

STATE OF RHODE ISLAND

SUPERIOR COURT

Michael Benson, *et al.*,
Plaintiffs

PC-2019-6761

v.

Gina M. Raimondo, in her official capacity as
Governor of Rhode Island, *et al.*,
Defendants

**MEMORANDUM OF FACT AND LAW OF
AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND
AS AMICUS CURIAE
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

The American Civil Liberties Union of Rhode Island (“ACLU-RI”), appearing as amicus curiae, submits the within Memorandum in support of Defendants’ Motion to Dismiss the Amended Complaint.

Michael Benson, *et al.*, (“Plaintiffs”) have brought this action against Governor Gina M. Raimondo, *et al.*, (“Defendants”) to challenge the constitutionality of the Reproductive Privacy Act, Chapter 4.13 of Title 23, signed by Governor Raimondo on June 19, 2019. Plaintiffs first filed this complaint on June 19, 2019, when H-5125B (the “Reproductive Privacy Act” or “RPA”) was still pending in the General Assembly. Their efforts that same day to enjoin the General Assembly from transmitting the RPA to the Governor for signature having failed, they subsequently amended the complaint on June 25, 2019 challenging the constitutionality of the RPA. Plaintiffs’ counsel had also submitted, as an exhibit to the complaint, testimony on the RPA in the form of an *amicus* brief submitted to Nicholas Mattiello, Speaker of the House, and Dominick Ruggerio, President of the Senate, on March 18, 2019 when H 5125B had passed, but its Senate counterpart, S 152, was still pending. See Exhibit 1 to Plaintiff’s Amended Complaint.

In each of these filings and testimony, Plaintiffs and their attorney draw erroneous conclusions and apply a far-fetched interpretation of the proceedings of the 1986 Rhode Island Constitutional Convention (“the 1986 Convention”), in particular, the deliberations leading up to the adoption of the current language of Article I, Section 2 of the Rhode Island Constitution. Moreover, they rely on recollections of non-delegates to the 1986 Convention to support their arguments, instead of the plain and unambiguous words of the provision itself.

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

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

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

protections). ACLU-RI played a major role in a coalition effort that was successful in defeating Question 14 by an overwhelming margin at the polls. ACLU-RI was also an active participant in the coalition that successfully lobbied for passage of the Reproductive Privacy Act challenged here.

ACLU-RI has a strong, documented, and consistent record spanning nearly 50 years of battle to obtain and preserve the individual right of reproductive choice in Rhode Island. Because Plaintiffs' position, if accepted, would undermine the General Assembly's legitimate authority to legislatively safeguard those individual freedoms, and because Plaintiffs' interpretation of Article 1, Section 2 cannot be squared with the contemporaneous records of the 1986 Convention, ACLU-RI files this Memorandum as *amicus curiae* in support of Defendants' motion to dismiss.

Introduction

The presentation which follows supplements, but does not duplicate, the arguments developed by the Defendants in their Motion to Dismiss. In their Memorandum in Support of Defendants' Motion to Dismiss ("Def. Memo."), Defendants ably investigated the plain language of Article I, Section 2 of the Constitution and demonstrated that its words cannot reasonably or plausibly be read to prohibit "any action by any person or subdivision of government." Def. Memo. at 8. Defendants also addressed the independent legislative authority constitutionally vested in the General Assembly by Article VI, Section 2—an authority which Article I, Section 2 neither purports to, nor can, diminish.

Defendants correctly point out that post-hoc statements of legislators as to what they had in mind when they voted in favor of legislation under scrutiny does not constitute competent evidence of "legislative intent." Here, as Defendants note, the asserted extrinsic evidence is even more attenuated, since the two affiants did not actually serve as delegates to the 1986 Convention.

Indeed, even the Convention delegates did not have the final say in what was adopted—that was left to the voters in a general election.¹

ACLU-RI agrees with Defendants that one should not and need not look beyond the plain words of Article I, Section 2, to conclude that it creates no impediment to enactment of the RPA. But having said that, ACLU-RI seeks to bring to the Court’s attention actual contemporaneous legislative history which further demonstrates that Article I, Section 2 was neither understood nor intended to affirmatively restrict or interfere with the exercise of reproductive rights. To the contrary, the delegates to the 1986 Convention specifically sought to impose such a constitutional prohibition in *Question 14*, which was soundly rejected by the electorate.

The purpose of this Memorandum is to provide the Court with the history of those efforts, as well as the *contemporaneous* explanation and information provided to the voters in considering approval or rejection of Article I, Section 2.

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

The thrust of Plaintiffs’ argument is that the language added to Article I, Section 2 was designed to bar the General Assembly from taking any action to protect abortion rights. As the Defendants have demonstrated, the plain language of the Section does not support such an interpretation.

Plaintiffs are correct that the members of the 1986 Convention sought to include a ban on abortions in the Rhode Island Constitution. But it was not contained in Article I, Section 2. To the contrary, the 1986 Convention approved a *separate* constitutional amendment to achieve that

¹ Similarly, the 2014 “pesky facts” statement of ACLU-RI in a publication, attached as Exhibit E to Exhibit 1 to the Amended Complaint, issued 28 years after the 1986 Convention, has no independent weight. In any event, Plaintiffs have not fairly or accurately characterized that statement.

very purpose--and to do so explicitly--but that amendment was overwhelmingly rejected by the voters.

In 1986, the electorate was presented with fourteen (14) proposed ballot questions containing a total of 25 constitutional amendments to the Rhode Island Constitution as a result of the efforts of the 1986 Convention. The summary of the fourteen questions, as drafted by the Convention, is appended to this Memorandum as Appendix 1. The proposed amendment, that was ultimately approved and incorporated in Article I, Section 2 is listed as Question 8. But in the list of ballot questions, Question 8 actually contains no reference to abortion or abortion funding. App.

1

The 1986 Convention separately approved Question 14 for approval by the voters. Question 14, if approved, would have accomplished directly and unambiguously what Plaintiffs purport to divine from the inclusion of the last sentence in Article I, Section 2: a direct and absolute ban on abortion and abortion funding in the Rhode Island Constitution. Instead of the tortured reading that Plaintiffs would ascribe to the one-sentence limitation on construction of a gender-discrimination ban contained in Article I, Section 2, Question 14 made its intention to impose an absolute constitutional ban on abortion rights unmistakable: by declaring a paramount right to life from moment of fertilization (section 1), imposing a prohibition on deprivation of unborn life except to prevent the death of the pregnant woman “as long as every reasonable effort was made to preserve” both lives (section 2), imposing a prohibition on use of any government funds for abortion (section 3), and providing that these restrictions would not be enforced until a change in federal law (section 4). The full text of Question 14 is attached hereto as Appendix 2.²

² In fact, in its listing of the constitutional questions in its pre-election voters guides, the Convention provided no indication that any reference to abortion or abortion funding was included

If Question 14 had been approved, there would be no question that it constrained the legislature from enacting protections for reproductive choice contained in the RPA. However, it did not pass. It was resoundingly defeated by a margin of nearly 2 to 1 (101,252 approve; 191,730 reject). The election results report in the November 5, 1986 edition of the Providence Journal is attached hereto as Appendix 4.

II. Plaintiff's Reliance on the 2019 Recollections of Non-Delegates to the 1986 Convention is No Substitute for Statutory Construction or Competent Evidence of Legislative Intent.

In support of their interpretation of the intent of the framers of the abortion-related wording of Article I, Section 2, Plaintiffs rely on the affidavits of two individuals, each executed in 2019, attached as Exhibits 2 and 3 to the Amended Complaint. Neither of the affiants were actual delegates to the 1986 Convention. Their recollections, made more than thirty years after the fact, have no evidentiary value.³

In their affidavits, Patrick Conley, who states he served as “General Counsel to the President” of the 1986 Convention,⁴ and Matthew Smith, who was Speaker of the House of Representatives at the time, claim to know the specific intent of the 1986 Convention delegates in approving the “abortion” proviso included in Article I, Section 2: to “mandate that any

in the text of Question 8. See Question List, Appendix 1, and Voters Guide Excerpt, attached hereto as Appendix 3.

In its 2014 statement attached by Plaintiffs as Exhibit E to Exhibit 1 of the Amended Complaint, ACLU-RI characterized the inclusion of the abortion reference in the Article I, Section 2 as a “stealth” amendment because “[it] did not appear anywhere on the ballot summary voters saw in the polling booth, or in the summary provided by the Secretary of State!” Ex. E, page 3.

³ Indeed, Speaker Smith’s affidavit provides nothing more than “bolstering” of counsel Conley, since Smith states that whatever understanding he obtained came from discussions with Conley. Exhibit 3 to Amended Complaint.

⁴ It is worth noting that Conley himself has described his tenure as General Counsel at the Convention as “short-lived.” Patrick T. Conley, “Rhode Island in Rhetoric and Reflection.” Rhode Island Publications Society, 2002, p. 188.

establishment of a new Rhode Island ‘fundamental right’ to abortion, and the funding thereof, would require a proper amendment to the Rhode Island Constitution.” Plaintiffs’ Exhibit 2.

This characterization is nowhere to be found in the Committee Reports or proceedings from the 1986 Convention.⁵

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

The committee recognizes the concerns of some of its members that language of this resolution may be interpreted by some to go far beyond its intended scope. Nothing contained in Resolution 86-00002, Sub. A, should be read to justify abortions or homosexual rights. Clearly, the word “gender” should not be interpreted as meaning sexual preference. Also, the prohibition of discrimination based on gender should not be read to permit abortion. Prohibition of abortion is a distinction made on the basis of when life begins, and is not a distinction based on gender.
Amended Complaint, Ex. F to Ex. 1 at 5-6 (emphasis added).

Plaintiffs have completely failed to even mention Question 14, much less acknowledge the fact that the voters overwhelmingly rejected it—an explicit abortion ban—at the same time that Article I, Section 2 was approved.

Conclusion

Thirty-three years ago, the voters of the State of Rhode Island made crystal clear that they did not support the inclusion of a ban on abortions or a “fetal personhood” provision in the

⁵ Nor does Conley’s Treatise on the Rhode Island Constitution, referenced in paragraph 6 of his Affidavit, Exhibit 2 to the Amended Complaint, provide any support for his claim. The “Treatise” simply mentions unexplained “concerns of some of the committee members” as the basis for the addition of this language. Patrick T. Conley and Robert G. Flanders, *The Rhode Island State Constitution*, Oxford University Press, 2011, page 56.

Constitution of the State of Rhode Island. Plaintiffs' efforts to create one by a tortured reading of Article I, Section 2 is, respectfully, frivolous and should be rejected.

Accordingly, ACLU-RI respectfully submits that the Defendants' Motion to Dismiss should be granted.

Respectfully submitted,

/s/ Lynette Labinger
Lynette Labinger #1645
128 Dorrance St., Box 710
(401) 465-9565
ll@labingerlaw.com

Cooperating Counsel,
American Civil Liberties Union Foundation
of Rhode Island

Of Counsel:

Faye A. Dion, Esq.⁶
379 McCorrie Lane
Portsmouth, RI 02871

CERTIFICATE OF SERVICE

I hereby certify that, on September 24, 2019:

- I electronically filed and served this document through the electronic filing system.
- The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Lynette Labinger

⁶ Admitted to practice law in the State of New York

RHODE ISLAND CONSTITUTIONAL CONVENTION

19  86

GET THE FACTS KNOW THE ISSUES

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

<p>1 REWRITE OF THE PRESENT CONSTITUTION Shall the Constitution of 1843 and the 44 amendments ratified since then be adopted as rewritten, in proper order, with annulled sections removed? Shall the Constitutional Convention publish the Constitution in proper form, including new amendments, if they are approved by the voters? (Resolution 86-00042 B)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>8 RIGHTS OF THE PEOPLE Shall free speech, due process and equal protection clauses be added to the Constitution? Shall the state or those doing business with the state be prohibited from discriminating against persons solely on the basis of race, gender or handicap? Shall victims of crime have constitutionally endowed rights, including the right to compensation from perpetrators? Shall individual rights protected by the state constitution stand independent of the U.S. Constitution? (Resolutions 86-00033, 86-00032, 86-00140, 86-00002 B, 86-00171)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>2 JUDICIAL SELECTION AND DISCIPLINE Shall a non-partisan, independent commission be established to nominate judges for appointment by the general assembly in the case of supreme court vacancies and for appointment by the governor in the case of vacancies in other courts? Shall the commission have authority to discipline or remove all judges? Shall judges appointed hereafter be required to retire at 72 years of age? Shall the duty of the supreme court to give advisory opinions be abolished? (Resolution 86-00080 A)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>9 SHORE USE AND ENVIRONMENTAL PROTECTION Shall rights of fishery and privileges of the shore be described and shall the powers of the state and local government to protect those rights and the environment be enlarged? Shall the regulation of land and waters for these purposes not be deemed a public use of private property? (Resolutions 86-00003, 86-00004A)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>3 LEGISLATIVE PAY AND MILEAGE Shall the daily pay of general assembly members be established at a sum equal to the average weekly wage of Rhode Island manufacturing workers, divided by a four-day legislative week (about \$76), the speaker receiving twice that amount; and shall mileage compensation be equal to the rate paid U.S. government employees, such pay and mileage to be limited to 60 days per year? (Resolution 86-00094 B)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>10 FELON OFFICE HOLDING AND VOTING Shall felons' voting rights, removed upon conviction, be restored upon completion of sentence and probation or parole? Shall felons and certain misdemeanants be banned from holding office for three years after completion of sentence and probation or parole? (Resolutions 86-00149 A, 86-00025 B)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>4 FOUR-YEAR TERMS AND RECALL Beginning in 1988, shall the governor, lieutenant governor, secretary of state, attorney general, general treasurer and members of the general assembly be elected to four-year terms and be subject to recall by voters? (Resolution 86-00028 A)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>11 LIBRARIES Shall it be a duty of the general assembly to promote public libraries and library services? (Resolution 86-00098)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>5 VOTER INITIATIVE Shall voters be empowered to petition certain laws and/or constitutional amendments onto the ballot for voter approval or rejection? Shall future constitutional convention candidates be elected on a non-partisan basis? (Resolutions 86-00001 B, 86-00136)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>12 BAIL Shall the courts be authorized to deny bail to persons accused of the unlawful sale or distribution of controlled substances punishable by a sentence of ten years or more? (Resolution 86-00153 B)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>6 ETHICS IN GOVERNMENT Shall more specific impeachment standards be established? Shall an ethics commission be established with authority to adopt a code of ethics and to discipline or remove public officials and employees found in violation of that code? Shall the general assembly adopt limits on campaign contributions and shall the general assembly enact a voluntary system of public campaign financing, coupled with limitations on total campaign spending by participating candidates? (Resolutions 86-00047 A, 86-00060 A, 86-00145 A)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>13 HOME RULE Shall cities and towns with charters have more authority over local affairs, within the limits of the General Laws, including the power to tax and borrow with local voter approval (unless overridden by a three-fifths vote in the general assembly); to protect public health, safety, morals and the environment; to regulate local businesses and local planning and development? Shall new or increased tax exemptions pertaining to cities and towns be subject to local voter approval? Shall cities and towns be reimbursed for certain state-mandated programs? Shall charter adoption and amendment procedures be simplified? (Resolution 86-00196 B)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>
<p>7 BUDGET POWERS AND EXECUTIVE SUCCESSION Shall the governor be constitutionally empowered to present an annual budget? Shall the speaker of the house become governor if both the governor and lieutenant governor die or are unable to serve? (Resolutions 86-00222, 86-00246)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>14 PARAMOUNT RIGHT TO LIFE/ABORTION To the extent permitted by the U.S. Constitution, shall all persons, including their unborn offspring, without regard to age, health, function, or condition of dependency, be endowed with an inalienable and paramount right to life; and to the extent permitted by the U.S. Constitution, shall abortion be prohibited, except that justified medical procedures to prevent the death of a pregnant woman shall be permitted? Shall the use of government monies to fund abortions be prohibited by the Constitution? (Resolution 86-00212 A)</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p>

VOTE
ON THE CONSTITUTIONAL QUESTIONS
TUESDAY, NOVEMBER 4th

APPENDIX 1

BALLOT POSITION NO. 14

PARAMOUNT RIGHT TO LIFE

STATE OF RHODE ISLAND
IN CONSTITUTIONAL CONVENTION
JANUARY SESSION, A.D. 1986

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

Title: A RESOLUTION RELATING TO THE PARAMOUNT RIGHT TO LIFE

Convention History:

Recommended for First Passage by Committee on Citizens
Rights

First Passage: June 3, 1986

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

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

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

"ARTICLE XVI

"THE PARAMOUNT RIGHT TO LIFE

"We, the people, declare:

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

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

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

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

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

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

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

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

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

86-212B *

BALLOT QUESTION NO. 8



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

RIGHTS OF THE PEOPLE

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

(Resolutions 86-00033, 86-00032, 86-00140, 86-00002-B, 86-00171)

THE CONSTITUTION NOW:

- A. The Constitution does not now contain a free speech or a due process and equal protection clause as does the U.S. Constitution.
- B. There is no direct reference to discrimination on the basis of race, gender or handicap.
- C. There are no provisions in the Constitution for victims of crime, although some laws on victims' rights do exist.
- D. There is no statement in the Rhode Island Constitution that the rights guaranteed in it stand independent of the federal Constitution.

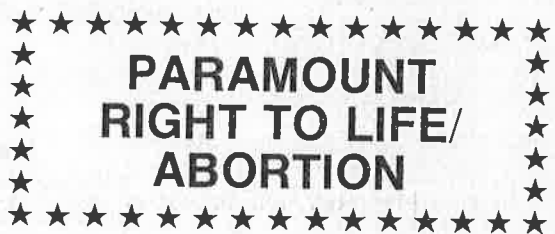
HOW IT WOULD CHANGE:

- A. No law could be passed restricting the freedom of speech, and the due process and equal protection clause of the federal Constitution would be added to the R.I. Constitution, declaring that no one can be denied life, liberty or property without due process of law.
- B. The state and persons doing business with the state would be prohibited from discriminating solely on the basis of race, gender or handicap.
- C. Victims of crime would be guaranteed certain rights, including the right to compensation from perpetrators for injury or loss, and the right to speak in court before sentencing.
- D. Rights protected by the R.I. Constitution would stand independent of the U.S. Constitution.

CONVENTION ACTION:

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

BALLOT QUESTION NO. 14



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

PARAMOUNT RIGHT TO LIFE/ABORTION

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

THE CONSTITUTION NOW:

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

HOW IT WOULD CHANGE:

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

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

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

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

CONVENTION ACTION:

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

Question 14 fails

Joy, tears greet abortion amendment's fall

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

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

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

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

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

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

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

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

Reciting the rosary

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

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

He said he thought that if the amendment had been worded differently — to allow abortions in the case of incest, for example — the

results would have been no different.

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

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

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

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

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

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

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

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

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

QUESTION 14

PARAMOUNT RIGHT
 TO LIFE / ABORTION

	YES	NO
Barrington	1596	4978
Bristol	2285	3222
Burrillville	1482	1932
Central Falls	1744	1680
Charlestown	360	1370
Coventry	2768	6154
Cranston	9016	18981
Cumberland	3550	5444
East Greenwich	994	2507
East Providence	4840	9994
Exeter	104	392
Foster	258	935
Glocester	761	1873
Hopkinton	465	1285
Jamestown	504	1480
Johnston	3371	5574
Lincoln	2314	4512
Little Compton	325	932
Middletown	1319	3011
Narragansett	1234	3341
Newport	1869	4188
New Shoreham		
North Kingstown	1893	5809
North Providence	4362	7199
North Smithfield	1470	2008
Pawtucket	7846	12017
Portsmouth	1499	3348
Providence	12938	25626
Richmond	318	1154
Scituate	858	2450
Smithfield	1976	4123
South Kingstown	1180	4903
Tiverton	1641	2280
Warren	1278	2014
Warwick	9149	21710
Westerly	2214	3180
West Greenwich	272	868
West Warwick	2886	4704
Woonsocket	8347	4672
TOTALS	101252	191730

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

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