STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

[FILED: July 12, 2024]

DAVID M. ROTH	:	
LINDA H. ROTH, and	:	
ES710 LLC,	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. WC-2023-0440**
	:	
STATE OF RHODE ISLAND and	:	
THE RHODE ISLAND COASTAL	:	
RESOURCES MANAGEMENT	:	
COUNCIL,	:	
***Defendants*.**	:	

DECISION

TAFT-CARTER, J. Before this Court for decision is the State of Rhode Island (State) and the Rhode Island Coastal Resources Management Council's (CRMC) (collectively, "Defendants") Motion for Summary Judgment[1] with respect to Plaintiffs David M. Roth, Linda H. Roth, and ES710 LLC's (collectively, "Plaintiffs") Amended Complaint challenging the constitutionality and validity of "An Act Relating to Waters and Navigation -- Costal Resources Management Council" (The Act) as codified in G.L. 1956 § 46-23-26 and the Plaintiffs' Objection.[2]

[1] Defendants filed a Motion to Dismiss Plaintiffs' Amended Complaint; however, because the parties presented matters outside the pleading, the Court converted it to a Motion for Summary Judgment as provided in Rule 56. *See* Super. R. Civ. P. 12(b).

[2] While Plaintiffs challenge the constitutionality of the entire Act, the preamble to the Act "is a prefatory explanation or statement purporting to state the reasons or occasion for a law or to explain in general terms the enactment's policy. . . . The preamble function is to explain and not to confer power or determine rights." 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* § 47:4 (7th ed. 2023).

Jurisdiction is pursuant to G.L. 1956 § 8-2-14, G.L. 1956 § 9-30-1, § 8-2-13, and Rule 56 of the Superior Court Rules of Civil Procedure.

I

Facts and Travel

A

The General Assembly enacted "An Act Relating to Waters and Navigation -- Coastal Resources Management Council" (The Act) in 2023. The Act amended Chapter 23 of Title 46 of the General Laws entitled Coastal Resources Management Council. The amendment, Section 26, redefined at which point the shore extends on its landward boundary.

At its core, The Act resets where "the land held in trust by the state for the enjoyment of all of its people ends and private property belonging to the littoral owners begins." *State v. Ibbison*, 448 A.2d 728, 729 (R.I. 1982). Until the passage of The Act, "the mean-high-tide line [MHT] [w]as the landward boundary of the shore for the purposes of the privileges guaranteed to the people of this state by our constitution." *Id.* at 732.

Pursuant to The Act "the public's rights and privileges of the shore may be exercised, where shore exists, on wet sand or dry sand or rocky beach, *up to ten feet (10') landward of the recognizable high tide line*." Section 46-23-26(c) (emphasis added). The recognizable high tide line was defined as "a line or mark left upon tidal flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface level at the maximum height reached by a rising tide." Section 46-23-26(b). It "may be determined by a line of seaweed, oil or scum . . . other physical markings . . . or other suitable means that delineate the general height reached by the water's surface level at a rising tide." *Id.* In the absence of physical "evidence," "the recognizable high tide line means the wet line on a sandy or rocky beach." *Id.*

Plaintiffs, as owners of adjoining beachfront properties located on East Beach in Westerly, Rhode Island filed a Complaint against the Defendants on September 25, 2023. *See* Compl. ¶ 2. David Roth and Linda Roth (collectively, "the Roths") purchased 3 Niantic Avenue, Westerly Rhode Island in 1988. *Id*. ¶ 16. ES710 LLC, a Florida limited liability company with its principal place of business in Hartford, Connecticut, owns 7 Niantic Avenue, in Westerly. *Id*. ¶ 17. Portions of the Plaintiffs' deed rights are within the recognizable high tide line. The deeds for each parcel designate "the Atlantic Ocean as the property's southerly boundary" so that the boundaries of their respective properties extend to the MHT line. *Id.* ¶¶ 3, 18, 40.

Plaintiffs allege that the State violated the separation of powers doctrine (Count I) and that it is liable for damages for inverse condemnation pursuant to article 1, section 16 of the Rhode Island Constitution (Count V). *See id*. ¶¶ 43-58, 88-95. Plaintiffs also brought claims against the Defendants alleging violations of article 1, section 16 of the Rhode Island Constitution's prohibition on takings (Count II) and the Takings Clause of the Fifth Amendment to the United States Constitution (Count III). *See id*. at ¶¶ 59-81. Finally, Plaintiffs ask the Court to enjoin Defendants from enforcing The Act (Count IV). *See id*. ¶¶ 82-87.

On January 31, 2024, the State filed its Motion to Dismiss, along with multiple exhibits, and a memorandum of law (Defs.' Mem.) pursuant to Rule 12(b)(6) of the Rhode Island Rules of Civil Procedure. This Court converted State's Motion to Dismiss to a Motion for Summary Judgment pursuant to Rule 56. *See* Rule 12(b) ("If, on a motion . . . to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56"). On April 12, 2024 Plaintiffs filed an Objection to Defendants' Motion to Dismiss (Pls.' Obj.) Defendants filed a reply on April 29, 2024. On May

17, 2024, Defendants filed Supplemental Exhibits in Support of its Converted Motion for Summary Judgment. This Court heard consolidated arguments for this matter and the similar, yet distinct *Stilts*[3] case, on May 20, 2024.

B

The public trust doctrine preserves the public rights of fishery, commerce, and navigation into Rhode Island waters. *Greater Providence Chamber of Commerce v. State*, 657 A.2d 1038, 1041 (R.I. 1995). As such, the state holds title to all land below the high-water mark in a proprietary capacity for the benefit of the public. *Id*. This principle is well established and has been recognized since common law. *Id*. at 1042.

The Rhode Island Constitution protects the public's right to access the shore. Article I section 17 of the Rhode Island Constitution as amended by Art. XXXVII, secs. 1-2, currently provides:

> "The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore; and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state." R.I. Const. art. I, § 17.

[3] *Stilts, LLC v. State of Rhode Island*, WC-2023-0481 (Oct. 6, 2023).

A right of passage along the shore is among the privileges enjoyed by the citizens of this state. *Jackvony v. Powel*, 67 R.I. 218, 21 A.2d 554, 558 (1941); *Ibbison*, 448 A.2d at 730.

The rights of access to the shore, as provided in the Rhode Island Constitution, are clearly protected; however, such protection is not untethered. Significantly, in 1982, the MHT was established to be "the landward boundary of the shore for the purposes of the privileges guaranteed to the people of this state by our constitution." *Ibbison*, 448 A.2d at 732.[4] This fixed "the point at which the land held in trust by the state for the enjoyment of all its people ends and private property belonging to littoral owners begins." *Id*. at 729. "The shoreline" was determined to be the "arithmetic average of high-water heights observed over an 18.6-year Metonic cycle." *Id*. at 730. This "is the line that is formed by the intersection of the tidal plane of mean high tide with the shore." *Id*. The definition of MHT is '"given by the United States Coast and Geodetic Survey."' *Id*. at 732 (quoting *Borax Consolidated v. City of Los Angeles*, 296 U.S. 10, 26 (1935)). The "mean-high-tide line represents the point that can be determined scientifically with the greatest certainty . . . [and that] a line determined over a period of years using modern scientific techniques is more precise than a mark made by the changing tides driven by the varying forces of nature." *Ibbison*, 448 A.2d at 732.

The law as established by the Rhode Island Supreme Court was in accord with the United States Supreme Court decision with respect to tide lines. Years before *Ibbison*, the United States Supreme Court held that, "[t]he tideland extends to the high-water mark." *Borax Consolidated*,

[4] The defendants in *Ibbison* were traveling along the beach in Westerly, Rhode Island as part of a beach-clean-up operation when they were stopped by a littoral owner and a patrolman of the Westerly police department. 448 A.2d at 729. The owner believed that "his private property extended to the mean-high-water line" and that the defendants "were not permitted to cross the landward side of [that line]." *Id*. However, the defendants "believed that their right to traverse the shore extended to the high-water mark," which was a "visible line on the shore indicated by the reach of an average high tide and further indicated by drifts and seaweed along the shore." *Id*.

296 U.S. at 22. The *Borax* Court explained that "[t]his does not mean . . . a physical mark made upon the ground by the waters; it means the *line of high water as determined by the course of the tides*." *Id*. (emphasis added). The Court went on, explaining that:

> "'Mean high water at any place is the average height of all the high waters at that place over a considerable period of time,' and the further observation that 'from theoretical considerations of an astronomical character' there should be a 'periodic variation in the rise of water above sea level having a period of 18.6 years[.]'" *Id*. at 26-27.

As a result of *Ibbison*, 448 A.2d at 732, and *Borax Consolidated*, 296 U.S. at 26-27, Rhode Island citizens were permitted to access the shore up to the MHT line and private property began landward of the MHT line.[5]

II

Standard of Review

"'Summary judgment is appropriate when no genuine issue of material fact is evident from 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any,' and the motion justice finds that the moving party is entitled to prevail as a matter

[5] After one-hundred forty-three years, the Rhode Island Constitution of 1843 was redrafted and revised at the 1986 Constitutional Convention giving Rhode Islanders a new and modern constitution. (Ex. B attached to Pls.' Compl., at ii.) The Convention reviewed more than two-hundred ninety resolutions and adopted twenty-six for submission to the people in the form of fourteen ballot questions. *Id*. The 1986 Constitutional Convention rejected a resolution defining the shore, as "that area below the tidal high water or vegetation line[.]" *See* Ex. A attached to Pls.' Compl. The Comment to the *Annotated Constitution of the State of Rhode Island and Providence Plantations*, published by the Rhode Island Secretary of State, confirms rejection of the proposed "shore" language: "[a]fter long deliberation, the committee left the definition of the term 'shore' for judicial determination." *See* Compl., Ex. B: Annotated Constitution at 10. Accordingly, *Ibbison*'s definition of "the shore" remained controlling. *See Northeastern Corporation v. Zoning Board of Review of Town of New Shoreham*, 534 A.2d 603, 606 (R.I. 1987) (explaining the "well[-]established principle that in this jurisdiction the line of demarcation that separates the property interests of the waterfront owners from the remaining populace of this state is the mean high-tide line.").

of law." *Beacon Mutual Insurance Co. v. Spino Brothers, Inc.*, 11 A.3d 645, 648 (R.I. 2011); *see* Super. R. Civ. P. 56. The Court views '"the evidence in the light most favorable to the nonmoving party."' *Beauregard v. Gouin*, 66 A.3d 489, 493 (R.I. 2013) (quoting *In re Estate of Dermanouelian*, 51 A.3d 327, 331 (R.I. 2012)).

Moreover, "the moving party bears the initial burden of establishing the absence of a genuine issue of fact." *McGovern v. Bank of America, N.A.*, 91 A.3d 853, 858 (R.I. 2014) (citing Robert B. Kent et al., *Rhode Island Civil Procedure* § 56:5, VII-28 (West 2006)). The burden then shifts to the "nonmoving party [who] bears the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions." *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013).

"'[C]ompetent evidence' . . . is generally presented on summary judgment in the form of 'pleadings, depositions, answers to interrogatories, . . . admissions on file, . . . [and] affidavits.'" *Flynn v. Nickerson Community Center*, 177 A.3d 468, 476 (R.I. 2018) (citations omitted.) "Our Supreme Court permits a motion justice to rule on motions for summary judgment when faced with pure questions of law and statutory interpretation." *Alves v. Cintas Corporation No. 2*, No. PC-2009-2412, 2013 WL 3722200, at *7 (R.I. Super. July 8, 2013). (citing *DelSanto v. Hyundai Motor Finance Co.*, 882 A.2d 561, 564 n.9 (R.I. 2005)).

III

Analysis

A

Unconstitutional Taking

The Plaintiff's underlying action challenges the constitutionality of The Act. It is argued that The Act constitutes a *per se* taking of the Plaintiffs' properties without just compensation. *See* Compl.[6] In its Motion, Defendants assert Article 1 Section 16 of the Rhode Island Constitution "provides that the General Assembly's exercise of its powers to protect the people's rights of fishery and privileges of the shore under Section 17 shall not be deemed a taking under the Rhode Island Constitution." *See* Defs.' Mem. 21; *see also* R.I. Const. art. 1, § 16. Further, Defendants assert that The Act is consistent with background principles of state law set forth in the Rhode Island Constitution. *See id.* at 24-27. In support, Defendants maintain that "the government does not take a property interest when it merely asserts a 'pre-existing limitation upon the land owner's

[6] With the exception of the separation of powers claim, Plaintiffs' claims allege an unconstitutional taking in violation of state or federal constitutions (Counts II and III) with an additional claim that The Act effectuated a taking by way of inverse condemnation (Count V). The case law and analysis with respect to Counts II, III, and V involve similar concepts and doctrines. The Defendants argue that *Alegria v. Keeney*, 687 A.2d 1249 (R.I. 1997) stands for the proposition that a plaintiff's sole recourse is a federal takings claim when article I, section 16 of the Rhode Island Constitution is implicated. (Defs.' Mem. 23.) A proper analysis demonstrates that the Fifth Amendment to the United States Constitution was the starting point and that the Rhode Island Constitution "*also* requires just compensation when private property is taken for public purposes." *Id.* at 1252 (emphasis added); *Marek v. Rhode Island*, 702 F.3d 650, 654 (1st Cir. 2012) ("Rhode Island courts recognize a cause of action for inverse condemnation . . . [and] the plaintiff would have had to pursue this procedure fully in a state court before a federal court could exercise jurisdiction over his takings claim."). The holding in *Alegria* did not reject "the takings claim based on the provisions in the Rhode Island Constitution that [Defendants argue] would preclude its takings claim in Rhode Island courts." *Soscia Holdings, LLC v. Rhode Island*, 677 F.Supp. 3d 55, 67 (D.R.I. June 15, 2023). Therefore, the Court considers these claims together before addressing Plaintiffs' separation of powers claim.

title[.]'" *Id*. at 24. (quoting *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1028-29 (1992)). Defendants claim that "[t]he people's rights of fishery and privileges of the shore, as recognized and guaranteed by the Rhode Island Constitution, are well-established principles of Rhode Island law that necessarily 'inhere in the title[s]' of oceanfront lots like [Plaintiffs'.]" *Id*. at 27.

Pursuant to the doctrines of "custom" or "customary rights[,]" Defendants assert that "the historical fact that the public has traditionally entered and used dry sand beach areas creates legally enforceable public rights to enjoy the continued use of those areas—notwithstanding that they may be privately owned." *Id*. at 28. Further, Defendants assert that "the public trust doctrine[] independently supports the General Assembly's decision to codify the public's rights and privileges through the Act." *Id*. at 32. Defendants insist that the "public trust doctrine is presumed to preserve the public's right to use those [shoreline] areas [that have been transferred to private parties] for purposes of fishery and navigation[.]" *Id*. at 33.

In response, Plaintiffs argue that "the Act is a *per se* physical taking under both state and federal constitutions." (Pls.' Obj. at 21.) Plaintiffs reason that the Act "grants a public right of access, occupation, and use across the Roths' private property" and "appropriates a right of access to physically invade the Roths' private property, without compensation[.]" *Id*. They insist that the background principles argument fails because The Act did more than merely assert a pre-existing limitation or right—rather, "the Act expand[ed] that pre-existing limitation on the Roths' title from the MHT line to ten feet inland of the [recognizable high tide] line." *Id*. at 24. Similarly, Plaintiffs additionally insist that "[t]he Act does not simply codify the public trust doctrine[,]" but rather, "it extends the public's right to access historically private property to ten feet landward of the [recognizable high tide] line." *Id*. at 27.

Finally, Defendants argue that the inverse condemnation claim must fail because it is duplicative of Plaintiffs' taking claim in Count II, to which Defendants aver that "Plaintiffs cannot state a viable takings claim[.]" (Defs.' Mem. at 39.) Defendants insist that "Plaintiffs' inability to assert a valid Fifth Amendment claim for a *per se* physical taking under Count III is also dispositive of their inverse condemnation claim under Count V." *Id*. at 40. Plaintiffs assert that "the Act has caused the serious and substantial impairment of [their] use and enjoyment of their properties." (Compl. ¶ 89.) They aver that The Act requires them to "permit public trespassers to enter their properties" and the "physical trespass has and will continue to seriously and substantially impair the Plaintiffs' use and enjoyment of their properties." *Id*. ¶ 94.

The Takings Clause, article I, section 16 of the Rhode Island Constitution provides, like its federal counterpart, that "[p]rivate property shall not be taken for public uses, without just compensation." R.I. Const. art. I, § 16; *see also* U.S. CONST. amend. V. ("nor shall private property be taken for public use, without just compensation"). "When the government physically acquires private property for a public use, the Takings Clause imposes a clear and categorical obligation to provide the owner with just compensation." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021) (citing *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 322 (2002)). "The determination of whether a taking has occurred is a question of law." *Harris v. Town of Lincoln*, 668 A.2d 321, 327 (R.I. 1995); *see also* 11A Eugene McQuillan, *Municipal Corporations* § 32.132.30 (3d. ed. 1991).

A *per se* taking occurs when "a regulation results in a physical appropriation of property[.]" *Cedar Point Nursery*, 594 U.S. at 149. "[G]overnment-authorized invasions of property—whether by plane, boat, cable, or *beachcomber*—are physical takings requiring just compensation." *Id*. at 152 (emphasis added). "Hence, depriving a property owner of physical autonomy over his or her

property is tantamount to taking away a part of the property itself." *Harris*, 668 A.2d at 327; *see also Kaiser Aetna v. United States*, 444 U.S. 164, 178 (1979) ("the Government's attempt to create a public right of access to the improved pond goes so far beyond ordinary regulation or improvement for navigation as to amount to a taking").

"The inverse-condemnation cause of action provides landowners with a means of seeking redress for governmental intrusions that, if performed by private citizens, would warrant analysis under the law of trespass." *Harris*, 668 A.2d at 327. The condemnation action is "inverse" because the landowner "claims that a government entity has taken his [or her] property but has not paid him the compensation to which he or she is entitled." (Daniel R. Mandelker & Michael Allan Wolf, *Land Use Law* § 8.21 (6th ed. LexisNexis Matthew Bender).) The "doctrine of inverse condemnation is predicated on the proposition that a taking may occur without such formal proceedings [as the exercise of eminent domain]." *First English Evangelical Lutheran Church of Glendale v. Los Angeles County, California*, 482 U.S. 304, 316 (1987).

"Determination of when a landowner obtains title to property in a takings case is necessary for determination of the 'bundle of rights' that the landowner owned at the time of the taking." *Palazzolo v. Coastal Resources Management Council*, No. C.A. 88-0297, 1997 WL 1526546, at *5 (R.I. Super. Oct. 24, 1997). The analysis, therefore, begins and ends with an inquiry "into the nature of the owner's estate" and whether "the proscribed use interests" were a part of the title to begin with. *Lucas*, 505 U.S. at 1027. "The ownership of property creates a [bundle of rights] including the right to possession, to exclude others, to use and enjoy, and to dispose of the property." *Palazzolo*, 1997 WL 1526546, at *4 (citing *Loretto v. Teleprompter Manhattan CATV Corporation*, 458 U.S. 419, 435 (1982)). Furthermore, "[t]he power to exclude has traditionally

been considered one of the most treasured strands in an owner's bundle of property rights." *Loretto*, 458 U.S. at 435; *Harris*, 668 A.2d at 327.

The General Assembly in enacting The Act, appropriated a public right of access onto private property when it designated up to 10' landward of the recognizable high tide line as the access point for the public's rights and privileges. *See Cedar Point Nursery*, 594 U.S. at 149. Therefore, The Act, in disposing of the MHT line, extended the point of public access over the Plaintiffs' private property. Furthermore, rather than restraining the Plaintiffs' use of their own property, The Act extends permanently a right of access to the public and inhibits Plaintiffs' right to exclude. The extension of the access point clearly results in the taking of "an interest in property." *Cedar Point*, 594 U.S. at 154.[7]

The Defendants, nonetheless, maintain that the proscribed use interests were "preexisting limitations" and therefore The Act is constitutional. *See Lucas*, 505 U.S. at 1027-28. In other word, the "proscribed use interest" was part of the Plaintiffs' title at the time of purchase. *Id.* at 1027. This argument fails because the ramification of The Act in shifting the boundary between public shore access and private property resulted in a confiscation of private property held by the Plaintiffs since the date of purchase. The preexisting limitations of public access on the Plaintiffs' properties were to the MHT line. The Act, therefore, reduced the Plaintiffs' "bundle of rights" inherent in the ownership of property. Therefore, by expanding the preexisting boundary line to ten feet landward of the recognizable high tide line, The Act confiscated the Plaintiffs' property resulting in an unconstitutional taking. *See* § 46-23-26(b); *see also Lucas*, 505 U.S. at 1003.

[7] To the extent the Defendants argue that this Court should use the test used by the United States Supreme Court for regulatory takings in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), the Court declines the invitation. *See* Defs.' Mem. 40. "Whenever a regulation results in a physical appropriation of property, a *per se* taking has occurred, and *Penn Central* has *no place*." *Cedar Point Nursery*, 594 U.S. at 149 (emphasis added).

B

Public Trust Doctrine

The public trust doctrine originates "from the common law principle that land conveyed by tidal waters belonged to the King but was held for use by all the people." Nichols on Eminent Domain, § 5.05[7][c][ii] (Matthew Bender, 3rd ed.) The doctrine "dictates that 'the state holds title to all land below the high-water mark in a proprietary capacity for the benefit of the public.'" *Champlin's Realty Associates, L.P. v. Tillson*, 823 A.2d 1162, 1165 (R.I. 2003) (quoting *Greater Providence Chamber of Commerce v. State*, 657 A.2d 1038, 1041 (R.I. 1995)). It aims to "preserve [] the public rights of fishery, commerce, and navigation in these waters." *Id*. In 1982, the *Ibbison* Court confirmed that the term "high-water mark" is interchangeable with the "mean high tide" line. 448 A.2d at 730; *see New England Naturist Association, Inc. v. Larsen*, 692 F. Supp. 75, 78 (D.R.I. 1988) ("Under Rhode Island law, its boundary is the mean high-water line which is defined as the intersection of the tidal plane of mean high tide . . . with the shore."); *see also Palazzolo v. State*, No. WM 88-0297, 2005 WL 1645974, at *12 (R.I. Super. July 5, 2005) ("Rhode Island's long held public policy reserving ownership of that property below the mean high-water mark in the state for the benefit of all citizens is an ancient doctrine.").

The State's authority over tidal land, however, is constrained by constitutional limitations. *Town of Warren v. Thornton-Whitehouse*, 740 A.2d 1255, 1259 (R.I. 1999); *see Greater Providence Chamber of Commerce,* 657 A.2d at 1042. Here, the State and Federal constitutional limitations of the takings and separation of powers clauses constrain the General Assembly's authority with respect to defining the "shore" in article I, section 17. Therefore, Defendants' reliance on the public trust doctrine fails.

Defendants further argue that The Act does not effectuate a taking because of the General Assembly's express plenary powers and police powers pursuant to Article 1 Section 16. (Defs.' Mem. 21-22.) Plaintiffs argue that even if the General Assembly has power to regulate privileges of the shore as defined under article I, section 17, that power does not extend to defining the term "shore" or where the shore exists. (Pls.' Obj. 18.) Plaintiffs further argue that the Defendants or the General Assembly may not exercise police powers in violation of other constitutional restrictions. *Id*.

The power of the General Assembly is "plenary and unlimited, save for the textual limitations to that power that are specified in the Federal or State Constitutions." *City of Pawtucket v. Sundlun*, 662 A.2d 40, 44 (R.I. 1995) (citing *Kass v. Retirement Board of Employees' Retirement System of the State of Rhode Island*, 567 A.2d 358, 360 (R.I. 1989)). The General Assembly's power to regulate fishery and the privileges of the shore are thus constrained by the textual limitations that are specified in the Federal or State Constitutions. *See Riley v. Rhode Island Department of Environmental Management*, 941 A.2d 198, 205 (R.I. 2008). Furthermore, "[a] claim that action is being taken under the police power of the state cannot justify disregard of constitutional inhibitions." *Panhandle Eastern Pipe Line Co. v. State Highway Commission of Kansas*, 294 U.S. 613, 619 (1935).

Therefore, Defendants' argument that The Act was a valid exercise of the General Assembly's plenary and police powers fails due to the existing constitutional limitations on those powers pursuant to the takings and separation of powers clauses. Accordingly, this Court denies Defendants' Motion for Summary Judgment as to Counts II, III, and V.

C

Separation of Powers

Defendants argue The Act is a valid exercise of the General Assembly's express, plenary power. (Defs.' Mem. 15.) The Defendants assert that article I, sections 16 and 17 foreclose any separation of powers argument. (Defs.' Mem. 16.) Therefore, the General Assembly, in passing the Act, "acted well within its authority" pursuant to article I, sections 16 and 17 of the Rhode Island Constitution by "setting the public policy of the State and enacting statewide laws of general application." *Id.* at 15-17. Defendants assert that The Act "provides a new legal standard" and "does not deprive courts of their adjudicatory role[.]" *Id.* at 18. Thus, it is "entirely consistent with the currently operative provisions of the Rhode Island Constitution." *Id.*

Plaintiffs, however, aver that The Act violates the separation-of-powers doctrine because the General Assembly assumed a "*function of this Court*." (Pls.' Obj. at 11) (emphasis in original). In support, Plaintiffs reason that the Act does more than "simply articulate or otherwise clarify the scope of the public's 'privileges' of the shore" because "the Act seeks to define 'where' the public's 'privileges' of the shore may be exercised." *Id.* at 19.

"The doctrine of separation of powers is an inherent and integral element of the republican form of government . . . that prohibits the usurpation of the power of one branch of government by a coordinate branch of government." *Quattrucci v. Lombardi*, 232 A.3d 1062, 1065-66 (R.I. 2020) (internal citations omitted). The doctrine is codified in article V of the Rhode Island Constitution, which states that "[t]he powers of the government shall be distributed into three separate and distinct departments: the legislative, executive and judicial." R.I. CONST. art. V. A violation of article V occurs when one branch "interfere[s] impermissibly with the other's performance of its constitutionally assigned function" or "when one branch assumes a function

that more properly is entrusted to another." *Woonsocket School Committee v. Chafee*, 89 A.3d 778, 793 (R.I. 2014).

"In some cases, it is difficult to draw and apply the precise line separating the different powers of government which, under our political systems, federal and state, are, without exception, carefully distributed between the legislative, the executive, and the judicial departments." *Taylor v. Place*, 4 R.I. 324, 332 (1856); *see Weeks v. Personnel Board of Review of Town of North Kingstown*, 118 R.I. 243, 249, 373 A.2d 176, 178-79 (1977) (Doris, J. Dissenting) ("It is an established and fundamental principle of constitutional law that one department of government cannot interfere with or encroach on either of the other departments.").

"The judicial power of this state shall be vested in one supreme court, and in such inferior courts as the general assembly may, from time to time, ordain and establish." R.I. CONST., art. X, § 1. Accordingly, "all judicial power is reserved to the courts and has been since the adoption of the state constitution in 1842." *Quattrucci*, 232 A.3d at 1066*; see also Lemoine v. Martineau*, 115 R.I. 233, 238, 342 A.2d 616, 620 (1975) ("Since the adoption of our state's constitution in 1842, it has been a well[-]established and accepted principle that the General Assembly cannot rightfully exercise judicial power. That power is conferred only upon the courts and is necessarily prohibited to the Legislature."). Our Supreme Court has "defined the exercise of judicial power as the control of a decision in a case or the interference with its progress, or the *alteration of the decision once made*." *Lemoine*, 115 R.I. at 238, 342 A.2d at 620 (emphasis added). "To affect to decide, or to control the decision, of a case or controversy which has arisen at law or in equity, or to interfere with its progress, or to alter its condition in any way, is to assume the exercise of judicial power; and that, too, although the subject of the case or controversy might have been such in its nature, that the legislature could have acted upon it, had it seen fit, without the aid of the courts." *Taylor*,

4 R.I. at 337.

Furthermore, an attempt to alter a decision once made by the Superior Court infringes "on the exercise of judicial power by infringing on powers that are central or essential to the operation of a coordinate branch." *Quattrucci*, 232 A.3d at 1067 (internal citations omitted). This "attempt to skirt the judgment of a court in this state" by the General Assembly "clearly 'disrupts the coordinate branch in the performance of its duties.'" *Id.* (internal citations omitted).

Clearly, our Supreme Court is "the final interpreter of the Rhode Island Constitution and state law." *McKenna v. Williams*, 874 A.2d 217, 225 (R.I. 2005)*; see also Benson v. McKee*, 273 A.3d 121, 133-34 (R.I. 2022) ("The General Assembly enacts law; it does not interpret or construe the constitution—that is the function of this Court."). In 1982, our Supreme Court declared "the [MHT] line as the landward boundary of the shore for the purposes of the privileges guaranteed to the people of this state by our constitution." *Ibbison*, 448 A.2d at 732. The Act made several legislative findings, including *Ibbison's* definition of the public's rights to the shore as the MHT or MHW line. (Ex. A attached to Defs.' Mem. § 1(5); *see* P.L. 2023, ch. 340-41, § 1. The Act stated that retaining the MHT line rule employed by the *Ibbison* court has restricted the public's rights and results in the public having shoreline access at or near the time of low tide. *Id*. § 1(iii). The Act further stated that the General Assembly was obligated to clarify Article 1 Section 17 of the Rhode Island Constitution. *Id*. § 1(6). In attempting to alter *Ibbison*, the General Assembly improperly "assume[d] a function that more properly is entrusted to [the Court]." *Chafee*, 89 A.3d at 793.

In construing acts of the General Assembly, '"we are to look not only at the language of the preamble, or of any particular clause, but at the language of the whole act. And if we find in the preamble, or in any particular clause, an expression not so large and extensive in its import as

those used in other parts of the act, and upon a view of the whole act we can collect from the more large and extensive expressions used in other parts the real intention of the legislature, it is our duty to give effect to the larges expressions, notwithstanding the phrases of less extensive import in the preamble or in any particular clause."' *MacDonald v. New York, N.H. & H.R. Co.*, 23 R.I. 558, 51 A. 578, 582-83 (1902) (quoting *Bywater v. Brandling*, 1828 WL 2853, 108 E.R. 863, 870 (1828)); *see* 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* § 47:4 (7th ed. 2023).

Defendants' assertions that The Act "merely provides a new legal standard" and is "entirely consistent with the currently operative provisions of the Rhode Island Constitution" fail. (Defs.' Mem. 18.) Rather, this Court is satisfied that The Act impermissibly attempts to alter the Supreme Court's decision in *Ibbison* by changing the boundary line from the MHT line to the "seaweed" line. *See Lemoine,* 115 R.I. at 238, 342 A.2d at 620; § 46-23-26; *see also Purdie v. Attorney General*, 732 A.2d 442, 447 (N.H. 1999) ("the legislature went beyond the[] common law limits by extending public trust rights to the highest high water mark" because "property rights created by the common law may not be taken away legislatively without due process of law"). The *Ibbison* court established an identifiable and reliable boundary that uses scientific techniques. 448 A.2d at 732. The Act uses a "recognizable high tide line" that fluctuates and is whimsical and inconsistent.

Accordingly, this Court concludes that The Act violates the doctrine of separation of powers. Thus, this Court denies Defendants' Motion for Summary Judgment as to Count I.

D

Injunctive Relief

Lastly, Defendants aver that "Plaintiffs cannot maintain an independent cause of action for injunctive relief." (Defs.' Mem. 39.)

"An injunction is a remedy, not a cause of action." *Long v. Dell, Inc*., 93 A.3d 988, 1004 (R.I. 2014). Because this Court has denied the Defendants' Motion for Summary Judgment, the underlying causes of action remain and the remedy may be available. *See id*. (explaining that if there are "underlying cause[s] of action remaining," a party has the "right to seek the remedy of injunctive relief"). Accordingly, this Court denies Defendants' Motion for Summary Judgment as to Count IV.

IV

Conclusion

For the reasons stated above, Plaintiffs' claims do not fail as a matter of law and Defendants' Motion for Summary Judgment is DENIED as to Counts I, II, III, IV, and V.

Counsel shall prepare the appropriate order.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**David M. Roth, Linda H. Roth, and ES710 LLC v. State of Rhode Island and The Rhode Island Coastal Resources Management Council**
CASE NO:	**WC-2023-0440**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**July 12, 2024**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiffs:	**Gerald J. Petros, Esq.**
For Defendants:	**Sarah Whynne Finnegan, Rice, Esq.; Jeff B. Kidd, Esq.**