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STATE OF RHODE ISLAND **SUPREME COURT**

LUTHER C. PARENTE and ERIC L. STEWART,

Plaintiffs-Appellees,

v.

NELSON LEFEBVRE, in his official capacity as Warden of the Department of Corrections, Anthony P. Travisano Intake Service Center; MICHELLE GARRIEPY, in her official capacity as a Registered Nurse for the Rhode Island Department of Corrections; JENNIFER MAGEAU, in her official capacity as a Registered Nurse for the Rhode Island Department of Corrections; NANCY RUOTOLO HULL, in her official capacity as a Registered Nurse for the Rhode Island Department of Corrections; RHODE ISLAND DEPARTMENT OF CORRECTIONS,

Defendants-Appellants.

SU-2024-0387-MP

ON CERTIFIED QUESTION PURSUANT TO RULE 6 OF THE SUPREME COURT RULES OF APPELLATE PROCEDURE FROM THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF AMICI CURIAE THE AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND AND AMERICAN CIVIL LIBERTIES UNION IN SUPPORT OF PLAINTIFFS-APPELLEES

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INTEREST OF THE AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND AND AMERICAN CIVIL LIBERTIES UNION TO APPEAR AS AMICI CURIAE

The American Civil Liberties Union of Rhode Island ("ACLU-RI"), with over 5,000 members, is the Rhode Island affiliate of the American Civil Liberties Union ("ACLU"), a nationwide, nonprofit, nonpartisan organization. The ACLU has approximately 1.3 million members and is among the oldest, largest, and most active civil rights organizations in the United States. The ACLU-RI and ACLU are dedicated to vindicating the principles of equality and liberty embodied in the Bill of Rights to the Rhode Island and United States Constitutions. For decades, amici have litigated questions involving civil liberties and civil rights in state and federal courts, including this Court. In furtherance of these goals, amici have participated in numerous cases involving doctrines that can potentially limit access to justice. *See Zab v. R.I. Dep't of Corr.*, 269 A.3d 741 (R.I. 2022); *Horn v. Southern Union*, 927 A.2d 292 (R.I. 2007); *Rathbun v. Autozone*, 361 F.3d 62 (1st Cir. 2004); *Natalie R. v. State*, 567 P.3d 550 (Utah 2025); *Mich. Immigrant Rts. Ctr. v. Whitmer*, Nos. 167300, 167301 (Mich. filed Oct. 8, 2024); *State v. Fernandez*, No. S071340 (Or. filed Jan. 29, 2025).

All parties have consented in writing to the appearance of amici to file the within brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs Luther Parente and Eric Stewart filed a lawsuit in federal court alleging that the Rhode Island Department of Corrections ("RIDOC") and various state officials discriminated against them based on their disabilities, in violation of federal law and the Rhode Island Civil Rights Act ("RICRA"), by deliberately ignoring and exacerbating injuries they sustained before entering RIDOC custody. In response, the state defendants argued that they have sovereign immunity for violating the RICRA and are thus free to discriminate based on disability without being sued for damages.

To resolve the sovereign immunity issue, the U.S. Court of Appeals for the First Circuit certified the following question to this Court:

> Whether discrimination claims under the Rhode Island Civil Rights Act of 1990, R.I. Gen. Laws § 42-112-1 to -2, are "actions of tort" under the State Tort Claims Act, R.I. Gen. Laws § 9-31-1(a)?

Parente v. Lefebvre, 122 F.4th 457, 465 (1st Cir. 2024).

The answer is clear: The state defendants do not have sovereign immunity in this case because plaintiffs' discrimination claims fall squarely within the State Tort Claims Act's waiver of sovereign immunity for all tort actions.

The State Tort Claims Act ("STCA"), enacted in 1970, broadly waives state sovereign immunity for "all actions of tort." R.I. Gen. Laws § 9-31-1(a). Specifically, state officials and agencies are "liable in all actions of tort in the same manner as a private individual or corporation," but their liability is subject to careful "monetary limitations." *Id.* That text reflects a clear legislative choice: The General Assembly protected the public by affording a damages remedy to individuals harmed by state officials, while at the same time protecting the State by imposing limits on *recovery*—not by keeping harmed individuals out of court altogether.

Plaintiffs' disability discrimination claims under the RICRA fall within the STCA's waiver of immunity for "all actions of tort" because discrimination claims are torts. As this Court recently explained, "tort" is a broad concept; it encompasses any "invasion of a private interest for which the plaintiff seeks compensation for the damage they have personally suffered." *Preserve at Boulder Hills, LLC v. Kenyon*, 312 A.3d 475, 483 (R.I. 2024). Accordingly, this Court and others have long recognized that discrimination claims—which seek compensation for alleged invasions of private interests based on protected characteristics—are torts. Thus, when the General Assembly enacted discrimination claims under the RICRA, it enacted "actions of tort" for which the STCA waives the State's immunity.

The RICRA's text reinforces that conclusion. It explicitly exempts state officials from potential RICRA liability only for certain "remedial programs designed to address past societal discrimination," thus confirming that, consistent with the STCA, state officials are not otherwise immune from its coverage. R.I. Gen. Laws § 42-112-1(c).

But even if there were some textual ambiguity about whether RICRA discrimination claims are "actions of tort" under the STCA, the broad purposes animating the RICRA would compel the conclusion that they are. Enacted in 1990, the RICRA provides Rhode Islanders with robust civil rights protections exceeding those provided by preexisting federal civil rights laws. Construing the RICRA to confer those protections to Rhode Islanders discriminated against by municipal officials, but not state officials, would undermine the RICRA's purposes. It would leave individuals discriminated against by state (but not municipal) officials without a remedy, and it would leave state (but not municipal) officials with insufficient incentive to avoid discriminating. Such a gerrymandered anti-discrimination law cannot be what the General Assembly intended. And allowing Rhode Islanders to seek recourse for discrimination by state officials would avoid a potential conflict with Article I, Section 5 of the Rhode Island Constitution, which enshrines a "[r]ight to justice" and "[r]emedies for injuries and wrongs." R.I. Const. art. I, § 5.

Accordingly, this Court should answer the certified question in the affirmative, by holding that RICRA discrimination claims are "actions of tort" for which the STCA waives sovereign immunity.

ARGUMENT

For at least three reasons, RICRA claims are "actions of tort" under the STCA, for which state officials are "liable . . . in the same manner as a private individual or corporation." R.I. Gen. Laws § 9-31-1(a). First, the plain meaning of "actions of tort" in the STCA encompasses discrimination claims, including those under the RICRA. Second, the RICRA's own text indicates that it applies to state officials. Third, the RICRA's broad remedial purpose weighs in favor of concluding that discrimination claims fall within the STCA's waiver of immunity, and against a conclusion that state officials can discriminate against Rhode Islanders with impunity.

I. Plaintiffs' RICRA claims are "actions of tort" under the STCA.

The "ultimate goal" of statutory interpretation "is to give effect to the purpose of the act as intended by the Legislature." *Epic Enters. LLC v. Bard Grp., LLC*, 186 A.3d 587, 590 (R.I. 2018) (quoting *Webster v. Perrotta*, 774 A.2d 68, 75 (R.I. 2001)). And the best evidence of the General Assembly's intent is the text it enacted. Thus, "when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Id.* (quoting *Alessi v. Bowen Court Condominium*, 44 A.3d 736, 740 (R.I. 2012)). As relevant here, discrimination claims, like those under the RICRA, have long been considered tort actions. Because the STCA explicitly waives sovereign immunity for "*all* actions of tort," its plain meaning waives immunity for plaintiffs' RICRA claims. R.I. Gen. Laws § 9-31-1(a) (emphasis added).

A. A tort is any civil invasion of a private interest arising independently of contract or property.

The phrase "all actions of tort" in the STCA is very broad. A tort is "[a] civil wrong, other than breach of contract, for which a remedy may be obtained," or, alternatively, "a breach of a duty that the law imposes on persons who stand in a particular relation to one another." *Tort*, Black's Law Dictionary (12th ed. 2024). That basic definition has prevailed since before the STCA's enactment in 1970. *See Tort*, Black's Law Dictionary (4th rev. ed. 1968) (defining tort as "[a] private or civil wrong or injury . . . independent of contract," or, alternatively, "[a] violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other which is involved in a given transaction").

This Court's pronouncements on the word "tort" align with its broad dictionary definition. For example, this Court has held that a civil claim created purely by statute—specifically, the civil Racketeer Influenced and Corrupt Organizations ("RICO") statute—is a "tort" and therefore subject to the three-year statute of limitations for "claims in tort" set forth in Rhode Island General Laws § 9-1-25(a). *See Preserve at Boulder Hills*, 312 A.3d at 481. The Court noted that a tort involves "an invasion of a private interest for which the plaintiff seeks compensation for the damage they have personally suffered and a judgment to fairly allocate the loss." *Id.* at 483 (quoting 74 Am. Jur. 2d *Torts* § 1 (Feb. 2024 update)). The plaintiff's RICO claim fell within that definition because it was "a *civil* action in order to 'seek[] compensation for the damage they have personally suffered.'" *Id.* (emphasis in original). It did not matter that the RICO claim was created by statute and was not a common-law tort. What mattered was that it was a civil claim "not created by a contract or a property interest." *Id.* at 484.

This Court's holding in *Preserve at Boulder Hills*, which deemed civil RICO claims to be "claims of tort" for purposes of the statute of limitations in § 9-1-25, bears directly on the meaning of "actions of tort" in the STCA. That's because, in waiving sovereign immunity for "all actions of tort," the STCA expressly invokes the limitations period in § 9-1-25 for "claims of tort." *See* R.I. Gen. Laws § 9-31-1(a) (providing that Rhode Island and its subdivisions "shall, subject to the period of limitations set forth in § 9-1-25, hereby be liable in all actions of tort"). And even in the absence of this direct cross-reference, the rules of statutory construction would support treating the word "tort" to mean the same thing in § 9-1-25 and the STCA. *See Purcell v. Johnson*, 297 A.3d 464, 470–71 (R.I. 2023) ("[W]hen two laws are *in pari materia*, the Court will harmonize them whenever possible."). It follows that this Court's § 9-1-25 analysis in *Preserve at Boulder Hills*—under which a statutory claim (including one asserted against the State or a government agency) constitutes a tort so long as it creates a private interest not involving contract or property—

applies fully to the STCA.

This Court's STCA cases confirm that the statutory term "actions of tort" incorporates the broad definition of "tort" set forth in dictionaries and decisions like *Preserve at Boulder Hills*. In *Laird v. Chrysler Corp.*, this Court specified that the STCA waives the State's immunity as to "actions of tort" in which a plaintiff "show[s] that there was a breach of a duty owed to him or her in an individual capacity and not merely a breach of some obligation owed to the general public." 460 A.2d 425, 429 (R.I. 1983) (citing *Ryan v. State Dep't of Transp., R.I.*, 420 A.2d 841, 843 (R.I. 1980)). That case involved a negligence claim against Rhode Island. *Id.* at 426. Because the claim alleged a breach of a duty owed to an individual plaintiff—and because the STCA is "a blanket waiver of sovereign immunity" as to such claims—the State could be sued. *Id.* at 429–30 (underscoring that "the broad language of [the STCA] . . . unambiguously and without restriction holds the state liable" as to all tort actions (internal quotation marks and citation omitted)).

Federal cases likewise indicate that tort claims arising from statute, including federal anti-discrimination statutes, are "actions of tort" for purposes of the STCA. *See, e.g.*, *Della Grotta v. Rhode Island*, 781 F.2d 343, 345–47 (1st Cir. 1986) (holding that the STCA applied to claims brought under 42 U.S.C. § 1983), *abrogated on other grounds by Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989); *Tang v. R.I. Dep't of Elderly Affairs*, 904 F. Supp. 55, 63 (D.R.I. 1995) (same for claims brought under 42 U.S.C. § 1981).

Despite those precedents, defendants appear to assert that the term "actions of tort" in the STCA must be narrowly read to mean only common-law torts that existed before the STCA's adoption. *See* Br. of State Defs./Appellants ("State Br.") at 12–13, 16–17. That argument is untenable for three reasons.

First, defendants' argument cannot be squared with this Court's decision in *Preserve at Boulder Hills* recognizing that an action under the state's civil RICO statute—a statutory claim with no direct common-law analog—qualified as a "tort."[1] *See* 312 A.3d at 483–84. So the proverbial ship has sailed on any argument that, as appearing in a statute, the term "tort" references only preexisting common-law torts.

Second, defendants' argument cannot be squared with the STCA's text. That text does not limit the waiver of immunity to "common-law torts." *See In re J.T.*, 252 A.3d 1276, 1281 (R.I. 2021) ("[W]e are not privileged to legislate, by inclusion, words which are not found in the statute." (citation omitted)). It does not even limit the waiver of immunity to "torts." Instead, it broadly waives immunity for "*all* actions of tort," and it generally mandates that the state "shall . . . be liable" in those actions "in the same manner as a private individual or corporation." R.I. Gen. Laws

[1] Like the RICRA, Rhode Island's civil RICO statute was enacted well after the passage of the STCA. *See* R.I. Gen. Laws §§ 7-15-1–7-15-11. And like the RICRA, the civil RICO statute provides for not only damages and attorneys' fees, *id.* § 7-15-4(a), 7-15-4(c), but also equitable remedies, such as injunctions, *id.* § 7-15-4(a).

§ 9-31-1(a) (emphasis added). And "all actions of tort" means *all* actions of tort.

Finally, defendants' argument fails to account for the General Assembly's reactions to judicial decisions. The General Assembly took no action to limit the STCA following this Court's 1983 decision in *Laird*, nor following repeated decisions holding that the State had waived its sovereign immunity for various statutory torts. *See, e.g.*, *Della Grotta*, 781 F.2d at 346–47; *Tang*, 904 F. Supp. at 63.[2] Such "legislative acquiescence in the court's construction may reasonably be considered to imply legislative approval." *E-Con-O-Wash Corp. of R.I. v. Sousa*, 164 A.2d 851, 853 (R.I. 1960).

In sum, there is no basis for reading into the statute exactly the sort of exceptions the STCA's "straightforward, uncomplicated, and unreserved" waiver rejected. *See Marrapese v. Rhode Island*, 500 F. Supp. 1207, 1221–22 (D.R.I. 1980). The STCA holds the State liable for all claims fitting the capacious definition of tort.

B. Discrimination claims are torts.

Discrimination claims meet the *Preserve at Boulder Hills* definition of torts:

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[2] Also illuminating is *Folan v. State/Department of Children, Youth, & Families*, where this Court allowed a RICRA claim to proceed against the State, reversing the superior court's determination that the plaintiff's prior recovery under a worker's compensation statute barred further recovery under the RICRA. 723 A.2d 287, 291–92 (R.I. 1999). While the State did not appear to assert sovereign immunity in *Folan*, the General Assembly's subsequent amendments to the RICRA did not controvert this Court's implication that the State could be held liable under that statute.

They seek to vindicate private interests not involving contract or property. *See* 312 A.3d at 483–84. So it is hardly surprising that many courts, including this Court, have long considered discrimination claims to be torts. And it was against this backdrop that the General Assembly adopted the STCA.

Long before the STCA was enacted, this Court stated that a statute allowing plaintiffs to sue public service corporations for "undue and unreasonable discrimination" established "an action of tort." *Main Realty Co. v. Blackstone Valley Gas & Electric Co.*, 193 A. 879, 881, 889 (R.I. 1937). Courts around the country have reached similar conclusions. In *Curtis v. Loether*, the U.S. Supreme Court recognized that a racial discrimination claim under the federal Fair Housing Act "sounds basically in tort." 415 U.S. 189, 195 (1974). As the Court explained, an anti-discrimination "statute merely defines a new legal duty, and authorizes the courts to compensate a plaintiff for the injury caused by the defendant's wrongful breach." *Id.* In addition, a discrimination action like Curtis's could "be likened to an action for defamation or intentional infliction of mental distress." *Id.* at 195 n.10 (citing *Rogers v. Loether*, 467 F.2d 1110, 1117 (7th Cir. 1972)).

While the U.S. Supreme Court decided *Curtis* just after Rhode Island enacted the STCA, it relied on longstanding principles. *Cf. Main Realty Co.*, 193 A. at 889 (recognizing a discrimination claim as "an action of tort" in 1937). A torts textbook from 1969, which the *Curtis* Court quoted, stated that "under the logic of the common law development of a law of insult and indignity, racial discrimination might be treated as a dignitary tort." *Curtis*, 415 U.S. at 195 n.10 (quoting Charles O. Gregory & Harry Kalven, Cases and Materials on Torts 961 (2d ed. 1969)); *see also, e.g.*, *Pryce v. Swedish-Am. Lines*, 30 F. Supp. 371, 372 (S.D.N.Y. 1939) (stating that a racial discrimination claim "sounds in tort" because it "is in no way dependent upon the terms of the passenger contract"); *Thomas v. Pick Hotels Corp.*, 224 F.2d 664, 665–66 (10th Cir. 1955) (holding that the plaintiff's racial discrimination claim "clearly sound[ed] in tort" because there was a "common law duty . . . to provide accommodations without discrimination").

The ensuing years have only confirmed what was true when the STCA was enacted: that discrimination claims are torts. In 1985, the U.S. Supreme Court held that all claims brought under 42 U.S.C. § 1983, which can include claims alleging discrimination in violation of the U.S. Constitution's equal protection guarantee, should be "characterized" as "tort action[s] for the recovery of damages for personal injuries." *Wilson v. Garcia*, 471 U.S. 261, 276 (1985); *see also Santiago-Negron v. Castro-Davila*, 865 F.2d 431, 440 (1st Cir. 1989) ("There can be no doubt that § 1983 actions create tort liability . . . ."); *Paul v. City of Woonsocket*, 745 A.2d 169, 172 (R.I. 2000) (holding that § 1983 claims are claims for "injuries to the person" (citation omitted)). Two years later, in 1987, the Court extended that holding to discrimination claims under 42 U.S.C. § 1981, the federal statute after which the

General Assembly modeled the RICRA in 1990. *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 661–62 (1987); *see* Argument III, *infra*. The Court reasoned that "racial discrimination . . . is a fundamental injury to the individual rights of a person." *Id.*; *see also id.* at 670 (Brennan, J., concurring in part and dissenting in part) (noting that the majority "characterizes all § 1981 actions as tort actions"); *Tang*, 904 F. Supp. at 63 (noting that "§ 1981 is, in essence, a tort action").

C. The STCA waives the State's sovereign immunity for RICRA claims.

Under these principles, plaintiffs' RICRA claims are "actions of tort" for which the STCA waives sovereign immunity. The RICRA is "a broad civil rights act." *Rathbun v. Autozone, Inc.*, 361 F.3d 62, 67 (1st Cir. 2004). It prohibits discrimination based on various protected characteristics, including "disability." R.I. Gen. Laws § 42-112-1(a); *see DeCamp v. Dollar Tree Stores, Inc.*, 875 A.2d 13, 27 n.14 (R.I. 2005) (noting that the failure to provide reasonable accommodations is a form of disability discrimination). Here, plaintiffs' RICRA claims allege that defendants owed them a duty to, without discrimination, provide medical services, treat their medical conditions, and follow the course of care plaintiffs' medical providers recommended.

Those claims meet the definition of tort set forth in *Preserve at Boulder Hills*, *Laird*, and the other authorities described above, because they assert civil claims based on individual interests not arising from contract or property. They are individual claims because the RICRA confers upon individual Rhode Islanders, not the public in general, a right against discrimination. *See Laird*, 460 A.2d at 429; *Goodman*, 482 U.S. at 661–62. And those individual claims are civil in nature because, when individuals assert them, their claims are "*civil* action[s] that 'seek[] compensation for the damage they have personally suffered.'" *Preserve at Boulder Hills*, 312 A.3d at 483. Those individual civil claims are not contract claims. Nor are they property claims. They are, therefore, torts.

Though this Court has never suggested that only claims closely related to common-law torts qualify as torts, plaintiffs' claims also resemble the common-law tort of medical malpractice, *see Ho-Rath v. Rhode Island Hosp.*, 89 A.3d 806, 812 (R.I. 2014), and can be analogized to dignitary torts like intentional or negligent infliction of emotional distress, *see Francis v. Am. Bankers Life Assur. Co. of Fla.*, 861 A.2d 1040, 1046 (R.I. 2004); *cf. Curtis*, 415 U.S. at 195 n.10.

Because plaintiffs' claims are torts, they fall within the STCA's waiver of the State's sovereign immunity for "*all* actions of tort." R.I. Gen. Laws § 9-31-1(a) (emphasis added). There is no basis to exclude plaintiffs' claims from this broad waiver.

Defendants' arguments that plaintiffs' RICRA claims do not qualify as torts are unavailing. First, defendants contend that the STCA could not have waived sovereign immunity for RICRA claims because the RICRA protects people's "rights to make and enforce contracts" and rights relating to "personal property." State Br. at 11–13; *see* R.I. Gen. Laws § 42-112-1(a). But the right to be free of discrimination in contracts and property is not a contract or property right. It is a right against *discrimination*. For example, if a person refuses to contract with another person because of their race, the person being discriminated against does not have a contract claim because there is no contract. But they unquestionably have a discrimination claim. That is why, in construing 42 U.S.C. § 1981, the U.S. Supreme Court concluded that the relevant claim does not seek to vindicate contract rights but rather the right to receive compensation for the defendant's breach of his statutory duty not to discriminate. *See Goodman*, 482 U.S. at 661–62. As this Court has made clear, when determining if a claim is a tort, courts look to "the underlying wrongful act." *Preserve at Boulder Hills*, 312 A.3d at 483. The underlying wrongful act in a RICRA claim is discrimination, whether or not it arises in the context of a contractual relationship or property transaction.

Defendants also assert that the RICRA does not create a cause of action in tort because it enforces public rights rather than private rights. *See* State Br. at 14–15. That asserted distinction has no basis in tort theory or Rhode Island law. Constitutional and statutory torts, just like common-law torts, offer individual remedies. *See generally* James J. Park, *The Constitutional Tort Action as Individual Remedy*, 38 Harv. C.R.-C.L. L. Rev. 393 (2003). And constitutional and statutory torts, just like common-law torts, enforce public rights and affect public action. *See, e.g.*, John C. P. Goldberg, *Twentieth-Century Tort Theory*, 91 Geo. L.J. 513, 560–62 (2003); John C. Jeffries, Jr., *Damages for Constitutional Violations: The Relation of Risk to Injury in Constitutional Torts*, 75 Va. L. Rev. 1461, 1462 (1989); Noah Smith-Drelich, *The Constitutional Tort System*, 96 Ind. L.J. 571, 573–74 (2021).

All that matters under Rhode Island law is whether a defendant breached a non-contract and non-property duty owed to an individual rather than the general public. *See Laird*, 460 A.2d at 429; *Preserve*, 312 A.3d at 482–83. That is what plaintiffs have alleged here. Consequently, RICRA discrimination claims are "actions of tort" for which the STCA waives sovereign immunity.

II. The text of the RICRA shows that it protects against discrimination by state officials.

Just as the STCA's text is clear that its waiver encompasses RICRA claims, the express language of the RICRA establishes that it applies to the State. By specifying narrow situations in which state officials are exempt from RICRA liability for actions that might otherwise violate the statute, the RICRA makes clear that state officials are otherwise very much subject to its provisions.

Section 42-112-1(c) of the RICRA exempts the State from liability for certain remedial programs:

> Nothing contained in this chapter shall be construed to affect chapter 14.1 of title 37, chapter 5.1 of title 28, or any other remedial programs designed to address past societal discrimination.

R.I. Gen. Laws § 42-112-1(c). Chapter 5.1 of Title 28 established a "state equal opportunity office" to, among other things, "ensur[e] compliance with the requirements of all federal agencies for equal opportunity." R.I. Gen. Laws § 28-5.1-2. Its focus is employment and appointments within "all units of Rhode Island state government," including departments, boards, and agencies. *Id.* § 28-5.1-1(a)(1). Similarly, Chapter 14.1 of Title 37 established a State Office of Minority Business Enterprise to support the "participation of firms owned and controlled by minorities and women" in state-funded projects and "state purchases of goods and services." *Id.* § 37-14.1-1.

If the General Assembly had not understood the RICRA to apply to the State, the exemption in § 42-112-1(c) for specific state programs would have been unnecessary. *See Ricci v. Rhode Island Com. Corp.*, 276 A.3d 903, 907–08 (R.I. 2022) (applying *expression unius* canon to conclude that where "the General Assembly quite deliberately exempted a very few specific positions from [a statute's] otherwise broad scope," other positions are not exempt); *Swain v. Est. of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012) ("The Legislature is presumed to have intended each word or provision of a statute to express a significant meaning, and the Court will give effect to every word, clause, or sentence, whenever possible." (cleaned up)). Thus, the RICRA's own text reinforces the conclusion that RICRA claims are "actions of tort" as to which the General Assembly has waived the State's sovereign immunity.

III. Any ambiguity as to whether the State is immune should be resolved in plaintiffs' favor because the General Assembly intended the RICRA to redress governmental discrimination.

Even if there were some statutory ambiguity as to whether RICRA actions are "actions of tort" within the meaning of the STCA, legislative intent would require resolving that ambiguity in favor of the conclusion that they are. The waiver of sovereign immunity effected by the STCA is unequivocally broad. *See Laird*, 460 A.2d at 430; Argument I, *supra*. To the extent there is any ambiguity, it concerns whether the General Assembly intended to hold the State liable for RICRA claims via the STCA's waiver.[3] The history of the RICRA makes clear that the General Assembly did.

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[3] The recently proposed legislation cited by the State, *see* State Br. at 21–22, does not reflect any ambiguity about the RICRA's reach. That legislation does not "amend RICRA" at all. *Id.* at 21. Rather, if enacted, it would create a new statute, entitled the Rhode Island Civil Rights Enforcement Act, providing a general enforcement mechanism to ensure that "the deprivation of *any* rights, privileges or immunities secured by the Constitution and laws of the State of Rhode Island" shall have a corresponding remedy. 2025 R.I. Senate Bill No. 0538 (emphasis added).

The proposed legislation was designed to make explicit a remedy for state constitutional rights and protections which courts have determined are not self-executing. *See, e.g.*, *Doe v. Brown Univ.*, 253 A.3d 389, 400 (R.I. 2021) (Article 1, § 2, anti-discrimination clause); *A.F. Lusi Const., Inc. v. Rhode Island Convention Ctr. Auth.*, 934 A.2d 791, 798 (R.I. 2007) (Article 3, § 7); *Smiler v. Napolitano*, 911 A.2d 1035, 1039 n.5 (R.I. 2006) (Article 1, § 5).

If statutory text is ambiguous, this Court "look[s] to the 'legislative intent behind the enactment.'" *Sauro v. Lombardi*, 178 A.3d 297, 304 (R.I. 2018) (quoting *Pawtucket Transfer Operations, LLC v. City of Pawtucket*, 944 A.2d 855, 859 (R.I. 2008)). The "facts and circumstances surrounding [a statute's] enactment" can shed light on the Legislature's intent. *Laird*, 460 A.2d at 428–30 (determining that the legislative intent behind the STCA was to abrogate sovereign immunity as to "all actions of tort"); *see First Republic Corp. of Am. v. Norberg*, 358 A.2d 38, 41 (1976) (explaining that "[l]egislative history is properly used as an aid to construction" when a statute is "ambiguous").

The circumstances of the RICRA's enactment show that it was intended to be a comprehensive anti-discrimination statute. As this Court has explained, the RICRA was "a reaction to the United States Supreme Court decision in *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989)," which "narrowly interpreted 42 U.S.C. § 1981." *Ward v. City of Pawtucket Police Dep't*, 639 A.2d 1379, 1381 (R.I. 1994). *Patterson* held that § 1981 prohibited racial discrimination only in the formation of a contract and provided no protection against discrimination occurring during the performance of a contract. *See* 491 U.S. at 171. In response, the General Assembly moved quickly and decisively. By enacting the RICRA, the General Assembly not only plugged the holes that *Patterson* had created in federal anti-discrimination law, it also substantially expanded state anti-discrimination law beyond the reach and scope of 42 U.S.C. § 1981. For example, while § 1981 had referenced the "making" of contracts, the RICRA also addresses the "performance, modification and termination of contracts." R.I. Gen. Laws § 42-112-1(b).[4] And whereas § 1981 addresses only racial discrimination, the RICRA proscribes discrimination based on "race, color, religion, sex, disability, age, [and] country of ancestral origin." *Id.* § 42-112-1(a).

In short, the RICRA "plainly reveal[s] the General Assembly's overarching intent to craft a broad civil rights act that would both complement and supplement federal civil rights protections." *Rathbun*, 361 F.3d at 67. This Court confirmed as much in *Ward*, observing that the RICRA "provides broad protection against all forms of discrimination in all phases of employment," among other contexts. 639 A.2d at 1381. Following *Ward*, courts have recognized that the RICRA should be "read . . . as broadly as possible—which means that if individuals discriminate in ways that violate the statute, then they must be liable under it." *Iacampo v. Hasbro, Inc.*, 929 F. Supp. 562, 573 (D.R.I. 1996); *see also, e.g.*, *Korsak v. Honey Dew Assocs., Inc.*, No. PC 13-0105, 2015 WL 5478208, at *12 (R.I. Super., Sep. 15, 2015) (similar).

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[4] In response to *Patterson*, Congress similarly amended § 1981 to specify that it applies to "the making, performance, modification, and termination of contracts." 42 U.S.C. § 1981(b) (1991); *see Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 372–73 (2004).

Shielding state actors from RICRA liability would undermine the statute's broad purpose. If such a state-actor carveout exists, a Rhode Islander who is racially profiled by the state police would not be able to sue under the RICRA, even though they *would* be able to sue if the offending agency were local law enforcement. Likewise, a woman who is paid less for her work under a government contract because of her gender would be barred from seeking redress if the contract were with the state government, even though she could bring a RICRA claim if the contract were with a local government. There is no indication that the General Assembly intended to leave so significant a gap in the RICRA's coverage or permit such inconsistent application of its protections. Notably, when the General Assembly enacted the RICRA to ensure protections beyond § 1981's baseline, it was well established that that baseline included liability for government actors. *See Gen. Bldg. Contractors Ass'n, Inc. v. Pennsylvania*, 458 U.S. 375, 387–88 (1982) ("The prohibitions of § 1981 encompass . . . governmental action.").

"[T]his Court's role is 'to determine and effectuate the Legislature's intent'" for the RICRA. *Such v. State*, 950 A.2d 1150, 1155–56 (R.I. 2008) (quoting *Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987)). Construing RICRA claims like plaintiffs' to fall outside the STCA's waiver of sovereign immunity for "all actions of tort" would insulate the State from liability for discriminatory acts and leave victims without recourse. Far from effectuating the General Assembly's intent for the

RICRA to serve as a comprehensive anti-discrimination statute—"a public policy that the Legislature considered to be of major importance," *Folan v. State/Dep't of Children, Youth, & Fams.*, 723 A.2d 287, 290–91 (R.I. 1999)—this result would flout it, *see LaPlante v. Honda N. Am., Inc.*, 697 A.2d 625, 628 (R.I. 1997) ("[T]his Court will adopt a [statutory] construction that avoids an absurd or unjust result.").[5] Accordingly, this Court should resolve any ambiguity by holding that plaintiffs' RICRA claims are "actions of tort" within the meaning of the STCA.

The Court should be especially wary of construing the RICRA to provide no remedy for discrimination by state actors because the Rhode Island Constitution provides that "[e]very person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character." R.I. Const. art. I, § 5; *see Kennedy v. Cumberland Eng'g Co.*, 471 A.2d 195, 199 (R.I. 1984) (holding that a law violated Article I, § 5 because it "denie[d] . . . claimants of their day in court, notwithstanding the merits of their claims and the direct liability of the potential defendants"). If the General Assembly had intended to immunize state actors who discriminate—despite the STCA's broad waiver of sovereign immunity for all torts, the RICRA's broad

[5] As one Rhode Island court observed in concluding that sovereign immunity does not bar RICRA claims in state court, "the fundamental public policy contemplated by [the RICRA] would be eviscerated" by the application of sovereign immunity. *Evans v. R.I. Dep't of Bus. Regul.*, No. CIV.A. 01-1122, 2004 WL 2075132, at *3 (R.I. Super. Aug. 21, 2004).

remedial purpose, and the Rhode Island Constitution's right-to-remedy provision—it presumably would have said so.

CONCLUSION

For these reasons, this Court should answer the certified question—"whether discrimination claims under the [RICRA] are 'actions of tort' under the [STCA]," *Parente*, 122 F.4th at 465—in the affirmative.

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1. This brief contains 5,590 words, excluding the parts exempted from the word count by Rule 18(b).

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