

Spring 2019

## Life and Civil Death in the Ocean State: Resurrecting Life-Prisoners' Right to Access Courts in Rhode Island

James M. Kovach

*J.D. Candidate 2020, Roger Williams University School of Law*

Follow this and additional works at: [https://docs.rwu.edu/rwu\\_LR](https://docs.rwu.edu/rwu_LR)

 Part of the [Constitutional Law Commons](#), [Fourteenth Amendment Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

Kovach, James M. (2019) "Life and Civil Death in the Ocean State: Resurrecting Life-Prisoners' Right to Access Courts in Rhode Island," *Roger Williams University Law Review*: Vol. 24 : Iss. 2 , Article 8.

Available at: [https://docs.rwu.edu/rwu\\_LR/vol24/iss2/8](https://docs.rwu.edu/rwu_LR/vol24/iss2/8)

This Notes and Comments is brought to you for free and open access by the School of Law at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized editor of DOCS@RWU. For more information, please contact [mwu@rwu.edu](mailto:mwu@rwu.edu).

# Life and Civil Death in the Ocean State: Resurrecting Life-Prisoners' Right to Access Courts in Rhode Island

James Michael Kovach\*

*“The flames sawed in the wind and the embers paled and deepened and paled and deepened like the bloodbeat of some living thing eviscerate upon the ground before them and they watched the fire which does contain within it something of men themselves inasmuch as they are less without it and are divided from their origins and are exiles.”—Cormac McCarthy<sup>1</sup>*

## INTRODUCTION

The concept of civil death, or “the state of a person who, though possessing natural life, has lost all his civil rights, and as to them, is considered as dead,” is anything but new, and its practice is far from unique to Rhode Island.<sup>2</sup> In fact, punishing a criminal by stripping him of his citizenship, divorcing him of all his rights, and thus regarding him as dead has been practiced since at least the Romans.<sup>3</sup> In Roman law, civil death was typically reserved for

---

\* Candidate for Juris Doctor, Roger Williams University School of Law, 2020. I want to thank everyone who helped me write this Comment. Professor Hassel, thank you for your time and expertise. To my parents, Jim and Jill Kovach, who taught me all that I know, thank you for everything.

1. CORMAC MCCARTHY, *BLOOD MERIDIAN OR THE EVENING REDNESS IN THE WEST* 255 (1985).

2. WALTER A. SHUMAKER & GEORGE FOSTER LONGSDORF, *THE CYCLOPEDIA OF LAW* 257 (1901).

3. CHARLES PHINEAS SHERMAN, *ROMAN LAW IN THE MODERN WORLD* 40 (1917).

punishment of serious crimes, as an accoutrement to being “condemned to exile . . . sentenced to be deported to an island, or . . . condemned to the mines.”<sup>4</sup> In the United States, this “vestige of medieval jurisprudence” has historically been embodied in state statutes that eliminate most or all of a convicted felon’s civil rights upon receiving a sentence of life in prison.<sup>5</sup> Civil death in the United States has declined since the mid-twentieth century, but Rhode Island has yet to repeal its civil death statute.<sup>6</sup>

In Rhode Island, the civil death statute, titled “Life Prisoners Deemed Civilly Dead,” requires that “every person imprisoned . . . for life shall, with respect to . . . all civil rights and relations of any nature whatsoever, be deemed to be dead in all respects, as if his or her natural death had taken place at the time of conviction.”<sup>7</sup> To the extent that life-prisoners in Rhode Island are capable of being released from prison on parole, the civil death statute makes no allowance for such parolees to regain civil life and repossess their rights.<sup>8</sup> The real affects of Rhode Island’s civil death statute were recently on display in *Gallop v. Adult Correctional Institutions*.<sup>9</sup> In

---

4. *Id.* at 40. A convicted Roman criminal, not condemned to civil death, could nevertheless expect to suffer an impairment to his so-called “civic honor” or reputation so severe as to suffer what was known as “infamia,” or infamy. *Id.* at 41. An infame was “excluded from public offices and the right to vote . . . [and] mak[e] a will,” and existed in a condition that is remarkably similar to the “Anglo-American deprivation of certain civil and political rights,” which still continues to this day. *Id.* at 41.

5. Ronald Eisenman, *Civil Death in New York*, 14 INTRAMURAL L. REV. N.Y.U. 170, 170 (1958–1959). Civil death statutes typically required a civilly dead person to surrender his “property rights, contract rights, the capacity to sue or to be sued, the citizenship status, insurance [rights], the right to make a will” and the right to vote. *Id.*

6. Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV. 1789, 1790 (2012).

7. 13 R.I. GEN. LAWS § 13-6-1 (1956). The civil death statute provides, in full:

Every person imprisoned in the adult correctional institutions for life shall, with respect to all rights of property, to the bond of matrimony and to all civil rights and relations of any nature whatsoever, be deemed to be dead in all respects, as if his or her natural death had taken place at the time of conviction. However, the bond of matrimony shall not be dissolved, nor shall the rights to property or other rights of the husband or wife of the imprisoned person be terminated or impaired, except on the entry of a lawfully obtained decree for divorce.

*Id.*

8. See 13 R.I. GEN. LAWS §§ 13-6-1, 13-8-13.

9. *Gallop v. Adult Corr. Insts.*, 182 A.3d 1137 (R.I. 2018).

this case, the Rhode Island Supreme Court affirmed that a plaintiff's negligence claim was properly dismissed because, as a result of his previous life sentence, he was deemed civilly dead and thus prohibited from asserting any civil actions.<sup>10</sup> The urgency of *Gallop* is amplified by its timing. Only two weeks before the Court heard arguments in *Gallop*, the Rhode Island Legislature introduced a bill, which, if enacted, would have completely repealed the civil death statute.<sup>11</sup>

The civil death statute openly and egregiously violates the Access to Courts Clause ("AC Clause") of the Rhode Island Constitution, which entitles Rhode Islanders to pursue remedies in state courts.<sup>12</sup> The statute further offends the United States Constitution as an impermissible bar of life-prisoners' right to access courts, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.<sup>13</sup> For the reasons expounded in this Comment, the Rhode Island Legislature should repeal the civil death statute outright. Otherwise, Rhode Island courts must invalidate the civil death statute as unconstitutional and irredeemably against public policy.

Part I of this Comment examines the Rhode Island Supreme Court's application of the civil death statute in *Gallop*.<sup>14</sup> This section will illuminate the statute's effect on Rhode Island life-prisoners' ability to bring claims in court and, accordingly, call attention to the court's improvident holding. Part II surveys the states that have overturned civil death statutes on the grounds that they violated the AC Clause of their respective state constitutions, which contain language similar to that of Rhode Island's AC

---

10. *Id.* at 1143.

11. See S.B. 2269, 145th Gen. Assemb., Jan. Sess. (R.I. 2018). The bill to repeal the civil death statute was recommended for further study by the Rhode Island Senate Committee on the Judiciary on February 13, 2018, but subsequently was not passed into law.

12. See R.I. CONST. art. I, § 5. The AC Clause provides, in full:

Every 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. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws.

*Id.*

13. U.S. CONST. amend. XIV.

14. See *Gallop*, 182 A.3d. at 1141–45.

Clause.<sup>15</sup> This survey highlights the analyses used by those states in scrutinizing the constitutionality of their own civil death statutes and lays the foundation for Rhode Island courts to follow. Part III of this Comment analyzes the United States Supreme Court's approach to prisoner access-to-courts challenges under the Fourteenth Amendment of the United States Constitution and underscores that Rhode Island's civil death statute is not rationally related to the predictable and dubious state interests often advanced in justification of restricting life-prisoners' access to courts.<sup>16</sup> Concluding, Part IV challenges the Rhode Island Legislature to return civil life to Rhode Island's life-prisoners, repeal the civil death statute outright, and restore life-prisoners' right to access courts. Otherwise, this challenge falls heavily on Rhode Island courts to enforce both the state and United States Constitutions, and thus invalidate the civil death statute as unconstitutional and against public policy.

I. THE RHODE ISLAND SUPREME COURT REACHED AN IMPROVIDENT AND UNSUSTAINABLE INTERPRETATION OF THE CIVIL DEATH STATUTE IN  
*GALLOP V. ADULT CORRECTIONAL INSTITUTIONS*

From the outset, the Rhode Island Supreme Court appeared to have its hands tied in *Gallop*. The court noted that by the year 1939, only eighteen states still enforced civil death, and today, New York and the Virgin Islands are the only other jurisdictions that continue to impose civil death on life-prisoners.<sup>17</sup> Despite the national trend whereby civil death statutes and the associated loss of civil rights for convicted prisoners "have almost all but vanished," the court nonetheless lamented that "[r]epeal is the province of the Legislature."<sup>18</sup>

Prior to *Gallop*, the Rhode Island Supreme Court had previously held that, although the Legislature may place reasonable limits on the guarantees of the AC Clause, "[t]he total denial of access to the courts" would "render this constitutional

---

15. See *Mitchell v. Moore*, 786 So. 2d 521 (Fla. 2001); *Chesapeake Utils. Corp. v. Hopkins*, 340 A.2d 154 (Del. 1975); *Davis v. Pullium*, 484 P.2d 1306 (Okla. 1971); *Lloyd v. Farkash*, 476 So. 2d 305 (Fla. Dist. Ct. App. 1985).

16. See *Lewis v. Casey*, 518 U.S. 343 (1996); *Bounds v. Smith*, 430 U.S. 817 (1977); *Boddie v. Connecticut*, 401 U.S. 371 (1971).

17. *Gallop*, 182 A.3d at 1141.

18. *Id.*

protection worthless.”<sup>19</sup> Nevertheless, the *Gallop* court declared that because the civil death statute “unambiguously mandate[s] that persons serving a life sentence” are civilly dead and thus “prohibited from asserting civil actions,” those individuals are entirely without recourse.<sup>20</sup> Accordingly, the court affirmed that Gallop’s negligence claim was “prudently and accurately dismissed” because he is serving a life sentence.<sup>21</sup> It would have been an error and an “excess of jurisdiction,” the court reasoned, for a life-prisoner’s claims to be considered by a trial court when the state has pronounced him civilly dead.<sup>22</sup> The court, however, did not stop there.

Just before the trial court dismissed the case, the plaintiff in *Gallop* “moved for leave to file a second amended complaint” in an attempt to raise constitutional claims.<sup>23</sup> The trial judge, however, dismissed Gallop’s negligence claims without addressing or ruling on his motion to amend.<sup>24</sup> On appeal, the *Gallop* court explained that it did not have the power to review a trial court’s ruling on a motion “for abuse of discretion if the trial justice ha[d] not exercised that discretion.”<sup>25</sup> Confusingly, however, the court concluded that the plaintiff, who the court had just affirmed to be unambiguously without the capacity to bring a negligence action in the first instance, somehow remained “entitled, at the very least, to a reasoned decision on his motion to file an amended complaint.”<sup>26</sup> With no further explanation of how a civilly dead person can be prohibited from bringing all claims in court, yet be entitled to a ruling on a motion to amend the very claim he is prohibited from bringing, one can see that the state of civil death in Rhode Island is left with more access-to-courts problems after *Gallop* than before the ruling.<sup>27</sup>

---

19. *Kennedy v. Cumberland Eng’g Co.*, 471 A.2d 195, 198 (R.I. 1984). “The total denial of access to the courts for adjudication of a claim even before it arises, however, most certainly ‘flies in the face of the constitutional command found in art. 1, § 5,’ . . . and to hold otherwise would be to render this constitutional protection worthless.” *Id.* (quoting *Lemoine v. Martineau*, 342 A.2d 616, 621 (R.I. 1975)).

20. *Gallop*, 182 A.3d at 1143.

21. *Id.*

22. *Id.*

23. *Id.* at 1143–44.

24. *Id.*

25. *Id.* at 1145.

26. *Id.*

27. *See id.*

II. RHODE ISLAND'S CIVIL DEATH STATUTE IS PATENTLY  
UNCONSTITUTIONAL UNDER THE ACCESS TO COURTS CLAUSE

Article I, section 5 of 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 . . .” and should “obtain right and justice freely . . . completely and without denial.”<sup>28</sup> By the plain language of this constitutional mandate, a layperson could easily articulate the irreconcilable contradiction created by application of the civil death statute. Rhode Island is not the first state to find itself home to this dilemma, as at least three other states with constitutional provisions closely mirroring the language of Rhode Island’s AC Clause have solved the issue in their courts.<sup>29</sup> This section will use the jurisprudence of Florida and Oklahoma courts as guideposts to lay the foundation for Rhode Island to invalidate the civil death statute as a violation of the state’s AC Clause.

A. *Florida Jurisprudence Requires Strict Scrutiny of Access-to-Courts Barriers*

Florida has confronted the constitutionality of civil death, and other bars imposed on prisoner litigation, in light of its own constitutional guarantee of access to courts. The AC Clause of Florida’s Constitution reads: “The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.”<sup>30</sup> In *Lloyd v. Farkash*, the First District Court of Appeal of Florida scrutinized the constitutionality of Florida’s civil death statute “insofar as it purport[ed] to deprive convicted felons of their right to bring civil actions.”<sup>31</sup> Specifically, the Florida civil death statute provided that “upon conviction for felony, the civil rights of the person convicted shall be suspended . . .”<sup>32</sup>

1. *Florida’s Civil Death Statute Impermissibly Abolished Prisoners’ Right to Access Courts and Provided No Reasonable*

---

28. R.I. CONST. art. I, § 5.

29. See *Mitchell v. Moore*, 786 So. 2d 521 (Fla. 2001); *Chesapeake Utils. Corp. v. Hopkins*, 340 A.2d 154 (Del. 1975); *Davis v. Pullium*, 484 P.2d 1306 (Okla. 1971); *Lloyd v. Farkash*, 476 So. 2d 305 (Fla. Dist. Ct. App. 1985).

30. FLA. CONST. art. I, § 21.

31. 476 So. 2d at 308.

32. FLA. STAT. ANN. § 944.292 (West 1997).

*Alternative in the Absence of an Overpowering Public Necessity*

In *Lloyd*, the court explained that “courts have an even greater duty to protect” rights that are “made express by the constitution,” such as the rights guaranteed by an AC Clause, than rights extended only by implication.<sup>33</sup> As such, the court scrutinized the civil death statute using the analysis set forth by the Florida Supreme Court in *Kluger v. White*, to be employed in cases involving a bar of the right to access courts.<sup>34</sup> Florida’s *Kluger* test requires a three-pronged analysis whereby “the Legislature may only abolish [the right to gain access to courts] if it has provided a reasonable alternative, it has shown an overpowering public necessity for the abolishment of the right, and there is no alternative method of remedying” the public necessity.<sup>35</sup> Crucially, “there is no relevant difference between the . . . test set forth in *Kluger*” and the analysis traditionally undertaken in strict scrutiny review.<sup>36</sup>

In *Lloyd*, the court applied the *Kluger* strict scrutiny analysis to Florida’s civil death statute to determine whether the statute violated the AC Clause of the Florida Constitution.<sup>37</sup> The *Lloyd* court determined that Florida’s civil death statute violated the AC Clause because it stripped convicted felons of all civil rights, and such a broad prohibition plainly “deprive[d] convicted felons of their right to bring civil actions in state courts . . .” without providing any alternative.<sup>38</sup>

The court in *Lloyd* was willing to entertain the argument that “some legitimate purposes may be served by denying inmates access to the courts,” such as preventing frivolous prisoner litigation and avoiding “administrative inconvenience[s].”<sup>39</sup> Nevertheless, the court held that such interests were “insufficient to override the constitutional right of access to courts.”<sup>40</sup> Accordingly, the court unequivocally declared that it does “not believe that an overpowering public necessity for the suspension” of

---

33. *Lloyd*, 476 So. 2d at 307.

34. *Id.* at 308 (citing *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973)).

35. *Mitchell v. Moore*, 786 So. 2d 521, 527 (Fla. 2001).

36. *Id.* at 528.

37. *Lloyd*, 476 So. 2d at 308.

38. *Id.*

39. *Id.* at 307.

40. *Id.*

convicted felons' right to access state courts "can be shown."<sup>41</sup> The distinction between the *Lloyd* court's use of the words "can be shown," rather than "has been shown," is crucial.<sup>42</sup> The significance of such a distinction is the *Lloyd* court's belief that no overpowering public necessity could justify upholding a similar restriction on life-prisoners' right to access courts in a future case.<sup>43</sup> The court thus found it unnecessary to analyze the third *Kluger* prong and ended its inquiry by concluding that Florida's civil death statute did in fact violate Florida's AC Clause.<sup>44</sup>

2. *A Public Interest in Preventing Frivolous Litigation Does Not Justify a Complete Bar of Prisoners' Right to Access Courts*

Although the *Lloyd* court declined to address whether there were alternative methods for addressing some overpowering public interest, the Florida Supreme Court has provided some guidance with respect to the third prong of the analysis.<sup>45</sup> In *Mitchell v. Moore*, the Florida Supreme Court applied the *Kluger* strict scrutiny analysis to Florida's "Prisoner Indigency Statute" (PIS).<sup>46</sup> Because the PIS effectively barred life-prisoners from asserting all civil actions, the law was analytically equivalent to the bar imposed by a civil death statute.<sup>47</sup> The court found that the restriction created "procedural pitfalls so difficult and time-consuming" as to "become a door to the Court that some inmates simply cannot open."<sup>48</sup>

Having concluded that the PIS infringed prisoners' "right to seek redress for *any type* of injury or complaint of any kind in any civil case that requires a filing fee," the court looked to whether there was an overpowering public necessity for such an imposition on prisoners' express right to access courts under Florida's AC Clause.<sup>49</sup> In doing so, the court noted that preventing "frivolous or malicious civil actions" was the only public necessity identified by

---

41. *Id.* at 308 (emphasis added).

42. *See id.*

43. *See id.*

44. *See id.*

45. *See Mitchell v. Moore*, 786 So. 2d 521, 528 (Fla. 2001).

46. *Id.* at 525; *see* FLA. STAT. ANN. § 57.085 (West 2014).

47. *See Mitchell*, 786 So. 2d at 525.

48. *Id.*

49. *Id.* at 527.

the Florida Legislature in enacting the PIS.<sup>50</sup>

Without determining whether preventing frivolous litigation is an overpowering public necessity, the court found that the PIS was not narrowly tailored to such an interest.<sup>51</sup> Specifically, the statute's "copy requirement restrict[ed] and impede[d] the filing of many more types of inmate petitions than the types of inmate petitions which were identified . . ."<sup>52</sup> Therefore, the court held that even if preventing frivolous litigation was an overpowering public necessity, alternative and more narrowly tailored remedies for such a public interest plainly exist.<sup>53</sup> As such, the court concluded that the PIS could not pass the *Kluger* strict scrutiny analysis.<sup>54</sup>

B. *Oklahoma Adamantly Denounced Civil Death as Unconscionable Legal Fiction Which Necessarily Creates Absurd Results*

Oklahoma has similarly faced the task of scrutinizing the constitutionality of civil death in light of its own constitutional guarantee of access to the courts.<sup>55</sup> Oklahoma's AC Clause is nearly identical to Rhode Island's, and provides that "[t]he courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay or prejudice."<sup>56</sup> In *Davis v. Pullium*, the Oklahoma Supreme Court sought to determine whether a state negligence action was properly dismissed by operation of Oklahoma's civil death statute.<sup>57</sup> The statute provided that "a person sentenced to imprisonment in the state prison for life, is thereby deemed civilly dead."<sup>58</sup>

The Oklahoma Supreme Court in *Davis* held that the civil death statute violated Oklahoma's AC Clause, and saw an opportunity to highlight the absurdity of civil death.<sup>59</sup> There, the

---

50. *Id.* at 528.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *See Davis v. Pullium*, 484 P.2d 1306 (Okla. 1971).

56. OKLA. CONST. art. II, § 6.

57. *Davis*, 484 P.2d at 1308.

58. *Id.* at 1307.

59. *See id.* at 1308.

court actively engaged in the legal fiction contained in civil death statutes and zealously defended life-prisoners' right to access courts.<sup>60</sup> The court first noted the irony in that, despite having been pronounced civilly dead by the state, "[Davis] was allowed his mortal existence" by personally appearing at trial, and "nevertheless remain[ed] a person and a citizen."<sup>61</sup> The court passionately declared that, even though "a convicted felon may be disenfranchised [and] denied . . . the full fruits of citizenship, he nevertheless cannot be regarded as human waste."<sup>62</sup> The court thus established that, as a matter of public policy, deeming life-prisoners civilly dead is less than humane and not in accord with a basic understanding of reality.<sup>63</sup>

The court further reasoned that Oklahoma's civil death statute "could produce preposterous arguments and conclusions," and provided two examples.<sup>64</sup> First, the court proposed that a person on trial for murder could no more be convicted of killing a civilly dead person than be sued in tort by the same, under the full effect of the civil death statute.<sup>65</sup> Second, the court explained that a civilly dead person could refuse to pay his taxes, "on the theory that only the living are required to pay."<sup>66</sup> The Oklahoma Supreme Court made clear that the only way to avoid these preposterous situations is by selective and arbitrary application of a law, which, by its own language, makes no such attempt to enumerate or distinguish hypothetical situations from those warranting its application.<sup>67</sup>

The court concluded that civil death statutes are a significant "infringement upon the spirit of our system of government," and "are not of harmony with the spirit of our fundamental laws."<sup>68</sup> In doing so, the court made clear that this "constitutional mandate ha[d] made [its] course sure and certain" and declared that "actions affecting [a civilly dead person's] existence, safety and personal liberties are natural rights which are fully and perpetually

---

60. *See id.*

61. *Id.*

62. *Id.*

63. *See id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *See id.*; *see also* 13 R.I. GEN. LAWS § 13-6-1 (1956).

68. *Davis*, 484 P.2d at 1308 (quoting *Byers v. Sun Savings Bank*, 41 P.2d 948, 948 (Okla. 1913)).

protected.”<sup>69</sup> The Oklahoma Supreme Court in *Davis* thus demonstrated an alternate approach to invalidating a civil death statute insofar as it purports to negate the guarantees of an AC Clause like Rhode Island’s.<sup>70</sup>

C. *Challenging Rhode Island’s Civil Death Statute Under the Access to Courts Clause*

The AC Clause of Rhode Island’s Constitution guarantees access to courts for all people in Rhode Island.<sup>71</sup> Like the *Lloyd* court’s duty to protect express rights to an even greater extent than implied rights, “[a] basic premise of constitutional interpretation [in Rhode Island] is that every clause must be given its due force, meaning, and effect,” and, “to hold otherwise would be to render [express] constitutional protection worthless.”<sup>72</sup> The fulfillment of this duty requires Rhode Island courts to strictly scrutinize attempts by the state legislature to strip its inhabitants of rights guaranteed to them by the Rhode Island Constitution.<sup>73</sup> As such, Rhode Island courts should only uphold obstructions to express constitutional rights, like the access-to-courts bar imposed by the civil death statute, when an overpowering public necessity exists to which there is no alternative remedy but to abolish the right.<sup>74</sup> In other words, the civil death statute should be analyzed with strict scrutiny when challenged on AC Clause grounds.

1. *Strict Scrutiny of Rhode Island’s Civil Death Statute*

The plain language of Rhode Island’s civil death statute imposes a complete bar on life-prisoners’ right to access courts, and likewise provides no alternative to that right.<sup>75</sup> As such, Rhode Island’s civil death statute is “a door to the [c]ourt” that cannot be opened, and the *Gallop* court made that clear by stating that “the Legislature has . . . mandated that persons serving a life sentence

---

69. *Id.*

70. *See id.*

71. R.I. CONST. art. I, § 5.

72. *Kennedy v. Cumberland Eng’g Co.*, 471 A.2d 195, 198 (R.I. 1985); *Lloyd v. Farkash*, 476 So. 2d 305, 307 (Fla. Dist. Ct. App. 1985).

73. *See Lloyd*, 476 So. 2d at 307.

74. *See id.* at 307–08.

75. 13 R.I. GEN. LAWS § 13-6-1 (1956). “Every person imprisoned . . . for life shall, with respect to . . . all civil rights and relations of any nature whatsoever, be deemed to be dead in all respects, as if his or her natural death had taken place . . .” *Id.*

are prohibited from asserting civil actions . . . [and] thus he is without recourse.”<sup>76</sup> Such a mandate, however, is invalid under Rhode Island’s AC Clause, unless it is the only available “method of remedying” an overpowering public interest, which justifies such a bar on prisoners’ right to access courts.<sup>77</sup>

In nearly all civil death-related access-to-courts cases, the only public interest consistently advanced is the interest in preventing frivolous litigation.<sup>78</sup> The *Lloyd* court, however, concluded that such an interest is “insufficient to” justify a complete bar of the right to access courts, holding that no “overpowering public necessity for [such a bar] can be shown.”<sup>79</sup> Similarly, the *Mitchell* court stopped short of concluding that the interest in preventing frivolous litigation is an overpowering public necessity.<sup>80</sup> Rhode Island courts must agree that preventing frivolous prisoner litigation is insufficient to justify the complete prohibition of their right to access courts.<sup>81</sup> To find otherwise would be to perpetrate the ancient and punitively conservative myth that life-prisoners cease to be counted as members of society upon conviction, which empowers the farcical belief that preventing life-prisoners from pursuing claims is a civilized response to any state interest.<sup>82</sup> While it may be true that “some legitimate purposes may be served by denying inmates access to the courts,” it is clear that such interests are not strong enough to save the civil death statute.<sup>83</sup>

Even if Rhode Island courts find that preventing frivolous claims is an overpowering public necessity, they must also find that the civil death statute is narrowly tailored to that interest if the statute is to survive an AC Clause challenge.<sup>84</sup> Rhode Island’s civil

---

76. *Gallop v. Adult Corr. Insts.*, 182 A.3d 1137, 1143 (R.I. 2018); see *Mitchell v. Moore*, 786 So. 2d 521, 525 (Fla. 2001).

77. See *Mitchell*, 786 So. 2d at 527; *Lloyd*, 476 So. 2d at 307–08.

78. See, e.g., *Thompson v. Bond*, 421 F. Supp. 878 (W.D. Mo. 1976); *Delorme v. Pierce Freightlines Co.*, 353 F. Supp. 258 (D. Or. 1973); *Mitchell v. Moore*, 786 So. 2d 521 (Fla. 2001); *Chesapeake Utils. Corp. v. Hopkins*, 340 A.2d 154 (Del. 1975); *Bush v. Reid*, 516 P.2d 1215 (Alaska 1973); *Davis v. Pullium*, 484 P.2d 1306 (Okla. 1971); *Lloyd v. Farkash*, 476 So. 2d 305 (Fla. Dist. Ct. App. 1985); *Bilello v. A. J. Eckert Co.*, 346 N.Y.S.2d 2 (N.Y. App. Div. 1973).

79. *Lloyd*, 476 So. 2d at 307–08.

80. *Mitchell*, 786 So. 2d at 528.

81. See *Lloyd*, 476 So. 2d at 307.

82. See SHERMAN, *supra* note 3, at 40.

83. See *Lloyd*, 476 So. 2d at 307.

84. See *Mitchell*, 786 So. 2d at 528.

death statute “restricts and impedes the filing of many more types of inmate petitions than” merely frivolous or malicious claims.<sup>85</sup> As such, it cannot be said that there are “no alternative method of correcting” a frivolous prisoner-litigation problem.<sup>86</sup> For example, a statute would more narrowly address the issue if it prescribed a process by which prisoners’ claims are determined to be either meritorious or frivolous before they may be litigated.<sup>87</sup> Another alternative might be to enumerate certain predetermined causes of action as *per se* meritorious, or prohibited, for the purposes of initiating litigation like any other person. It is clear that if preventing frivolous litigation is deemed to be an overpowering public interest, a law addressing that interest must be much more narrowly tailored than the civil death statute to withstand constitutional challenges.

2. *Invalidating the Civil Death Statute Is Supported by Compelling Policy Arguments*

Similar to the irony observed in *Davis*, a life-prisoner in Rhode Island exists in a fictitious, yet legally recognized, state of being wherein the government considers his natural death to have taken place despite the fact that he “nevertheless remains a [living] person and a citizen.”<sup>88</sup> Rhode Island’s civil death statute likewise unapologetically converts life-prisoners into “human waste” by terminating not just their right to access courts, but “all civil rights and relations of any nature whatsoever.”<sup>89</sup>

Additionally, the *Davis* court’s concern for “preposterous arguments and conclusions,” which inevitably arise from a literal interpretation of a civil death statute, is of equal concern to Rhode Island.<sup>90</sup> Like the hypothetical civilly dead person who could refuse to pay his taxes because only living people pay taxes, or the hypothetical murderer who could never be charged for killing a civilly dead person, preposterous conclusions such as these can only be avoided in Rhode Island by an inconsistent and arbitrary application of the civil death statute.<sup>91</sup> Nevertheless, the court in

---

85. *Id.*

86. *Id.* at 527.

87. *Id.*

88. *Davis v. Pullium*, 484 P.2d 1306, 1308 (Okla. 1971).

89. 13 R.I. GEN. LAWS § 13-6-1 (1956); see *Davis*, 484 P.2d at 1308.

90. See *Davis*, 484 P.2d at 1308.

91. See *id.*

*Gallop* refused to recognize any such selective application when it declined to read an exception into the civil death statute, stating that the statute “is clear and unambiguous on its face and should be construed according to its plain and ordinary meaning . . . .”<sup>92</sup> In declining to do so, however, the court created one such preposterous conclusion when it stated that a civilly dead person is prohibited from asserting claims in court because he is considered dead, but remains entitled to a ruling on a motion to amend the very claim which his imaginary death precludes him from bringing.<sup>93</sup> As such, *Gallop*’s puzzling holding offers uncertain operational utility, undermines the authority of the AC Clause, and further highlights the need to repeal the civil death statute.

In sum, Rhode Island’s civil death statute must be invalidated as an impermissible bar on life-prisoners’ right to access courts in violation of the plain language of the AC Clause, which is neither supported by an overwhelming public necessity nor strictly tailored to such an interest. Indeed, “[i]f the constitutional guarantee of right of access to the courts is to have any meaning, this statute must be struck down.”<sup>94</sup> Courts in Rhode Island must conclude that the civil death statute is neither in accord with “the spirit of our system of government” in Rhode Island, nor in “harmony with the spirit of our fundamental law,” because its affect is to regard life-prisoners as human waste and to create unsustainable works of legal fiction.<sup>95</sup>

For these same reasons, the Rhode Island Legislature would be equally remiss if it failed to repeal the civil death statute, and thereby put an end to “medieval jurisprudence” in Rhode Island.<sup>96</sup> Rhode Island must strive, like Oklahoma did in 1971, to realize the “existence, safety and personal liberties” of convicted felons—and of all people—as “natural rights which are fully and perpetually protected.”<sup>97</sup>

### III. RHODE ISLAND’S CIVIL DEATH STATUTE REMAINS AN UNCONSTITUTIONAL ACCESS-TO-COURTS BARRIER UNDER *LEWIS V.*

---

92. *Gallop v. Adult Corr. Insts.*, 182 A.3d 1137, 1141 (R.I. 2018).

93. *Id.* at 1144–45.

94. *Kennedy v. Cumberland Eng’g Co.*, 471 A.2d 195, 199 (R.I. 1985).

95. *See Davis*, 484 P.2d at 1308.

96. *See id.*; Eisenman, *supra* note 5, at 170.

97. *See Davis*, 484 P.2d at 1308.

## CASEY IN VIOLATION OF THE FOURTEENTH AMENDMENT

Another basis by which some states have invalidated civil death statutes is on the grounds that they impermissibly bar life-prisoners' ability to access courts in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution.<sup>98</sup> The United States Supreme Court has, since at least 1940, recognized an evolving view of prisoners' right to access courts.<sup>99</sup> This Part will explain why the civil death statute should be invalidated as an unconstitutional burden on prisoners' right to access courts in violation of the Fourteenth Amendment, even under the restrictive holding of *Lewis v. Casey*.<sup>100</sup>

A. *Access-to-Courts Challenges Under Boddie v. Connecticut*

In *Boddie v. Connecticut*, the United States Supreme Court held unconstitutional a state statute that prevented individuals who were unable to pay a filing fee from accessing courts to obtain a divorce.<sup>101</sup> The Court emphasized that American courts are entrusted with protecting "individual rights and duties," by implementing a "regularized, orderly process of dispute settlement."<sup>102</sup> The Court explained that a state's "obligations under the Fourteenth Amendment are not simply generalized ones; rather the State owes to each individual that process which, in light of the values of a free society, can be characterized as due."<sup>103</sup> In doing so, the Court made clear that to no degree "less than [cases involving religious freedom, free speech or assembly], the right to a

---

98. See *Thompson v. Bond*, 421 F. Supp. 878, 878 (W.D. Mo. 1976); see also *Delorme v. Pierce Freightlines Co.*, 353 F. Supp. 258, 258 (D. Or. 1973); *Bush v. Reid*, 516 P.2d 1215, 1215 (Alaska 1973).

99. David Steinberger, *Lewis v. Casey: Tightening the Boundaries of Prisoner Access to the Courts?*, 18 PACE L. REV. 377, 389 (1998).

100. See *Lewis v. Casey*, 518 U.S. 343, 343 (1996).

101. 401 U.S. 371, 382 (1971).

102. See *id.* at 375.

Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of a system of rules . . . enabling them to . . . definitively settle their differences in an orderly, predictable manner . . . . [I]t is this injection of the rule of law that allows society to reap the benefits of rejecting what political theorists call the "state of nature."

*Id.* at 374.

103. *Id.* at 380.

meaningful opportunity to be heard within the limits of practicability, must be protected” from laws which seek to suppress that right.<sup>104</sup> The Court in *Boddie* thus reasoned that “where a state commands a monopoly over the only available legitimate means of dispute settlement and the relationship underlying the dispute is warp and woof of the fabric of society, [a] state may not deny” completely prisoners’ right to access courts.<sup>105</sup>

In *Bush v. Reid*, the Alaska Supreme Court applied the *Boddie* holding to the question of parolees’ right to access courts, and regarded the holding as the “starting point” for challenging a bar to this right.<sup>106</sup> The court first determined that access to courts is the only recourse available to an injured American citizen whose injurer will not voluntarily remedy his condition.<sup>107</sup> Second, the court unequivocally declared that “the denial of access to the civil courts rends the fabric of justice as surely . . . as [the ability to access family courts to obtain a divorce] in *Boddie*,” because “the very quality of [one’s] future existence may be dependent upon the outcome.”<sup>108</sup> Because there are no significant alternative means of obtaining relief when a statute places a complete bar on access to courts, the threshold inquiry of the *Boddie* analysis was satisfied in *Bush*.<sup>109</sup>

The Alaska Supreme Court also reasoned that another fundamental interest exists by which to invoke the protection of the Fourteenth Amendment.<sup>110</sup> The court explained that Bush’s personal injury claim was a form of property, known as a “chase in action.”<sup>111</sup> The court thus reasoned that “deprivation of access to the courts . . . deprives [a] claimant of the whole value of his

---

104. *Id.* at 379.

105. *Bush v. Reid*, 516 P.2d 1215, 1218 (Alaska 1973); *see generally Boddie*, 401 U.S. at 371.

106. *Bush*, 516 P.2d at 1218.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 1218–19.

In *Boddie* Justice Harlan sought the fundamental human relationship doctrine to satisfy the due process clause only because denial of access to a divorce court does not impair a simpler ‘liberty or property’ interest . . . [which would] justify] access to the particular dispute resolution process [and thereby] actuate [Fourteenth Amendment protection].

*Id.*

111. *Id.* at 1219.

property . . . [and] is no less severe than the taking of disputed wages or property during the pendency of litigation.”<sup>112</sup>

The court concluded that such a deprivation of the right to access courts “condemn[s] [the deprived] to suffer a grievous loss of . . . rights protected by the [D]ue [P]rocess clause of the [F]ourteenth [A]mendment of the United States Constitution.”<sup>113</sup> In balancing the competing interests for such a deprivation, the court identified as potential state interests the “fears of disruption of prison routine, spurious litigation . . . and increased risk of escape.”<sup>114</sup> The court concluded, however, that with respect to parolees, these arguments satisfied neither strict scrutiny, nor rational review.<sup>115</sup> The court likewise found, for the same reasons, that the statute also violated the Equal Protection Clauses of the United States and Alaska Constitutions.<sup>116</sup> Crucially, the court added that civil death “violates the spirit and intention of the Alaska Constitution” and that the Court would thus “not be impeded in [its] constitutional progress by a narrower holding of the United States Supreme Court.”<sup>117</sup>

Other courts have reached similar holdings in the context of life-prisoners who have not been released on parole.<sup>118</sup> In *Thompson v. Bond*, the United States District Court for the Western District of Missouri conducted a strict scrutiny analysis of Missouri’s civil death statute.<sup>119</sup> There, the court held that preventing frivolous litigation and preserving prison routine were insufficient interests to justify “the statute’s substantial infringement upon [life-prisoners’] fundamental rights.”<sup>120</sup> The court found “no data or . . . evidence to show that prisoners are

---

112. *Id.* “The judicial process exists to reduce inchoate claims to money judgment where private settlement is unavailing (or to extinguish them as non-meritorious).” *Id.* “Unlitigated claims for personal injury have slight market value.” *Id.*

113. *Id.* “We further declare that we would reach an identical result in interpreting the due process provisions of the Alaska Constitution alone, finding as we do that Justice Harlan’s insightful analysis of the social compact applies with equal force to our constitution.” *Id.*

114. *Id.* at 1220.

115. *Id.* at 1220–21.

116. *Id.* at 1220.

117. *Id.* at 1219–20.

118. *See* *Thompson v. Bond*, 421 F. Supp. 878 (W.D. Mo. 1976); *Delorme v. Pierce Freightlines Co.*, 353 F. Supp. 258, 260 (D. Or. 1973); *see also* *Bilello v. A. J. Eckert Co.*, 346 N.Y.S.2d 2 (N.Y. App. Div. 1973).

119. *See* *Thompson*, 421 F. Supp. at 878.

120. *Id.* at 884.

inherently inclined to file spurious lawsuits.”<sup>121</sup> Crucially, the court determined that even if prisoners were so inclined, “foreclosing the filing of all prisoner suits, regardless of their merit, would be overbroad.”<sup>122</sup> As such, Missouri’s civil death statute was thus invalidated as a violation of life-prisoners’ “right to due process of law” insofar as it terminated their capacity to access courts.

After *Boddie*, the general right of access to courts in the context of prisoners was initially reinforced by the United States Supreme Court in *Bounds v. Smith*.<sup>123</sup> In *Bounds*, the Court was concerned with “whether [s]tates must protect the right of prisoners to access . . . courts by providing them with law libraries or alternative sources of legal knowledge.”<sup>124</sup> Importantly, the Court expressly “established beyond doubt that prisoners have a constitutional right of access to the courts.”<sup>125</sup> *Bounds* has been called “the benchmark” access-to-courts case because it held that all people, including prisoners, have a “fundamental constitutional right of access to the courts.”<sup>126</sup> This right “requires prison authorities to assist inmates in preparation and filing of meaningful legal papers,” and thus necessarily implies that states may not completely bar life-prisoners from accessing courts.<sup>127</sup>

#### B. *Access-to-Courts Challenges After Lewis v. Casey*

The United States Supreme Court changed its approach to prisoner access-to-courts challenges in *Lewis v. Casey*, where it revisited the implications of its holding in *Bounds*.<sup>128</sup> In *Lewis*, the Court held first that “in order to establish a violation of *Bounds*, an inmate must show that the alleged inadequacies . . . caused him ‘actual injury . . .’”<sup>129</sup> Secondly, and crucially, “[t]he Court emphasized that the right of access [to courts] for prisoners, like all prisoners’ rights, is evaluated under rational basis review . . .”<sup>130</sup>

---

121. *Id.*

122. *Id.*

123. *See* 430 U.S. 817 (1977).

124. *Id.* at 817.

125. *Id.* at 821.

126. *Id.* at 828; Steinberger, *supra* note, 99 at 378.

127. *See Bounds*, 430 U.S. at 828.

128. *See* 518 U.S. 343, 346 (1996) (citing *Bounds*, 430 U.S. at 828).

129. *Id.* at 348.

130. ERWIN CHERMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES § 10.9 (4th ed. 2011). “[A] prison regulation impinging on inmates’ constitutional rights ‘is valid if it is reasonably related to legitimate penological

Additionally, the Court was careful to point out that “several statements in *Bounds* went beyond the right of access [to courts] recognized in the earlier cases on which it relied . . . .”<sup>131</sup> Specifically, statements in *Bounds*, which “appear to suggest that [a] [s]tate must enable [a] prisoner to *discover* grievances, and to *litigate effectively* once in court” must now be disclaimed.<sup>132</sup> The Court explained that the Constitution does not require “the conferral of such sophisticated legal capabilities upon a mostly uneducated and indeed largely illiterate prison population . . . .”<sup>133</sup> Despite significantly walking-back its previous holdings, the *Lewis* Court nevertheless conceded that “[t]he right that *Bounds* acknowledged was the (already well-established) right of *access to the courts*.”<sup>134</sup>

### C. *Challenging Rhode Island’s Civil Death Statute Under Lewis*

It has been said that *Lewis* represented a “drastic attempt to limit the . . . constitutional right of inmates to meaningful[ly]” access courts.<sup>135</sup> While this may be true, civilly dead life-prisoners in Rhode Island have more significant access-to-courts barriers than the availability of a law library or legal assistance. Rhode Island’s civil death statute precludes would-be life-prisoner claimants, like Gallop, from accessing “the only available legitimate means of dispute settlement,” by prohibiting their access to civil courts.<sup>136</sup> Further, the complete denial of Gallop’s and other life-prisoners’ access to “civil courts rends the fabric of justice as surely” in Rhode Island as it did in Connecticut or Alaska.<sup>137</sup> Likewise, to the extent that Rhode Island recognizes claimants as possessing a “chose in action” property right, the civil death statute deprives life-prisoners of the entire value of that right.<sup>138</sup> As such, the civilly dead in Rhode Island meet the criteria for initiating a Due Process

---

interests.” *Lewis*, 518 U.S. at 361 (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)).

131. *Lewis*, 518 U.S. at 354.

132. *Id.* (emphasis in original).

133. *Id.* The *Lewis* opinion, authored by Justice Antonin Scalia, indeed made no attempt to conceal its operating prejudice against prisoners. *See id.*

134. *Id.* at 350 (emphasis in original).

135. Steinberger, *supra* note 99, at 378.

136. *See Bush v. Reid*, 516 P.2d 1215, 1218 (Alaska 1973).

137. *See id.*

138. *See id.* at 1219.

and Equal Protection challenge under the *Boddie* framework.<sup>139</sup>

Under *Lewis*, however, a life-prisoner in Rhode Island asserting that the statute unconstitutionally bars his right to access courts must show an actual injury, “such as the inability to meet a filing deadline or to present a claim.”<sup>140</sup> Unlike the hypothetical life-prisoner anticipated in *Lewis*, who is not injured by a state’s failure to “confe[r] . . . sophisticated legal capabilities” with which to litigate his claims, life-prisoners in Rhode Island suffer actual injury when their claims are dismissed by mandate of the civil death statute.<sup>141</sup> Gallop’s actual injury, which was a complete bar on his capacity to access courts, is incomparable to the injury of a prisoner who merely does not have access to an adequate law library to research the claims that he has the capacity to bring.<sup>142</sup> As such, life-prisoners in Rhode Island meet the *Lewis* “actual injury” requirement.

Although *Bush* involved parolees, the Court’s rationale is directly applicable to Rhode Island’s civil death statute, which makes no exception for life-prisoners who are later paroled.<sup>143</sup> Just as in Alaska, there is an “utter vacancy of rationale” for preventing a paroled life-prisoner in Rhode Island from accessing courts, even under the “more lenient ‘rational basis’ test” prescribed by *Lewis*.<sup>144</sup>

The same vacancy of rationale exists for preventing life-prisoners who are not released on parole from accessing courts. There is no data or evidence to support the argument that life-prisoners are “inherently inclined” to pursue frivolous litigation.<sup>145</sup> Rhode Island’s civil death statute, of course, prevents all life-prisoners from asserting all claims.<sup>146</sup> Even if preventing frivolous litigation is a legitimate state interest under *Lewis*, the civil death statute still cannot survive rational basis review because it makes

---

139. See *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971); see also *Bush*, 515 P.2d at 1218.

140. *Lewis v. Casey*, 518 U.S. 343, 348 (1996).

141. See *id.* at 354.

142. See *Gallop v. Adult Corr. Insts.*, 182 A.3d 1137, 1141 (R.I. 2018).

143. 13 R.I. GEN. LAWS § 13-6-1 (1956). “In the case of a prisoner sentenced to imprisonment for life, a parole permit may be issued at any time after the prisoner has served not less than ten (10) years imprisonment,” provided that other criteria, accounting for the severity of the crime, are met. *Id.* § 13-8-13(a).

144. *Bush*, 516 P.2d at 1220, 1221; see also *Lewis*, 518 U.S. at 361.

145. See *Thompson v. Bond*, 421 F. Supp. 878, 884 (W.D. Mo. 1976).

146. 13 R.I. GEN. LAWS § 13-6-1.

no attempt to distinguish meritorious from frivolous claims.<sup>147</sup> Such a draconian, blanket prohibition of the right to access courts cannot reasonably be considered rationally related to the interest in preventing frivolous litigation in a just, civilized state. There are “[m]uch less onerous ways . . . available to protect the judicial process” and routine prison activity from frivolous litigation than a complete bar on “an entire class of litigants” like life-prisoners.<sup>148</sup> One can see that the only true rationale for preventing life-prisoners from bringing good-faith, meritorious claims is the farcical and punitively conservative view of life-prisoners as non-living “human waste,” who are not entitled to their rights as citizens.<sup>149</sup> In short, the civil death statute remains an impermissible access-to-courts barrier, despite the narrowing of the Supreme Court’s access-to-courts doctrine in *Lewis*, and must be invalidated as a violation of Rhode Island life-prisoners’ right to access to courts under Fourteenth Amendment of the United States

---

147. See *Lewis*, 518 U.S. at 361.

148. *Delorme v. Pierce Freightlines Co.*, 353 F. Supp. 258, 260 (D. Or. 1973) (holding that state-defendants failed to show that a civil death’s bar on access to courts was rationally related to the interest in preventing frivolous litigation).

In most instances . . . prisoners need not be brought to the courtroom to resolve a civil matter. Where the prisoner’s testimony is important, the court can direct him to submit an affidavit or suggest a deposition at the prison. Various courts have ruled that a prisoner has no constitutional right to be present at a civil trial . . . and therefore a civil suit need not necessarily disrupt the prison routine by requiring transportation to and from the court.

*Thompson*, 421 F. Supp. at 884–85.

149. *Davis v. Pullium*, 484 P.2d 1306, 1308 (Okla. 1971).

Although there is no Rhode Island legislative history available that would shed light on the purpose of Section 13–6–1, the Supreme Court of Rhode Island has indicated that the provision “was intended to be a limitation on the assertion of any rights by a prisoner serving a life sentence.”

*Ferreira v. Wall*, C.A. No. 15-219-ML, 2016 WL 8235110, at \*2 (D. R.I. Oct. 26, 2016) (quoting *Bogosian v. Vaccaro*, 422 A.2d 1253, 1254 (R.I. 1980)). Such a vague and undefined state interest, which amounts to no more than a threadbare paraphrasing of the civil death statute’s text, is repugnant to the very spirit and intention of the Rhode Island and United States Constitutions, and thus is not a legitimate state interest which would save the civil death statute. A statute that terminates all of a person’s “rights of property . . . the bond of matrimony and . . . all civil rights and relations of any nature whatsoever,” simply is not rationally related to criminal punishment. See § 13-6-1.

Constitution.<sup>150</sup>

#### CONCLUSION

The Rhode Island Legislature must recognize the improvident nature of the civil death statute and repeal it. Alternatively, Rhode Island courts must invalidate the statute as an impermissible bar on life-prisoners' right to access courts in violation of the AC Clause of the Rhode Island Constitution and the Fourteenth Amendment of the United States Constitution. Rhode Island must join its peers in the realization that "the concept of civil death has been condemned by virtually every court and commentator to study it [since the 1940s]."<sup>151</sup> The uncomfortable truth that Alaska, Florida, Missouri, and Oklahoma in the 1970s and 1980s represented a more progressive iteration of criminal justice, which afforded more rights to its prisoners than does Rhode Island in 2019, cannot be overstated, and is an authoritarian stain on the conscience of a state which is at times a leading example of social values.<sup>152</sup> So long as Rhode Island continues to give legitimacy to the "vestige of medieval jurisprudence" that is its civil death

---

150. See *Lewis*, 518 U.S. at 350.

151. See *Thompson*, 421 F. Supp. at 885.

Finally, the Court cannot fail to note that the concept of civil death has been condemned by virtually every court and commentator to study it over the last thirty years. Only approximately 13 states have yet to abolish their civil death statutes, and neither the practice elsewhere nor any evidence mustered by defendants for this Court's attention indicates that abolition of civil death has adversely affected prison routine or overburdened correctional administrators or state courts in other jurisdictions.

*Id.*

152. See e.g., *Act Abolishing Capital Punishment*, R.I. DEPT' STATE, <http://sos.ri.gov/virtualarchives/items/show/484> [<https://perma.cc/PCC6-97R2>] (last visited Apr. 5, 2019); Jacqueline Tempera & Patrick Anderson, *R.I. Senate Passes Bill Ending Life-Without-Parole Sentences For Juveniles*, PROVIDENCE J. (June 15, 2017, 5:59 PM), <https://www.providencejournal.com/news/20170615/ri-senate-passes-bill-ending-life-without-parole-sentences-for-juveniles> [<https://perma.cc/7KTT-FV6V>]; Nate Raymond, *Rhode Island Sues Major Oil Companies Over Climate Change*, REUTERS (July 2, 2018, 1:59 PM), <https://af.reuters.com/article/commoditiesNews/idAFL1N1TY0MD> [<https://perma.cc/K36S-98MC>]; Sheldon Whitehouse, *Brett Kavanaugh Hearing: Senate Republicans Have Worked Together With Kavanaugh to Deny Dr. Ford a Fair Investigation*, NBC NEWS (Sept. 27, 2018, 4:37 AM), <https://www.nbcnews.com/think/opinion/kavanaugh-senate-republicans-have-worked-together-deny-christine-blasey-ford-ncna913621> [<https://perma.cc/K25L-L4NZ>].

statute, it cannot achieve its fundamental ideal that “[e]very person ought to obtain right and justice freely, and without purchase, completely and without denial.”