**STATE OF RHODE ISLAND**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**(FILED: February 8, 2022)**

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| **BLAKE A. FILIPPI, individually, and in his capacities as Member of the Rhode Island House of Representatives, Minority Leader of the Rhode Island House of of Representatives and Member of the Joint Committee on Legislative Services,** ***Plaintiff*****,** | **:** | |
| **v.** | **:** | **C.A. No. PC-2020-00508** |
| **NICHOLAS MATTIELLO, individually and in his Capacity as the former Speaker of the Rhode Island House of Representatives and Chairman of the Joint Committee on Legislative Services, et al.,** ***Defendants*****.** | **:** | |

**DECISION**

**SILVERSTEIN, J. (Ret.)** This matter is before the Court for decision with respect to the objection of Plaintiff to Defendants' proposed Order and Final Judgment and Defendants' objection to Plaintiff's Motion for Leave to File a Second Amended Complaint (Second Am. Compl.) pursuant to Rule 15 of the Superior Court Rules of Civil Procedure. Plaintiff is a duly elected Rhode Island State Representative and serves as the Minority Leader of the House of Representatives (the House).

Defendants include, among others, the Speaker of the House K. Joseph Shekarchi, the former Speaker of the House Nicholas Mattiello, the President of the Rhode Island Senate Dominick Ruggerio, the Majority Leader of the House Christopher Blazejewski, and the Minority Leader of the Senate Dennis Algiere. Each of the aforementioned Defendants are sued individually

and in their capacities as members of the Joint Committee on Legislative Services (the JCLS), created pursuant to the provisions of G.L. 1956 § 22-11-1. Under the terms of this statute, the Speaker is Chairman and the Senate President is the Vice Chairman of the JCLS. Also named as Defendants are the Executive Director of the JCLS Henry Kinch, the former Executive Director of the JCLS Frank Montanaro, the General Treasurer of the State Seth Magaziner, and the State Controller Peter Keenan, all of whom are sued individually and in their official capacities. Defendants have filed objections to Plaintiff's Motion to Amend.

## I

## Facts and Travel[1]

Blake A. Filippi (Plaintiff) is a resident of, and duly elected Rhode Island State Representative for, the 36th Representative District. (Second Am. Compl. ¶ 1.) Plaintiff also serves as the Minority Leader of the House and is a member of the JCLS. *Id*. Section 22-11-3(a) of the Rhode Island General Laws grants to the JCLS "exclusively the responsibility . . . to act upon all administrative matters affecting the operation of the general assembly, including, but not limited to" a list of specific administrative tasks. *See* § 22-11-3(a)(1)-(6). Further, the JCLS is vested with "exclusive authority on office space allocations and maintenance and repair in this state capitol building for all agencies of government, except the offices of the governor and the offices of the secretary of state." Section 22-11-3(b).

Plaintiff alleges that the Legislative Defendants[2] have exercised the functions of the JCLS without including Plaintiff. (Second Am. Compl. ¶¶ 14-19.) Plaintiff has called a meeting of the

[1] The facts set forth herein are gleaned from the allegations set forth in the Second Amended Complaint and for the purposes of this decision only are taken as true.

[2] Defendant members of the JCLS include Chairman K. Joseph Shekarchi (Speaker of the House of Representatives), former Chairman Nicholas Mattiello, Vice-Chairman Dominick Ruggerio (President of the Senate), Christopher Blazejewski (House Majority Leader), and Dennis Algiere

JCLS, but Defendant members have refused to attend and have effectively excluded Plaintiff from the operations of the JCLS. *Id*. ¶¶ 25-27.

Plaintiff initially filed a Complaint with this Court on January 23, 2020, which the Court dismissed without prejudice on February 1, 2021. *See* Decision, Feb. 1, 2021 (Silverstein, J.) (Decision) 9. Plaintiff then filed an Objection to the form of Order and Judgment submitted by Defendants and moved for leave to amend the Complaint pursuant to Rule 15 of the Superior Court Rules of Civil Procedure. (Pl.'s Obj. to Proposed Order and Final J. (Pl.'s Obj.) 1.) Plaintiff's Second Amended Complaint seeks declaratory relief pursuant to the Uniform Declaratory Judgments Act (UDJA), G.L. 1956 §§ 9-30-1, *et seq*. (Second Am. Compl. ¶¶ 30-31.) In addition, Plaintiff's Second Amended Complaint asks this Court, *inter alia*, to grant preliminary and permanent injunctive relief "restraining and enjoining [the Speaker, the Executive Director, the General Treasurer, and the State Controller] from taking action which would usurp, or serve to usurp, the statutory responsibilities of JCLS . . . ." *Id*. ¶¶ 46(b)-(d). Plaintiff further alleges in the Second Amended Complaint that Defendants have deprived Plaintiff of his personal and official rights and responsibilities as a resident of the 36th Representative District, State Representative, as the Minority Leader for the House of Representatives, and as a member of the JCLS in violation of Plaintiff's civil and constitutional rights under 42 U.S.C. §§ 1983, 1985, and 1986 because he is an "outspoken member of [the] minority . . . party." *Id*. ¶¶ 27, 34-46.

Defendants object to Plaintiff's Motion to Amend the Complaint, stating Plaintiff's requested relief in his Second Amended Complaint is the same relief requested in his First Amended Complaint, which the Court ruled it was constitutionally prohibited from granting.

(Senate Minority Leader). The Executive Director Henry Kinch is, and the former Executive Director Frank Montanaro was, an employee of the JCLS but were named as defendants and together with the Defendant members of the JCLS are referred to as Legislative Defendants.

(Defs.' Mem. in Supp. of Obj. to Pl.'s Mot. to Amend (Defs.' Mem.) 3.) Further, Defendants allege that Plaintiff's additional claims under 42 U.S.C. §§ 1983, 1985, and 1986 are futile because Defendants have absolute legislative immunity for their legislative acts, and Plaintiff is not able to state a claim for conspiracy to interfere with his civil rights. *Id*. at 4.

A hearing on the motion was held on March 23, 2021, and the parties filed supplemental memoranda with the Court.

## II

## Standard of Review

Rule 15(a) provides in pertinent part that:

> "(a) *Amendments.* A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served . . . . Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Super. R. Civ. P. 15(a).

The Rhode Island Supreme Court, "[i]n interpreting Rule 15(a), . . . has observed that the 'true spirit of the rule is exemplified' by the words 'and leave shall be freely given when justice so requires.'" *Harodite Industries, Inc. v. Warren Electric Corp.*, 24 A.3d 514, 530 (R.I. 2011) (quoting *Medeiros v. Cornwall*, 911 A.2d 251, 253 (R.I. 2006)). Our Supreme Court has therefore consistently interpreted Rule 15(a) to allow trial justices to grant amendments to the pleadings liberally if justice so requires. *Harodite Industries, Inc.*, 24 A.3d at 530. The reason for this liberal approach is "to facilitate the resolution of disputes on their merits rather than on blind adherence to procedural technicalities." *Wachsberger v. Pepper*, 583 A.2d 77, 78 (R.I. 1990) (citing *Inleasing Corp. v. Jessup*, 475 A.2d 989, 992 (R.I. 1984)). Additionally, "[w]hen a complaint is dismissed for failure to state a claim upon which relief can be granted, the dismissal should be accompanied with a grant of leave to amend, unless it appears to a high degree of

certainty that amendment would be unavailing." 1 Robert B. Kent, et al., *Rhode Island Civil and Appellate Procedure with Commentaries* § 15:4 (2020-2021 ed.).

## III

## Discussion

Plaintiff moves for leave to file a Second Amended Complaint so as to include alleged violations of his federally guaranteed civil and constitutional rights. The Legislative Defendants, joined by the Executive Director, the State Controller, and the General Treasurer, base their Objection to Plaintiff's Motion for Leave to Amend to add claims under 42 U.S.C. §§ 1983, 1985, and 1986 on a recognized exception to the liberal amendment rule, that is to say the Doctrine of Futility. (Defs.' Suppl. Reply Mem. (Defs.' Suppl. Reply) 10.) "If a proposed amendment is not clearly futile, then denial of leave to amend is improper." Charles A. Wright, et al., *Federal Practice & Procedure*, § 1487 at 102 (2008). In reviewing for futility, the U.S. Court of Appeals for the First Circuit has noted that the futility standard mirrors the Rule 12(b)(6) standard of legal sufficiency. *Glassman v. Computervision Corp.,* 90 F.3d 617, 623, (1st Cir. 1996). Here, the objecting Defendants assert that (1) Rule 501 of the Rhode Island Rules of Evidence (Rule 501), (2) state constitutional protections, and (3) absolute legislative immunity make futile Plaintiff's Second Amended Complaint. (Mot. Hr'g Tr. 30:10-31:4, 31:22-32:8, 34:3-35:1, Mar. 23, 2021.)

### A

### Applicability of Rule 501

Rule 501 states, "[n]othing in these rules shall be deemed to modify or supersede existing law relating to privilege, except to the extent expressly provided in Rule 502."[3] R.I. R. Evid. 501.

[3] Rule 502 discusses provisions in which "disclosure of a communication or information covered by the attorney-client privilege or work-product protection" is allowable. R.I. R. Evid. 502.

Defendants argue that all state law privileges continue to apply to them and that federal privileges are not applicable to the claims alleged in the Second Amended Complaint. (Mot. Hr'g Tr. 30:9-14.) Defendants assert that state law must be applied to the claims asserted in Plaintiff's Second Amended Complaint because Plaintiff brought the claim to state court rather than federal. *Id*. at 31:5-14. Further, Defendants claim this Court already determined the Court could not render a decision on the initial claims because of state privileges. *Id*. at 31:5-20. Plaintiff claims that the relief he seeks in his Second Amended Complaint is based upon federal law, not state law, and as such the state privileges previously ruled on no longer apply. (Pl.'s Suppl. Mem. in Supp. of Mot. to Amend (Pl.'s Suppl. Mem.) 17.)

"States may establish the rules of procedure governing litigation in their own courts." *Felder v. Casey*, 487 U.S. 131, 138 (1988). Further, "[i]t is undisputed that the Superior Court has concurrent jurisdiction with the federal courts over civil rights actions pursuant to 42 U.S.C. § 1983." *DiCiantis v. Wall*, 795 A.2d 1121, 1125 (R.I. 2002) (citing *Licht v. Quattrocchi*, 454 A.2d 1210, 1211 (R.I. 1982)). In *Haywood v. Drown*, 556 U.S. 729 (2009), the United States Supreme Court held as follows:

> "This Court has long made clear that federal law is as much the law of the several States as are the laws passed by their legislatures. Federal and state law "together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent." *Claflin v. Houseman*, 93 U.S. 130, 136–137, 23 L.Ed. 833 (1876); see *Minneapolis & St. Louis R. Co. v. Bombolis*, 241 U.S. 211, 222, 36 S.Ct. 595, 60 L.Ed. 961 (1916); The Federalist No. 82, p. 132 (E. Bourne ed. 1947, Book II) (A.Hamilton) ("[T]he inference seems to be conclusive, that the State courts would have a concurrent jurisdiction in all cases arising under the laws of the Union, where it was not expressly prohibited"). Although § 1983, a Reconstruction-era statute, was passed "to interpose the federal courts between the States and the people, as guardians of the

> people's federal rights," *Mitchum v. Foster*, 407 U.S. 225, 242, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972), state courts as well as federal courts are entrusted with providing a forum for the vindication of federal rights violated by state or local officials acting under color of state law, See *Patsy v. Board of Regents of Fla.*, 457 U.S. 496, 506–507, 102 S.Ct. 2557, 73 L.Ed.2d 172 (1982) (canvassing the legislative debates of the 1871 Congress and noting that "many legislators interpreted [§ 1983] to provide dual or concurrent forums in the state and federal system, enabling the plaintiff to choose the forum in which to seek relief"); *Maine v. Thiboutot*, 448 U.S. 1, 3, n. 1, 100 S.Ct. 2502, 65 L.Ed.2d 555 (1980)." *Haywood*, 556 U.S. at 734-35.

When hearing federal claims, state courts apply "their own procedural rules so long as they do not infringe upon the substantive federal law at issue." *Burris v. CSX Transportation Company, Inc*., No. 4:17-cv-2681-RBH-TER, 2018 WL 1701979, *2 (D.S.C. 2018). To clarify, if "state rules of procedure and evidence . . . affect the substantive federal right[s]" of a federal claim adjudicated in state court, then federal rules of procedure and evidence will apply to those federal claims. *See Shotwell v. Donahoe*, 85 P.3d 1045, 1048 (Ariz. 2004). Substantive federal rights are "those rights that are 'fundamental,' that is, rights that are implicit in the concept of ordered liberty," which include "most . . . of the rights enumerated in the Bill of Rights[.]" *McKinney v. Pate*, 20 F.3d 1550, 1556 (11th Cir. 1998) (internal quotations omitted).

Plaintiff's Second Amended Complaint alleges Defendants have acted in violation of the Constitution of the United States of America by depriving Plaintiff of his personal and official rights. (Pl.'s Second Am. Compl. ¶¶ 35, 38, 41.) More specifically, Plaintiff alleges that his deprived rights include the First Amendment rights to freedom of speech and freedom of assembly, the Fifth and Fourteenth Amendment right to due process, and the Fourteenth Amendment right to equal protection. *Id*. Freedom of speech, freedom of assembly, due process, and equal protection are all substantive federal rights which may not be infringed upon. *See McKinney*, 20 F.3d at 1556; *see also Shotwell*, 85 P.3d at 1048. If this Court were to apply Rule 501 to the federal claims

alleged and grant Defendants the state law privileges previously decided upon, Plaintiff would not be able to seek redress for the alleged violations of his civil and constitutional rights. *See* R.I. R. Evid. 501; *see also* Decision 9. Since application of Rule 501 would affect the ability to properly adjudicate Plaintiff's claims relating to Defendants' alleged violations of the Constitution of the United States of America, the federal rules of procedure and evidence govern those claims. *See* R.I. R. Evid. 501; *see also Shotwell*, 85 P.3d at 1048.

**B**

**State Constitutional Protections**

Defendants rely on our Supreme Court's rulings in both *Irons v. Rhode Island Ethics Commission*, 973 A.2d 1124 (R.I. 2009) and *Holmes v. Farmer*, 475 A.2d 976 (R.I. 1984) to advance the notion that they are protected under state law privileges with respect to the Speech and Debate clause that "protects the institution of the Legislature itself from attack by either of the other co-equal branches of government." *Holmes*, 475 A.2d at 985; *see Irons*, 973 A.2d at 1131. Defendants state the claims alleged in the Second Amended Complaint are the same as the claims alleged in the First Amended Complaint which renders them futile. (Defs.' Mem. 7-8.) Further, Defendants allege this Court is not able to award Plaintiff damages on the assertion that Plaintiff was deprived of his individual rights and suffered individual injury because of how the JCLS conducts business. *Id.* at 13. Plaintiff filed the Second Amended Complaint to redress the violation of Plaintiff's federally protected civil and constitutional rights. (Mem. in Supp. of Mot. for Leave to File Second Am. Compl. (Pl.'s Mem.) 3.) Plaintiff stated the claims for declaratory judgment and injunctive relief were argued again in the Second Amended Complaint to protect Plaintiff's right to appeal this Court's prior ruling. *Id.* at 8.

After examining the filings, this Court finds that Plaintiff did not assert he was deprived of his individual rights as a result of how the JCLS conducts business; rather, Plaintiff alleged Defendant Members of the JCLS excluded Plaintiff from participation in the JCLS which violates his civil and constitutional rights. *See* Second Am. Compl. ¶¶ 34-46; *see also* Pl.'s Mem. 3. Since Plaintiff's federal claims deal with substantive federal rights, federal rules of procedure and evidence will govern. *See McKinney*, 20 F.3d at 1556; *see also Shotwell*, 85 P.3d at 1048. Therefore, the State Constitutional protections afforded to Defendants in this Court's prior Decision are now unavailing when deciding whether Defendants violated the Constitution of the United States. U.S. Const. art. VI, cl. 2.

**C**

**Absolute Legislative Immunity**

Defendants argue Plaintiff's alleged claims are futile because Defendants have absolute legislative immunity for their legislative acts. (Defs.' Mem. 17-18.) Plaintiff claims Defendants' act of excluding Plaintiff from the JCLS, in violation of his federal civil and constitutional rights, does not meet the definition of a legislative act that would allow for Defendants to succeed on a defense of absolute legislative immunity. (Pl.'s Mem. 19.)

The Rhode Island Constitution provides legislators with a privilege "from inquiry into their legislative acts or into the motivation for actual performance of legislative acts that are clearly part of the legislative process." *Holmes*, 475 A.2d at 983. However, the United States Supreme Court has held that legislative immunity is not absolute and that certain activities of the legislators are outside the scope of legislative immunity. *United States v. Brewster*, 408 U.S. 501, 512 (1972). The Rhode Island Supreme Court agrees with the United States Supreme Court and has been clear that "actions by legislators outside the legislative process" are not protected. *Holmes*, 475 A.2d at

983. "To determine whether [the] challenged conduct is legislative . . . a court must consider the nature of the acts in question, rather than the motive or intent of the official performing them." *Maynard v. Beck*, 741 A.2d 866, 870 (R.I. 1999) (citing *Bogan v. Scott Harris*, 523 U.S. 44, 54 (1998)).

In *United States v. Brewster*, cited *supra*, the United States Supreme Court defined a "legislative act" for which the federal Speech and Debate Clause grants immunity as "an act generally done in Congress in relation to the business before it." *Brewster*, 408 U.S. at 512. Therefore, "the Speech or Debate Clause prohibits inquiry only into those things generally said or done in the House or the Senate in the performance of official duties and into the motivation for those acts." *Id*. The Rhode Island Supreme Court's explanation that "[l]egislators should not be questioned . . . for their acts in carrying out their legislative duties relating to the legislative process" is consistent with *Brewster*. *Holmes*, 475 A.2d at 983; *see Brewster*, 408 U.S. at 512. In *Marra v. O'Leary*, 652 A.2d 974 (R.I. 1995), the Rhode Island Supreme Court described "discussi[on] and voting on proposed legislation" by members and employees of the General Assembly's Joint Committee on Accounts and Claims as "precisely the type of activity that legislative immunity was intended to protect." *Marra*, 652 A.2d at 975 (citing *Holmes*, 475 A.2d at 984). Similarly, the *Holmes* court determined that "[i]nquiry by the court into the actions or motivations of the legislators in proposing, passing, or voting upon a particular piece of legislation . . . falls clearly within the most basic elements of legislative privilege." *Holmes*, 475 A.2d at 984.

While Defendants assert their actions fall within the definition of legislative acts that would allow for absolute legislative immunity, the Court is not persuaded that exclusion of an individual from a committee falls within that definition. *See* Defs.' Mem. 18; *see also Holmes*, 475 A.2d at 983. The facts of this case are similar to those seen in *Kucinich v. Forbes*, 432 F. Supp. 1101

(N.D. Ohio 1977), where a city councilor was temporarily suspended by the other city council members. *Kucinich*, 432 F. Supp. at 1107. There, the claims asserting violation of the plaintiff's federally protected civil and constitutional rights of free speech, equal protection, and due process were not barred by the doctrines of Separation of Powers and Political Question. *Id*. at 1109-10. Similarly, in *Bond v. Floyd*, 385 U.S. 116 (1966), the plaintiff was excluded from the Georgia House of Representatives because of statements he made in criticism of the federal government. *Bond*, 385 U.S. at 122-23. There, plaintiff's claims asserting a violation of his federally guaranteed right to free speech was actionable under federal law and not limited by the separation of powers. *Id*. at 126. Specifically, the Supreme Court of the United States stated:

> "The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy. The central commitment of the First Amendment, as summarized in the opinion of the Court in *New York Times v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964), is that 'debate on public issues should be uninhibited, robust, and wide-open.' . . . Just as erroneous statements must be protected to give freedom of expression the breathing space it needs to survive, so statements criticizing public policy and the implementation of it must be similarly protected. . . . The interest of the public in hearing all sides of a public issue is hardly advanced by extending more protection to citizen-critics than to legislators. Legislators have an obligation to take positions on controversial political questions so that their constitutents [*sic*] can be fully informed by them, and be better able to assess their qualifications for office; also so they may be represented in governmental debates by the person they have elected to represent them. We therefore hold that the disqualification of Bond from membership in the Georgia House because of his statements violated Bond's right of free expression under the First Amendment." *Id*. at 135-37.

The facts here differ slightly from those seen in *Kucinich* and *Bond*. In *Kucinich*, the Cleveland City Council members were in session debating the merits of legislation when Mr. Kucinich made statements that the Council President accepted money from the chief proponent of the legislation before the Council. *Kucinich*, 432 F. Supp. at 1104-05. Following these statements,

a vote was cast by the other Council members to suspend Mr. Kucinich, and the motion passed with twenty-six members in favor of the suspension and four against. *Id*. at 1107. The court ruled that the claims asserting violation of the plaintiff's federally protected civil and constitutional rights were not barred by the doctrines of Separation of Powers and Political Question, even though these events unfolded during a legislative session. *Id*. at 1109-10.

In *Bond*, Mr. Bond was elected as a Representative for the Georgia House of Representatives. *Bond*, 385 U.S. at 118. Prior to the Georgia House reconvening in January 1966, Mr. Bond made public statements opposing the draft and U.S. involvement in the Vietnam war. *Id*. at 119-23. Petitions were filed challenging Bond's right to be seated and, after hearings on the petitions, Mr. Bond was not allowed to take the oath of office and was not allowed to be seated as a member of the House. *Id*. at 123-25. The Supreme Court ruled that the Georgia House of Representatives deprived Mr. Bond of his federal constitutional rights because of his statements against the U.S. government and involvement in the Vietnam war. *Id*. at 131-37.

Here, similar to Mr. Bond who was deprived of his federal constitutional and civil rights because he was outspoken with his views, Plaintiff alleges that Defendants have excluded Plaintiff from participating in the JCLS because he is an outspoken member of the minority party. Second Am. Compl. ¶¶ 34-46. The facts here differ from both *Kucinich* and *Bond* because the defendants in those cases could make an argument of legislative immunity because there was a vote to exclude the plaintiffs. *See Kucinich*, 432 F. Supp. at 1107; *see also Bond*, 385 U.S. at 123-25. Defendants have not provided the Court with any evidence that the exclusion of Plaintiff from the JCLS falls under a legislative act.

As such, this Court does not view Plaintiff's asserted federal claims as futile, and Defendants have failed to show how the exclusion of Plaintiff from JCLS matters falls within the

definition of legislative acts. *See* Defs.' Mem. Therefore, this Court will not deny Plaintiff's Motion for Leave to Amend on the basis of Defendants' alleged legislative immunity for the exclusion of Plaintiff.

## IV

## Conclusion

Predicated upon the foregoing, Plaintiff's Motion for Leave to File a Second Amended Complaint is granted.

Prevailing counsel shall present an order consistent herewith with notice and an opportunity to be heard to counsel for all Defendants.

**RHODE ISLAND SUPERIOR COURT**
***Decision Addendum Sheet***

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| **TITLE OF CASE:** | **Blake A. Filippi v. Nicholas Mattiello, et al.** |
| **CASE NO:** | **PC-2020-00508** |
| **COURT:** | **Providence County Superior Court** |
| **DATE DECISION FILED:** | **February 8, 2022** |
| **JUSTICE/MAGISTRATE:** | **Silverstein, J. (Ret.)** |
| **ATTORNEYS:** | |
| **For Plaintiff:** | **Nicholas Gorham, Esq.** |
| **For Defendant:** | **Cassandra A. DeAngelis, Esq.; Joseph Avanzato, Esq.; Nicole J. Benjamin, Esq.; John A. Tarantino, Esq.; Rajaram Suryanarayan, Esq.; Lauren E. Jones, Esq.; Kathleen A. Hilton, Esq.; Marc Desisto, Esq.** |