a right to vote" on the issue of any amendment to the Rhode Island Constitution on the issue of granting or securing a right to abortion and the funding thereof. Burns v. Sundlun, 617 A.2d 114, 116 (R.I. 1992).

Our Supreme Court has also not spoken as to the scope of the repeal of Article VI, Section 10, relative to Defendants' claim of absolute legislative power under Article VI, Section 2. (APP.ExD.Mem.11-14). To the extent Defendants now explicitly reach out to a "separation of branches" portion of the Rhode Island Constitution to re-introduce power prohibited by Article I, Section 2, - - as made applicable to the legislature through Article VI, Section 1, supremacy clause - - this case echoes the voice of the public interest in harnessing legislative abuse of power and corruption in our government.

Unlike in Watson v. Fox, Plaintiffs do not seek an advisory opinion here. In Watson, the "thrust of plaintiffs' complaint was that the General Assembly had violated the 'separation of powers' principles embedded in the Rhode Island Constitution. Watson v. Fox, at footnote 3. Not so here. Here, Plaintiffs seek a declaration of the duties and obligations of the General Assembly and Governor relative to the RPA. (APP.ExA.Complaint). More importantly, in contrast to Watson, and unchallenged by Defendants here, Plaintiffs' pleading alleges circumstances that sustain "concrete adverseness" between Plaintiffs and Defendants, necessary "to address thorny constitutional questions." Watson v. Fox, 44 A.3d 130, 138-39 (R.I. 2012); See, Flast, 392 U.S. at 99, 88 S.Ct. 1942, Baker v. Carr, 369 U.S. at 204, 82 S.Ct. 691 (1962).

This Honorable Court must deny Defendants' motion to dismiss because the instant case raises issues of "substantial public interest" that can only be resolved by the court.

VIII. Conclusion

In lieu of filing an Answer to Plaintiffs' First Amended Complaint, Defendants chose to file the instant motion. This Honorable Court is now bound to hold Defendants to the proper legal standard. For all the above reasons and any additional reasons raised at oral argument, this Honorable Court must sustain Plaintiffs' Objection and Deny Defendants' Motion To Dismiss.

Respectfully Submitted by,
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By Their Attorney,

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Dated: September 30, 2019

CERTIFICATION

I hereby certify that on this 30th day of September, 2019, I have electronically filed and electronically served the within document via the ECF filing system and that it is available for viewing and downloading, and electronically mailed, and mailed USPS priority mail, delivery confirmation, to the following below:

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