

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**SUPERIOR COURT**

**PROVIDENCE, S.C.**

ELIZABETH CADY STANTON  
TRUST,

Plaintiff,

v.

PETER NERONHA, in his official  
capacity as Attorney General of  
Rhode Island, |

Defendant.

**COMPLAINT FOR DECLARATORY  
AND MANDAMUS RELIEF**

Civil Action No. 22-cv-

**INTRODUCTION**

1. This is an action for declaratory judgment pursuant to Rhode Island Super. Ct. R. Civ. P. 57 and the Uniform Declaratory Judgment Act, G.L. 1956, § 9-30-1 to obtain a judicial declaration that the Equal Rights Amendment (“ERA”) is valid and enforceable. Plaintiff also seeks mandamus relief in the form of a court order requiring Defendant to identify and repair all sex discriminatory laws, policies, and programs in Rhode Island, to bring them into compliance with the ERA because Plaintiff has a clear legal right to the relief sought, Defendant has a ministerial duty to perform the requested act without discretion to refuse, and Plaintiff has no plain, speedy and adequate remedy at law. *New England Development LLC v. Berg*, 913 A.2d 363, 368 (R.I. 2007).

2. This matter is filed with a sense of urgency because a draft decision of the United

States Supreme Court was recently released, indicating that the Court is poised to overturn *Roe v. Wade*, 410 U.S. 113 (1973), a vitally important legal precedent establishing women's fundamental constitutional rights to bodily integrity and personal autonomy in the context of medical decision-making regarding whether to bear children. *Thomas E. Dobbs, et al. v. Jackson Women's Health Organization, et al.*, ("leaked opinion.") The leaked opinion overturning *Roe v. Wade* includes the statement, "no such right to abortion is implicitly protected by any constitutional provision ..." *Thomas E. Dobbs, et al. v. Jackson Women's Health Organization et al.*, at 5. This statement conflicts with the plain language of the ERA, which guarantees "equality of rights ... based on sex" as there is a constitutional provision that protects abortion - the ERA. The ability to become pregnant and have abortions is obviously a sex characteristic. Indeed, the Supreme Court itself recognized in *Planned Parenthood v. Casey*, 505 U.S. 833, 856 (1992) that "the ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their ability to control their reproductive lives." Clearly reproductive health regarding the decision to have a child, or not, is a sex-based issue, yet the Supreme Court's draft opinion in *Dodd* states that "*no ... right*" in the Constitution protects abortion. The draft opinion is wrong. The ERA *does* afford women protection for their abortion rights because abortion is inherently sex-based. By declaring the ERA's validity, this Court will prevent the Supreme Court from overruling *Roe* and protect women's basic human right to control their own lives.

3. The American people overwhelmingly agree that women are fully equal persons under the United States Constitution. Speaking through the states, the people finally ratified the ERA when the Commonwealth of Virginia became the last necessary state to ratify on January

27, 2020, establishing the ERA as our nation's Twenty-Eighth Amendment. It states, "Equality of rights shall not be denied or abridged by the United States or by any State on account of sex."

4. By its terms, the ERA became enforceable January 27, 2022, two years after ratification. The two-year delay between ratification and enforceability is designed to give state officials time to repair laws, policies, and programs that do not comply with the ERA.

5. Defendant Peter Neronha has stated that the ERA is now part of the Constitution. In fact, only days after the ERA was ratified in January 2020, Defendant signed a letter to Congress along with many other Attorneys General around the country stating that the ERA is valid because it has satisfied all the Article V requirements to become an amendment. In this same letter, the Defendant also states that the ERA's purported ratification deadline is irrelevant because a deadline cannot "invalidate a ratified amendment."

6. Notwithstanding Defendant's official statements that the ERA is now law, he has failed to take any steps to repair laws, policies and programs in Rhode Island that do not comply with the ERA, including 1) Gen. Law § 9-25-17, which states "No execution shall issue against the body of any female on any judgment founded on a contract where the debt or damages do not exceed fifty dollars (\$50.00); but in such case, the execution shall issue against the goods and chattels and real estate of the female against whom the judgment shall have been rendered;" 2) R.I. Gen. Law § 10-10-4, which states "No female shall be arrested on original writ in any action founded on contract;" 3) R.I. Gen. Law § 41-5.2-12, which states that "(a) Male mixed martial artists shall wear a groin protector of their own selection, of a type approved by the commissioner. (b) Female mixed martial artists are prohibited from wearing groin protectors. (c) Female mixed martial artists shall wear a chest protector during competition. The chest protector shall be subject to the approval of the commissioner;" 4) R.I. Gen. Law § 15-4-14, which states

that “(a) In all actions, suits, and proceedings by or against a married woman, she shall sue and be sued alone. (b) In all actions for injuries to the person, a married woman may sue in her own name and may include in the suit a claim for medical and/or hospital and/or dental expenses incurred in her behalf either in her name or that of her husband. (c) If the husband pays any or all of his wife's bills, the party responsible for the injuries may reimburse him directly and will not be required to pay the bills again.” This is only a sampling of the many sex discriminatory laws, policies, and programs that Defendant has failed to bring into compliance with the ERA.

7. This action seeks all necessary writs and court orders that declare what the law is, and why the Defendant must immediately take steps to begin repairing all sex discriminatory laws, policies, and programs in Rhode Island, and bring them into full compliance with the ERA. When the ERA is validated, *Roe v. Wade* will be better protected against the current threat that it will be overturned, and all similar threats in the future.

### **PARTIES**

8. Defendant Peter Neronha is the Attorney General for the State of Rhode Island. He is responsible for ensuring that Rhode Island is fully compliant with the United States Constitution.

9. Plaintiff Elizabeth Cady Stanton Trust (“ECST”) is a national 501(c)(3) organization whose mission includes education and advocacy for women’s constitutional equality and rights. ECST is widely known as a leader in the women’s rights movement. It is named for famed women’s rights activist Elizabeth Cady Stanton, who authored the historic Declaration of Sentiments in 1848, which was presented at the well-known Women’s Rights Convention at Seneca Falls, New York. The Declaration of Sentiments was the first effort by women in the United States to establish their constitutional equality. Its primary sentiment reads: “All men and

women are created equal.” The Declaration of Sentiments was styled after the Declaration of Independence, which had been written by men decades earlier. The Declaration of Sentiments was meant as a protest against the exclusion of women as fully equal persons under the Constitution. ECST was founded by Stanton’s great-great-granddaughter Coline Jenkins and Marsha Weinstein in 1999 and has been working toward the establishment of women’s equality ever since. ECST performs its mission throughout the United States and has conducted many events in the state of Rhode Island.

### **JURISDICTION AND VENUE**

10. Pursuant to RI Gen L § 8-2-16, the Superior Court has original jurisdiction over all extraordinary writs, including writs of mandamus. In addition, the Superior Court has exclusive jurisdiction on any equity action pursuant to RI Gen L § 8-2-13.

11. Venue is proper in this Court because the Defendant’s official place of business is in Providence, Rhode Island.

### **FACTS**

12. In 1972, Congress proposed the Equal Rights Amendment as an amendment to the United States Constitution and sent it to the states for ratification.

13. Article V of the Constitution dictates that an amendment’s ratification is determined solely by the state-ratification process and provides that an amendment “shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states...” Nothing more is needed. Once three-fourths of the States ratify an amendment, it becomes law.

14. On January 27, 2020, the ERA became “valid to all intents and purposes” because Virginia became the last of three-fourths of the States to ratify it.

15. As set forth above, Rhode Island has many laws that discriminate or classify on the basis of sex, but the Defendant has taken no steps to bring those laws into compliance with the ERA, leaving women in Rhode Island vulnerable to unequal protection of all laws, including laws that protect women's right to decide whether to bear children.

16. The ERA is critically important to democracy. Without it, half the population of the United States enjoys less than full citizenship because the Fourteenth Amendment's Equal Protection Clause does not equally protect women from sex-based classifications and discrimination.

17. Plaintiff and all women in Rhode Island have been injured, and continue to be injured, by Defendant's failure to bring all Rhode Island laws, policies, and programs into compliance with the ERA as this interferes with the ERA's vitality.

18. Plaintiff and all women have standing to seek a remedy because they have a protectable legal interest in the ERA's continued "vitality." *Idaho v. Freeman*, 625 F.2d 886, 887 (9<sup>th</sup> Cir. 1980).

19. Relief from this Court will protect Plaintiff and all women in Rhode Island, from further injury.

20. Plaintiff seeks appropriate writs, orders, and judgments from this Court to ensure that Defendant brings all Rhode Island laws, policies, and programs into compliance with the ERA.

#### **FACTS REGARDING THE CLASS OF PEOPLE AFFECTED**

22. Violence against women is the product of women's inequality and is reinforced by discriminatory laws and exclusionary social norms.<sup>1</sup>

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<sup>1</sup> U.N. General Assembly, 2006, *In-Depth Study on All Forms of Violence against Women: Report of the Secretary General*. A/61/122/Add.1; United Nations, New York, <http://www.un.org/womenwatch/daw/vaw/v-sg-study.htm>, February 2010; D. Rhode, *Speaking of Sex*, 1997, *the Denial of Gender Inequality*.

23. An average of more than five women a day are killed by men in the United States<sup>2</sup>; nearly 1 in 2 women experiences some form of sexual violence in their lifetime, 37% between the ages of 18-24.<sup>3</sup> Females are 5 to 8 times more likely than men to be victimized by an intimate partner and they suffer disproportionately high rates of domestic and dating violence,<sup>4</sup> sexual assault,<sup>5</sup> and stalking.<sup>6</sup> Only a small percentage of victims report sexual assaults to government officials because, inter alia, they expect the government not to provide effective redress, and they fear the legal system will cause additional harm.<sup>7</sup>

24. Only 9% of all rapists are prosecuted, 5% lead to conviction, and less than 3% spend

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<sup>2</sup> Wilcox, Dawn, *2018 Women & Girls Allegedly Killed by Men & Boys*, WOMEN COUNT USA: FEMICIDE ACCOUNTABILITY PROJECT, (2018)  
<https://airtable.com/shrwuHqMomCq6uMhr/tblM2NwHxDxJVTOAp/viw9JRjeFSyTxCCtL>  
(identifying 1841 women and girls killed by men and boys in the U.S. in 2018. 1841 divided by 365 is 5.04).

<sup>3</sup> *Rape Prevention and Education Program*, Centers for Disease Control and Prevention, 2013.  
<http://www.cdc.gov/violenceprevention/rpe/>>.

<sup>4</sup> U.S. DEPARTMENT OF JUSTICE, *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*, (March 1998) (violence by an intimate partner accounts for about 21% of violent crime experienced by women and about 2% of the violence experienced by men.) 92% of all domestic violence incidents are committed by men against women; accord, U.S. DEPARTMENT OF JUSTICE, *Violence Against Women, Bureau of Justice Statistics*, January, 1994; and Koss, M.P. (1988), *Hidden Rape: Incidence, Prevalence and Descriptive Characteristics of Sexual Aggression and Victimization in a National Sample of College Students*. In Burgess, A.W. (ed.) *Sexual Assault*. Vol. II. New York: Garland Pub. (84% of raped women know their assailants and 57% of rapes occur on a date.)

<sup>5</sup> U.S. DEPARTMENT OF JUSTICE, *2003 National Crime Victimization Survey* (nine out of ten rape victims are female); Koss, M.P., id, (women aged 16-24 are four times more likely to be raped than any other population group.)

<sup>6</sup> 8% of women and 2% of men in the United States have been stalked at some time in their life. 78% of stalking victims identified in a survey were women, and 22 percent were men. Thus, four out of five stalking victims are women. By comparison, 94 percent of the stalkers identified by female victims and 60 percent of the stalkers identified by male victims were male. Overall, 87 percent of the stalkers identified by the victims were male. NATIONAL INSTITUTE OF JUSTICE *Stalking in America: Findings from the National Violence Against Women Survey*, 1998.

<sup>7</sup> D. Kilpatrick et al., *Drug-facilitated, incapacitated, and Forcible Rape: A National Study*, 2007; U.S. Bureau of justice Statistics, M. Planty and L. Langton, *Female Victims of Sexual Violence, 1994-2010*,” 2010.

even one day behind bars.<sup>8</sup>

25. Offenders' sense of entitlement is produced by women's constitutional inequality, and fosters rape-supportive attitudes and behaviors, which is correlated with sexual aggression.<sup>9</sup>

26. One in three to one in four women is victimized by sexual assault during college.<sup>10</sup> Given that approximately 916,000 women graduated from post-secondary schools in 2009,<sup>11</sup> this means over 200,000 women are victimized by sexual assault during college. Some studies find as few as 5% of college victims file reports.<sup>12</sup>

27. Female students in the United States endure pervasive unequal treatment, harassment, and violence, on the basis of sex, throughout all levels of education.<sup>13</sup> Women also suffer

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<sup>8</sup> Probability Statistics Calculated by the Rape, Abuse and Incest National Network, "Reporting Rates," 2013.

<sup>9</sup> L. Bouffard, *Exploring the Utility of Entitlement in Understanding Sexual Aggression*, 38 Journal of Criminal Justice, pp.870-879 (2010).

<sup>10</sup> <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>, pp. xii-xiii and 2-1 (2007); U.S. Department of Justice Office of Community Oriented Policing Services, Acquaintance Rape of College Students, March 28, 2002, <http://www.cops.usdoj.gov/pdf/e03021472.pdf>; <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>; Freyd, J. Rosenthal, M. & Smith, C., Preliminary Results from the University of Oregon Sexual Violence and Institutional Behavior Campus Survey, 2014, <http://dynamic.uoregon.edu/jjf/campus/UO-campus-results-30Sept14.pdf>.

<sup>11</sup> <http://www.census.gov/prod/2012pubs/p20-566.pdf>.

<sup>12</sup> B. Fischer, et al., *Sexual Victimization of College Women*, National Institute of Justice, (2000), <http://www.nij.gov/publications/pages/publication-detail.aspx?ncjnumber=182369> (5%).

<sup>13</sup> Sadker, & Zittleman, *Still Failing at Fairness, How Gender Bias Cheats Girls and Boys in School and What We Can Do About It*, Scribner Press 2009; [www.hks.harvard.edu/centers/carr/research-publications/carr-center-working-papers-series/caplan-and-ford-%22the-voices-of-diversity-%22](http://www.hks.harvard.edu/centers/carr/research-publications/carr-center-working-papers-series/caplan-and-ford-%22the-voices-of-diversity-%22).



disproportionately high rates of domestic and dating violence,<sup>14</sup> sexual assault<sup>15</sup> and stalking.<sup>16</sup>

28. Because women do not enjoy full constitutional equality, they suffer disproportionately higher rates of violence, and offenders of violence against women are less likely to be held responsible compared to offenders of other types of violence.

#### **PLAINTIFF ELIZABETH CADY STANTON TRUST**

29. The Elizabeth Cady Stanton Trust (ECST) is a national 501(c)(3) non-profit organization whose mission and purpose includes educating the public about and advocating for women's rights. ECST's President, Coline Jenkins, is the great-great granddaughter of renowned women's rights leader, Elizabeth Cady Stanton.

30. In August 2020, the ECST unveiled a statue of three women's rights pioneers, Elizabeth Cady Stanton, Sojourner Truth, and Susan B. Anthony, in Central Park, New York. This event featured many speakers, including Hillary Clinton, New York Lt. Governor Kathleen

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<sup>14</sup> Women are less likely than men to be victims of violent crimes overall, but women are 5 to 8 times more likely than men to be victimized by an intimate partner. *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*, U.S. Department of Justice, March, 1998; violence by an intimate partner accounts for about 21% of violent crime experienced by women and about 2% of the violence experienced by men. *Id.* 92% of all domestic violence incidents are committed by men against women. *Violence Against Women, Bureau of Justice Statistics*, U.S. Department of Justice, January, 1994; 84% of raped women know their assailants and 57% of rapes occur on a date. Koss, M.P. (1988). *Hidden Rape: Incidence, Prevalence and descriptive Characteristics of Sexual Aggression and Victimization in a National Sample of College Students*. In Burgess, A.W. (ed.) *Sexual Assault*. Vol. II. New York: Garland Pub.

<sup>15</sup> Nine out of ten rape victims are female, U.S. Department of Justice, *2003 National Crime Victimization Survey*. 2003; Women aged 16-24 are four times more likely to be raped than any other population group. Koss, M.P., *id.*

<sup>16</sup> 8% of women and 2% of men in the United States have been stalked at some time in their life. 78% of stalking victims identified in a survey were women, and 22 percent were men. Thus, four out of five stalking victims are women. By comparison, 94 percent of the stalkers identified by female victims and 60 percent of the stalkers identified by male victims were male. Overall, 87 percent of the stalkers identified by the victims were male. National Institute of Justice 1998. *Stalking in America: Findings from the National Violence Against Women Survey*).

Hochul, and Congresswoman Carolyn Maloney, who discussed the history of women's struggle for equality.

31. ECST also recently unveiled a statute of Alice Paul in Seneca Falls New York, at the site where Paul introduced the ERA in 1923. ECST has conducted many similar events around the country to educate and raise awareness about women's ongoing struggle for equality, including an event at Marble House in Newport Rhode Island, the Summer home of ERA activist Alva Belmont. Belmont frequently used the Marble House to increase attention to women's fight for equality and raise money for the Equal Rights Amendment.

32. ECST's involvement in this litigation is on behalf of women in Rhode Island and across the country who are suffering harm by Defendant's actions and inactions *because they are female*. ECST and all women have a protectable legal interest in ensuring that government officials, including the Defendant, immediately come into compliance with the ERA by repairing all sex discriminatory laws, policies, and programs.

## **COUNT I**

### **(Twenty-Eighth Amendment)**

33. Plaintiffs repeat and reallege each of the prior allegations in this complaint.

34. The ERA is now the Twenty-Eighth Amendment to the United States Constitution.

35. The ERA forbids states to have laws, policies, or programs in place that discriminate or classify on the basis of sex.

36. Rhode Island has laws, policies, and programs in place that discriminate on the basis of sex.

37. Defendant is responsible for ensuring that all laws, policies, and programs do not

discriminate on the basis of sex, and fully comply with the ERA.

38. Defendant has failed to ensure that all laws, policies, and programs comply with the ERA, causing ongoing injury to Plaintiff and all women in Rhode Island.

## **COUNT II**

### **(Mandamus – Article 78; CPLR § 7803)**

39. Plaintiff repeats and realleges each of the prior allegations in this complaint.

40. As chief law enforcement officer for the state of Rhode Island, Defendant has a duty to identify and repair all sex discriminatory laws, policies, and programs in Rhode Island, to ensure full compliance with the ERA.

41. Defendant's failure to bring Rhode Island laws, policies, and programs into compliance with the ERA is arbitrary, capricious, and and/or an abuse of discretion.

42. Plaintiff has no administrative remedies to exhaust.

43. Defendant's actions and inactions have caused and are continuing to cause harm to Plaintiff and all women.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendant and issue the following remedies:

- i. A declaratory judgment that the ERA is the duly ratified Twenty-Eighth Amendment to the United States Constitution;
- ii. An order requiring Defendant to take all necessary steps to ensure that all Rhode Island laws, policies, and programs comply with the ERA;
- iii. An order requiring Defendant to pay Plaintiff's reasonable costs and expenses of this action, including attorneys' fees;
- iv. All other relief to which Plaintiff might be entitled.

Respectfully submitted,

The Elizabeth Cady Stanton Trust

By its Attorneys,

/s/ Amy Rice

Amy Rice, Esq. (#6506)  
Law Offices of Amy Rice  
One Courthouse Square  
Newport, RI 02840  
amy@amyricelaw.com  
P: (877) 269-5291

/s/ Megan E. Sheehan

Megan Sheehan, Esq. (#9804)  
Sheehan & Associates  
65 Bay Spring Ave.  
Barrington, RI 02806  
P: (401) 400-5839  
megan@sheehanlawoffice.net

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