

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC **SUPREME COURT**

NO. 2008-335-M.P.
NO. 2009-01-M.P.
[P.C. No. 07-6666]

WILLIAM V. IRONS
CROSS-PETITIONER AND RESPONDENT

VS.

THE RHODE ISLAND ETHICS COMMISSION
PETITIONER AND CROSS-RESPONDENT

ON CERTIORARI TO THE PROVIDENCE COUNTY SUPERIOR COURT

BRIEF OF OPERATION CLEAN GOVERNMENT, INC.
***AMICUS CURIAE* IN SUPPORT OF RHODE ISLAND ETHICS COMMISSION**
ON SPEECH IN DEBATE ISSUE

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QUESTION PRESENTED FOR REVIEW

WHETHER ARTICLE 3, SECTION 8 OF THE RHODE ISLAND CONSTITUTION EMPOWERS THE RHODE ISLAND ETHICS COMMISSION TO INVESTIGATE A MEMBER OF THE GENERAL ASSEMBLY WHERE THERE IS PROBABLE CAUSE TO BELIEVE THAT THE MEMBER HAD A SUBSTANTIAL CONFLICT OF INTEREST AND USED HIS POSITION TO OBTAIN FINANCIAL GAIN FOR A BUSINESS ASSOCIATE.

TABLE OF CONTENTS

Question Presented	1
Table of Authorities	3
Interest of the Amicus	5
Statement of the Case	7
Argument	7
Conclusion	21
Certification	22

TABLE OF AUTHORITIES

Cases

<u>Bailey v. Laurie</u> , 118 R.I. 184 (1977)	15
<u>Brock v. Thompson</u> , 948 P.2d 279 (Okla. 1997)	18
<u>Costello v. United States</u> , 350 U.S. 359 (1956)	17
<u>Gravel v. United States</u> , 408 U.S. 606 (1972)	17
<u>Holmes v. Farmer</u> , 475 A.2d 976 (R.I. 1984)	passim
<u>Lemoine v. Martineau</u> , 115 R.I. 233 (1975)	15
<u>In re: William V. Irons</u> , Complaint No. 2004-1 (R.I. Eth. Comm)	5
<u>In re Advisory Opinion (Ethics Commission)</u> , 612 A.d 1 (R.I. 1992).....	passim
<u>In re Request for Advisory Opinion (CRMC)</u> , 961 A.2d 930 (R.I. 2008)	13
<u>In re Advisory Opinion (Ethics Commission – Separation of Powers)</u> , 732 A.2d 55, 64 (1999)	13, 19
<u>State v. Dankworth</u> , 672 P.2d 148 (Alaska Ct. App. 1983)	17
<u>State v. Neufeld</u> , 260 Kan. 930 (1996)	18
<u>United States v. Helstoski</u> , 442 U.S. 1979)	17
<u>United States v. Jefferson</u> , 546 F.3d 300 (4 th Cir. 2008), <u>cert. pending</u> No. 2008-1059 (petition for cert. docketed Feb. 20, 2009)	17
<u>United States v. Johnson</u> , 383 U.S. 169 (1966)	16

Constitutions, Statutes and Court Rules

R.I. Const., Art. 1, sec. 1	8
R.I. Const., Art. 3, sec. 7	passim

R.I. Const., Art. 3, sec.8passim
R.I. Const., Art. 6, sec. 5passim
R.I. Const. Art. 9, sec. 3 12
R.I. Gen. Laws §§ 36-14-5 5
U.S. Const., Art. 1, sec. 6 15
Other Authorities
H.G. WELLS, OUTLINE OF HISTORY (Rev. ed. 1971) 16

INTEREST OF THE AMICUS

Operation Clean Government, Inc. [hereinafter referred to as OCG] is a domestic non-profit corporation whose by-laws provide that it is a non-partisan grassroots organization that “believes that our state government should be accountable to all the people whom they have elected to serve.” OCG By-Laws (preamble). OCG advocates “strong democratic laws and institutions that will give the public confidence that policies are fairly debated and decided on their merits, and that our common resources are used responsibly in the public interest.” Id. “The organization shall promote honest, responsible and responsive state government.” OCG By-Laws, Art. 2. In particular, OCG attempts to achieve its purposes by, inter alia, “[m]onitoring the three branches of government, exposing abuse, corruption and inefficiency, taking legal action when appropriate.” Id.

This case arises out of a complaint that was filed before the Rhode Island Ethics Commission, In re: William V. Irons, Complaint No. 2004-1. The complainants in the Irons matter were Robert Arruda, in the capacity as Chair of OCG, and Beverly Clay, in the capacity as Vice Chair of OCG. In its complaint, OCG alleged, *inter alia*:

By acting in his governmental capacity, as Chairman of the Corporations Committee, Respondent, as Chairman of said Committee, actively opposed and voted against "freedom of choice" bills in April 1999, that would prohibit insurers from limiting where their subscribers can buy their medications. In subsequent legislative sessions, Respondent has continued to actively oppose pharmacy choice legislation. In so doing, Respondent deliberated, considered, or otherwise participated in a governmental decision to affect pharmacy issues, while he was paid significant commissions by Blue Cross & Blue Shield of Rhode Island, the provider of the CVS health-insurance plan covering more than 5,000 employees in Rhode Island, in violation of *R.I. Gen. Laws §§ 36-14-5(a), (b) and (d)*.

Complaint, para. 14.

The Rhode Island Ethics Commission found probable cause to believe that former Sen. Irons, the respondent before the Commission, acted on behalf of the interests of his business client, in a manner inconsistent with the public's right to "full access to their government:" The Commission found probable cause on two counts of OCG's complaint as follows:

1) There exists probable cause that, by his participation in the Senate Corporations Committee's consideration of Pharmacy Freedom of Choice legislation in the 1999 and 2000 legislative sessions, the Respondent participated in a matter in which he had a substantial conflict of interest, in violation of R.I. Gen. Laws sec. 36-14-5(a).

* * *

3) There exists probable cause that, by his participation in the Senate Corporations Committee's consideration of Pharmacy Freedom of Choice legislation in the 1999 and 2000 legislative sessions, the Respondent used his office to obtain financial gain for CVS, his business associate, in violation of R.I. Gen. Laws sec. 36-14-5(d).

Order and Finding of Probable Cause, In re: William V. Irons, Complaint No. 2004-1 (Nov. 15, 2004).

The issues in this case are at the core of OCG's mission. The role of the Rhode Ethics Commission – and the question whether the Commission will have the ability to fulfill its constitutional function – are of critical importance to OCG, its members, and the public that it seeks to serve. OCG wishes to participate as *amicus curiae* in order to provide this Court with legal argument in favor of the Rhode Island Ethics Commission's authority to enforce the Rhode Island Code of Ethics promulgated pursuant to Article 3, section 8 of the Rhode Island Constitution.

STATEMENT OF THE CASE

OCG adopts the Statement of the Case set forth in the brief of the Rhode island Ethics Commission.

ARGUMENT

ARTICLE 3, SECTION 8 OF THE RHODE ISLAND CONSTITUTION EMPOWERS THE RHODE ISLAND ETHICS COMMISSION TO INVESTIGATE A MEMBER OF THE GENERAL ASSEMBLY WHERE THERE IS PROBABLE CAUSE TO BELIEVE THAT THE MEMBER HAD A SUBSTANTIAL CONFLICT OF INTEREST AND USED HIS POSITION TO OBTAIN FINANCIAL GAIN FOR A BUSINESS ASSOCIATE.

In 1986 Rhode Island voters approved significant changes to our Constitution, adopting, among other provisions, Sections 7 and 8 of Article 3:

Section 7. Ethical conduct. – The people of the state of Rhode Island believe that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety and *not use their position for private gain or advantage*. Such persons shall hold their positions during good behavior.

Section 8. Ethics commission – Code of ethics. – The general assembly shall establish an independent non-partisan ethics commission which shall adopt a code of ethics including, but not limited to, provisions on *conflicts of interest*, confidential information, *use of position*, contracts with government agencies and financial disclosure. *All* elected and appointed officials and employees of state and local government, of boards, commissions and agencies shall be subject to the code of ethics. *The ethics commission shall have the authority to investigate violations of the code of ethics* and to impose penalties, as provided by law; and the commission shall have the power to remove from office officials who are not subject to impeachment.

R.I. Const., Art. 3, sec. 7, 8 (emphasis added).

This case raises the question whether this clear and unambiguous directive from the people of Rhode Island – language that Rhode Island’s Declaration of Rights makes

“sacred and obligatory upon all.”¹– is rendered meaningless relative to members of the General Assembly by virtue of the “Speech in Debate” clause set forth in Art. 6, sec. 5².

The Rhode Island Ethics Commission found probable cause to believe that Sen. William V. Irons had violated the Code of Ethics by using his position as Chair of the Senate Corporations Committee to benefit a client of his private insurance business. On review in the Superior Court, however, the trial justice concluded that Sen. Irons’ alleged misconduct fell within the boundaries of “Speech in Debate,” and that the immunity conferred in Art. 6, sec. 5 shields Members of the General Assembly from investigation by the Ethics Commission for such activity. OCG submits that the trial justice erred, and that this Court must reverse.

A. By its clear and unambiguous language of Art. 3, sec. 7 and 8 subjects members of the General Assembly to the Code of Ethics. The language of Art. 3 could scarcely be more clear. When voters approved these provisions in 1986, they specifically set forth the objective that “public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety and not use their position for private gain or advantage.” R.I. Const., Art. 3, sec. 7. Voters mandated creation of the Rhode Island Ethics Commission, directed the Commission to adopt a Code of Ethics, and stated with great specificity that no public official would be exempt from the Code’s reach, or from the Commission’s enforcement authority:

All elected and appointed officials and employees of state and local government, of boards, commissions and agencies shall be subject to the

¹ R.I. Const., Art. 1, sec. 1

² “For any speech in debate in either house, no member shall be questioned in any other place.” R.I. Const. Art. 6, sec. 5.

code of ethics. *The ethics commission shall have the authority to investigate violations of the code of ethics* and to impose penalties, as provided by law; and the commission shall have the power to remove from office officials who are not subject to impeachment.

Id., sec. 8 (emphasis added).

In 1992 the Justices of this Court addressed the scope of these provisions in In re Advisory Opinion (Ethics Commission), 612 A.d 1 (R.I. 1992). The Justices described these constitutional amendments as requiring establishment of a commission that “would be formed to oversee ethics in State Government.” Id. at 3. The Justices recognized that the delegates who drafted this language derived “their power solely from the people.” Id. at 7. This Court’s task of construction requires that the intent of the framers be given full effect. Id.

In doing so, we rely on the well-established rule of constitutional construction that when words in a constitution are free from ambiguity, they are to be given their plain, ordinary, and usually accepted meaning. Moreover, “every clause must be given its due force, meaning and effect and that no word or section must be assumed to have been unnecessarily used or needlessly added.” “[W]e must presume that the language was carefully weighed and that its terms imply a definite meaning.”

Id. at 7 (citations omitted). The Justices in Advisory Opinion (Ethics Commission) were called upon to opine whether Art. 3 conferred substantive legislative powers upon the Ethics Commission. In analyzing this issue, the Justices examined the proceedings of the 1986 Constitutional Convention with regard to the legislative function of the General Assembly, as well as the public’s deep distrust of that institution:

Chairman DeSisto: Personally, I think, and let’s face it – we all distrust the General Assembly.

Delegate Lacouture: Maybe some of our concerns can be resolved if instead of relying on the structure to come up with the code of ethics or the prohibition – let the commission do that.

Delegate Milette: you know, that's a new idea, and I like it . . . [W]e would direct that a code of ethics be developed. . . . [T]he code of ethics will be developed, and put the responsibility on the Conflict of Interest Commission instead of on the state legislature. Now that takes the fox away from the chickens What I would like to see is to make sure it just doesn't die at the table, that it gets passed on to a responsible body which we would spell out to make the code of ethics become a reality. Now if we are concerned about the state legislature doing it or doing it right, let's take it away from them. Let's give it to another body.

Id. at 10 (quoting May 22, 1986 proceedings of Constitutional Convention, Ethics Committee).

After examining the language of the Constitution and the proceedings of the Convention, the Justices concluded that the new language inserted into Article 3 in 1986 was to create a body that limited the power of the General Assembly over ethics and conferred such powers on the Commission:

[I]t is abundantly clear that the framers expressly intended to limit the General Assembly's power to enact substantive legislation regarding ethics. Rather, their primary intent was to empower the commission with the authority to develop a code of ethics, *to investigate violations, and to enforce its provisions*, always subject to review by the judicial branch of government consistent with the Constitution.

Id. at 11 (emphasis added).

The Justices clearly recognized that one of the principal forces motivating the people in adopting these changes to Art. 3 was their concern about whether the General Assembly was up to the task:

As noted, in addressing ethics reform, many committee members expressed a distrust of the General Assembly and the need to "get the fox out of the hen house." In construing such comments, we adhere to the proposition set forth by commission proponents who suggest that such comments indicate a significant concern that if the task of adopting a code of ethics was left to the General Assembly, "the sharp teeth in any code of ethics could be removed by those who feared being bitten." Further, the presentational comments by the committee chairman before the entire convention body indicate an express awareness by committee members of

the rampant corruption and unethical conduct that had been plaguing the state in preceding years.

Id. at 11.

Examining the precise language of Art. 3, sec. 8, there can be no question that it reaches legislative activity of Members of the General Assembly. On its very terms, the provision is universal in its application:

All elected and appointed officials and employees of state and local government, of boards, commissions and agencies shall be subject to the code of ethics.

R.I. Const. Art. 3, sec. 8. The use of the word “all” could scarcely be more absolute or clear. Members of the General Assembly are, pursuant to Article 4, section 1, elected officials of state government and therefore fall plainly within the ambit of persons whom the Constitution subjects to the ethics code. With regard to the Commission’s investigative and enforcement powers, the Constitution authorizes the Commission to investigate violations of the Code and impose penalties for its violation. Included within the range of the Commission’s enforcement options is “the power to remove from office officials who are not subject to impeachment.” Art. 3, sec. 8 The Commission’s removal power – at least as it applies to officials of the state government – could only be meant to apply to Members of the General Assembly. By excluding from the Commission’s authority the power to remove officials who are subject to impeachment, the drafters of Art. 3, sec. 8 were plainly aware of the provisions of Article 9, section 3, which limit impeachments to Executive and Judicial Branch officials:

Section 3. Officers subject to impeachment -- Grounds and effect of conviction. -- *The governor and all other executive and judicial officers shall be liable to impeachment.* The governor or any other executive officer shall be removed from office if, upon impeachment, such officer shall be found incapacitated or guilty of the commission of a felony or

crime of moral turpitude, misfeasance or malfeasance in office. Judges shall be removed if, upon impeachment, they shall be found incapacitated or guilty of the commission of a felony or crime of moral turpitude, misfeasance or malfeasance in office or violation of the canons of judicial ethics. Judgment of incapacity or guilt in a case of impeachment shall not extend further than to removal from office. The person convicted shall, nevertheless, be liable to indictment, trial and punishment, according to laws.

R.I. Const. Art. 9, sec. 3 (emphasis added). Excluding Members of the General Assembly from the reach of the Commission's enforcement authority would render the final clause of Art. 3, sec. 8 nugatory. If the Commission's power of removal applies only to state officials not subject to impeachment, and if Executive Branch and Judicial Branch officials *are* subject to impeachment, then the power of removal must have been intended to apply to those state elected officials who are *not* subject to impeachment: Members of the General Assembly. To hold otherwise would directly contradict the well-recognized rule that in applying the language of the Constitution, "every clause must be given its due force, meaning and effect and that no word or section must be assumed to have been unnecessarily used or needlessly added." "[W]e must presume that the language was carefully weighed and that its terms imply a definite meaning." Advisory Opinion (Ethics Commission), 612 A.2d at 7 (citations omitted).

As the Justices of this Court observed in 1992, one of the principal concerns that motivated the Delegates to the 1986 Convention was

"a distrust of the General Assembly and the need to "get the fox out of the hen house." In construing such comments, we adhere to the proposition set forth by commission proponents who suggest that such comments indicate a significant concern that if the task of adopting a code of ethics was left to the General Assembly, "the sharp teeth in any code of ethics could be removed by those who feared being bitten."

Id. at 11. Given these concerns about keeping the General Assembly “fox” out of the ethics “hen house,” and the view that Delegates desired adoption of an Ethics Code with sufficient “teeth” that the Members of the General Assembly might fear its “bite,” it cannot seriously be claimed that the Drafters intended or expected legislators to be beyond the reach of the Commission’s powers of enforcement.

Moreover, Art. 3, sec. 8 must be read together with its companion section, Art. 3, sec. 7. That provision – which is partly a preamble to the powers conferred in sec. 8 – firmly established the intent of the framers who wrote it and the voters who ratified it:

The people of the state of Rhode Island believe that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety and *not use their position for private gain or advantage*. Such persons shall hold their positions during good behavior.

R.I. Const. Art. 3, sec. 7 (emphasis added). It must be recognized that, at the time of the adoption of the 1986 Constitution, the Rhode Island General Assembly was one of the most powerful legislatures in the United States, part of Rhode Island’s constitutional structure which the Justices of this Court in 1999 described as historically having a “quintessential system of parliamentary supremacy.”³ In re Advisory Opinion (Ethics

³ Since the 1986 Constitution the powers of the General Assembly have been curtailed by several amendments to the Constitution. In 1994, for example, the voters eliminated the General Assembly’s “Grand Committee” process for election of Justices of this Court, replacing that system with a judicial selection procedure that presently appears in Art. 10, sec. 4. In the so-called Separation of Powers amendments adopted in 2004, the voters further limited the powers of the General Assembly by, inter alia, barring legislators from serving on boards and commissions that exercise executive power, Art. 3, sec. 6, eliminating the “continuing powers” of the General Assembly that had been set forth in the former Art. 6, sec. 10, and vesting the Governor with greater appointment powers. See generally, In re Request for Advisory Opinion (CRMC), 961 A.2d 930 (R.I. 2008) (discussing application of 2004 Separation of Powers amendments to Rhode Island Constitution).

Commission – Separation of Powers), 732 A.2d 55, 64 (1999). Given the pre-eminent role that the General Assembly then played in the structure of Rhode Island’s government, any effort to put a stop to the ethical lapses of the past would necessarily have involved application of the new code to legislators. To the extent that the drafters and voters desired to exert some control over their government – and to install a system that would guard against future abuses – it would make absolutely no sense for them to establish an Ethics Commission with no authority over the (nearly) all-powerful General Assembly. These provisions will be effective only if Members of the General Assembly fall within the reach of the Commission’s enforcement authority.

As noted supra, our Constitution’s Declaration of Rights states that the provisions of our Constitution are “sacred and obligatory upon all.” R.I. Const., Art. 1, sec. 1. This Court, in fulfilling its obligation to give full meaning to the words of the Constitution, must accordingly hold that Art. 3, sec. 8 provides for both adoption of a code of ethics and establishment of an ethics commission with such powers of enforcement as are necessary to fulfill the essential mandates of Art. 3, sec. 7 and sec. 8.

B. The “Speech in Debate” Clause does not prevent the Rhode Island Ethics Commission from enforcing the Code of Ethics against a Member of the General Assembly. OCG submits that the trial justice erred in finding that the “Speech in Debate” clause of the Rhode Island Constitution, Art. 6, sec. 5, barred further proceedings by the Ethics Commission against former Senator Irons. As noted supra, the plain language of the 1986 Ethics Amendments, together with the intent of the drafters and the people who adopted them, demonstrates that members of the General Assembly are subject to the Code and the Commission’s enforcement of it. Although the Speech in Debate clause

affords legislators immunity in a wide variety of settings, it cannot preclude the Ethics Commission from carrying out its constitutional mandate.

Rhode Island's "Speech in Debate" clause⁴ is set forth in section 5 of Article 6 ("Of the Legislative Power") and provides:

Section 5. Immunities of general assembly members. – The persons of all members of the general assembly shall be exempt from arrest and their estates from attachment in any civil action, during the session of the general assembly, and two days before the commencement and two days after the termination thereof, and all process served contrary hereto shall be void. *For any speech in debate in either house, no member shall be questioned in any other place.*

R.I. Const. Art. 6, sec. 5 (emphasis added). This Court has never considered the interplay between the Ethics provisions, Art. 3, sec. 7 and sec. 8, and the Speech in Debate clause, and most of this Court's applications of the clause predate the 1986 Convention.

The trial justice placed heavy reliance upon this Court's decision in Holmes v. Farmer, 475 A.2d 976 (R.I. 1984), a civil case involving the question whether legislators could testify in court regarding their motivation in passing legislation. This Court in Holmes noted that it had never previously given any extensive consideration to the speech in debate clause.⁵ In an opinion by Justice Shea, this Court surveyed the history of Speech in Debate immunity and found its origins in the period leading up to the adoption of the English Bill of Rights and the Glorious Revolution of 1689. Id. at 981. The Court noted that Parliament's desire for independence and fears about persecution by

⁴ The language of Rhode Island's clause deviates slightly from the analogous provision of the United States Constitution, which provides "for any speech *or* debate in either House, they shall not be questioned in any other place." U.S. Const. Art. 1, sec. 6 (emphasis added). This Court has stated that there is no relevant difference between the two clauses. Holmes v. Farmer, 475 A.2d 976, 981 (R.I. 1984).

⁵ The Court noted that it has previously mentioned the clause "in passing," in Bailey v. Laurie, 118 R.I. 184 (1977), and Lemoine v. Martineau, 115 R.I. 233 (1975).

the Crown⁶ motivated the establishment of a privilege that insure that “proceedings in Parliament ought not to be impeached or questioned in any court or place outside of Parliament.” *Id.* (quoting Reinstein & Silvergate, *Legislative Privilege and the Separation of Powers*, 86 Harv. L. Rev. 1113 (1973)). Quoting approvingly from United States v. Johnson, 383 U.S. 169 (1966), this Court deemed the speech in debate privilege as a “manifestation of the ‘practical security’ for ensuring the independence of the legislature.” Holmes v. Farmer, 475 A.2d at 983 (quoting Johnson, 383 U.S. at 179) (emphasis added).

Although this Court’s opinion in Holmes is replete with sweeping affirmation of speech in debate immunity, the holding of the case is actually quite narrow. Before the Court in Holmes was the narrow question whether Members of the General Assembly could be questioned in court regarding their motivation for proposing or enacting certain legislative provisions. The case involved a declaratory judgment action filed to challenge legislative reapportionment plans. The plaintiffs claimed that the proposed districts violated the equal protection clause of the Rhode Island Constitution, as well as the requirement of compactness. During the trial, plaintiffs attempted to introduce testimony from several legislators in an effort to demonstrate both their ignorance of the Constitution’s apportionment requirements and their political motivation in drawing new district lines. The trial justice excluded the evidence based both on the speech in debate privilege and relevancy. Although this Court based its affirmance of that decision on the speech in debate claim, Justice Kelleher wrote a separate concurrence in which he

⁶Of course, Parliament in 1659 might well have feared future retaliation from the Crown; after all it was, the famous “Long Parliament” that devolved into the infamous “Rump Parliament” that had deposed and beheaded Charles I in 1649. H.G. WELLS, *OUTLINE OF HISTORY*, 680 - 83 (Rev. ed. 1971).

criticized the Court for reaching a question of constitutional dimension when it was not necessary to the Court's decision. Holmes v. Farmer, 475 A.2d 976, 988 (R.I. 1984) (Kelleher, J., concurring). ("A decision based upon a constitutional determination should be avoided whenever it is possible to determine the issue on other grounds").

Thus, despite Justice Shea's broad language, the holding of Holmes is narrow and unremarkable; in a civil proceeding seeking declaratory relief, members of the General Assembly cannot testify with regard to their motivations in proposing and voting on legislation. And, as noted supra, Holmes was decided prior the adoption of the 1986 Ethics Amendments.

OCG recognizes that former Sen. Irons will likely rely upon cases decided by the United States Supreme Court pursuant to the federal speech and debate clause for their sweeping language. Cases such as United States v. Johnson, 383 U.S. 169 (1965), Gravel v. United States, 408 U.S. 606 (1972), and United States v. Helstoski, 442 U.S. 1979), provide important historical perspective on the meaning of the federal clause.⁷

Indeed, former Senator Irons will also likely rely upon decisions of the supreme courts of other states applying their own speech in debate clauses. Many such decisions exist arising out of a variety of factual contexts. See, e.g., State v. Dankworth, 672 P.2d 148 (Alaska Ct. App. 1983) (immunity protected legislator from prosecution for arranging appropriation measure allowing state to purchase property owned personally by

⁷ The United States Supreme Court presently has pending before it a petition for certiorari filed on behalf of former Congressman William Jefferson, whose legislative offices were searched by federal law enforcement officials. United States v. Jefferson, 546 F.3d 300 (4th Cir. 2008), cert. pending No. 2008-1059 (petition for cert. docketed Feb. 20, 2009). The petitioner seeks dismissal of his indictment and asks the Court to overrule Costello v. United States, 350 U.S. 359 (1956) (facially valid indictment not subject to dismissal based on improper evidence presented to grand jury).

legislator); State v. Neufeld, 260 Kan. 930 (1996) (clause protected legislator who blackmailed fellow legislator to gain his vote on legislation by threatening to disclose personal sexual indiscretions); Brock v. Thompson, 948 P.2d 279 (Okla. 1997) (in state with initiative petition process, clause protects from suit persons who are gathering signatures for petition drive because they are engaged in lawmaking).

None of the cases decided by other jurisdictions, however, address Rhode Island's unique constitutional structure, nor do they involve an Ethics Commission with the type of constitutional mandate set forth in Art. 3, sec. 8 of our Constitution. Moreover, the misconduct for which other states' speech in debate clauses have provided immunity to legislators in other jurisdictions fit well within the type of activity that Art. 3, sec. 7 and sec. 8 were devised to prevent:

[T]he years preceding this state's 1986 constitutional convention were marked by scandal and corruption in both state and local government. As a result the overwhelming majority of Rhode Island's citizens were at the very least distrustful of their elected and appointed officials and government as a whole.

In re Advisory Opinion (Ethics Commission), 612 A.2d at 2.

Indeed, OCG submits that a proper reading of the Ethics Amendments together with Art. 6, sec. 5 demonstrates that there is no impediment to the Ethics Commission's enforcement action in this case. That is because the Ethics Amendments had the effect of establishing shared authority by the General Assembly and the Ethics Commission within the sphere of legislative activity, as the Justices of this Court recognized in In re Advisory Opinion (Ethics Commission), 612 A.2d 1 (1992).

As noted throughout this brief, the Ethics Amendments conferred a portion of the legislative power upon the Ethics Commission, within the specific boundaries set forth in

Art. 3, sec. 7 and sec. 8. As the Justices said in In re Advisory Opinion (Ethics Commission):

We have ruled that the terms of Article 3, section 8, expressly confer upon the commission the *limited and concurrent power to enact substantive ethics laws*. Accordingly, it logically flows that such an affirmative grant of power to the commission necessarily implies a limitation of the same on the part of the General Assembly or any other body. This is not to say, however, that the General Assembly is prohibited from enacting ethics laws altogether; rather, the General Assembly is merely limited to enacting laws that are not inconsistent with, or contradictory to, the code of ethics adopted by the commission.

Id. at 14 (emphasis added). The Justices recognized that one function of Art. 3, sec. 8 was to create an Ethics Commission that performs a role within a limited portion of “what had always been a legislative prerogative.” In re Advisory Opinion (Ethics Commission – Separation of Powers), 732 A.2d 55, 60 (1999). Thus, our Constitution provides that, with regard to ethics, the Ethics Commission and the General Assembly each have a share of this State’s legislative power.

Accordingly, it is important to note that although the speech in debate clause may generally protect legislators from enforcement outside of the legislative arena (“no member shall be questioned in any *other* place”), the clause poses no such bar to such proceedings *within* the legislative arena. Because the Commission and the General Assembly share that arena in the narrow area of ethics, for purposes of enforcing ethics provisions upon other participants in the legislative sphere, the Commission should not be regarded as “any other place.”

In addition, the very precise mandate of Art. 3, sec. 8 – requiring adoption and enforcement of a code that addressed “use of position” – demonstrates the drafters’ and voters’ intent that it should apply to actions that legislators take within the legislative

forum, for it is only in that arena that a Member of the General Assembly could “use” his or her “position” or engage in a conflict of interest as those terms are encompassed in Art. 3, sec. 7 and 8. OCG submits that the allegations in this case are serious and constitute precisely the type of improper behavior that the drafters and voters had in mind when the Ethics Amendments were overwhelmingly adopted in 1986.

To hold an entire class of elected officials – within an extremely powerful Branch of our state government – exempt from enforcement of the code is to break faith with the convention delegates who wrote the amendments and the voters who heartily approved them. As the Declaration of Rights provides, these provisions are “sacred and obligatory upon all.” R.I. Const., Art. 1, sec. 1. This Court must therefore reject former Senator Irons claim of immunity and hold that the speech in debate clause does not apply to the Ethics Commission’s enforcement action in this case.

CONCLUSION

The Ethics Amendments were adopted in order to combat the type of activity that OCG alleged in its complaint in this case. The drafters who wrote these provisions, and the voters who adopted them, clearly intended them to apply to members of the General Assembly. The speech in debate clause forms no bar to this case, and OCG urges this Court so hold.

For the foregoing reasons, and for such additional reasons as may appear at the oral argument of this cause, the order of the trial justice dismissing OCG's complaint must be reversed, and this case should be remanded to the Ethics Commission with instructions to proceed with the prosecution of the counts against former Senator Irons.

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CERTIFICATION

I hereby certify that the within motion was served upon all parties hereto by mailing a copy, postage prepaid to the address of their counsel of record as follows:

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