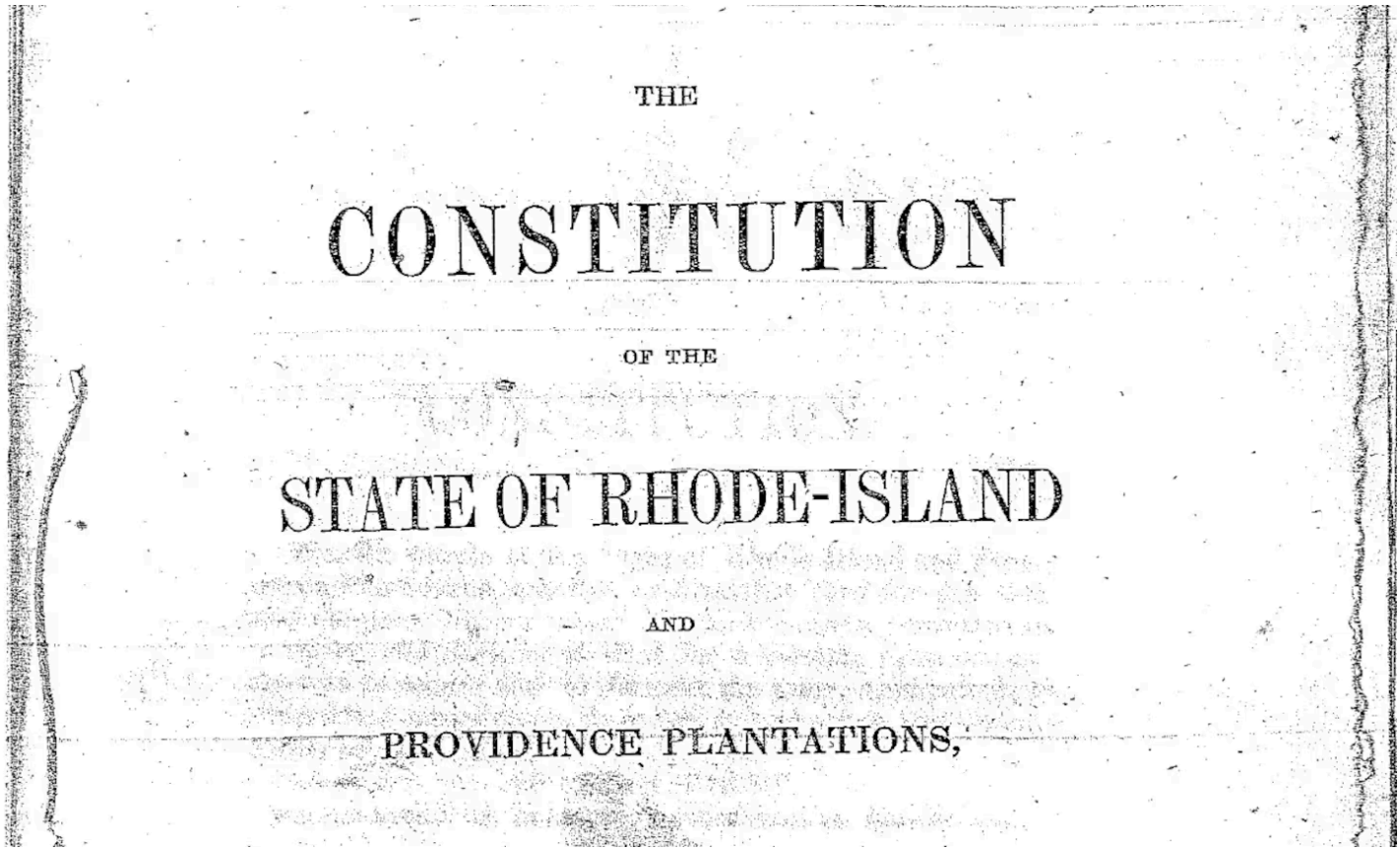
COMMENTARY

The disinformation campaign against a R.I. constitutional convention

The coalition opposing a constitutional convention has promoted bogus arguments to the public, writes the editor of the Rhode Island State Constitutional Convention Clearinghouse

By J.H. Snider Updated November 2, 2024, 6:00 a.m.



The Rhode Island Constitution. RHODE ISLAND SECRETARY OF STATE'S OFFICE

The "no" coalition opposing a Rhode Island constitutional convention — Question 1 — has spent more than $182,000 on an ad campaign arguing that the costs and risks of a convention outweigh its potential benefits.

Rhode Island most recently held a constitutional convention in 1986, from which two amendments with reproductive rights language were proposed. One was overwhelmingly rejected by voters. The other, an effort to clarify civil rights language, passed. Central to the "no" coalition's advocacy has been a disinformation campaign about the amendment voters approved that year.

The "no" campaign itself began with a broad investment in the claim that a constitutional convention could endanger women's reproductive rights. When the constitutional convention question was last on the ballot in 2014, as it is every 10 years, the "no" campaign sent a direct mailer to registered Rhode Island voters making this argument just days before the election. Subsequently, the argument was widely ridiculed because Rhode Islanders support women's reproductive rights, including abortion.

But what if voters could be hoodwinked into voting against their own core interests? That's essentially what the current "no" campaign argues happened in 1986.

That year, the amendment approved by voters included the following clause, which, taken out of context, appears to restrict women's reproductive rights: "Nothing in this section shall be construed to grant or secure any right relating to abortion or the funding thereof."

What makes this argument so interesting is that the Rhode Island ACLU, a leader of both the 2014 and 2024 "no" coalitions, rebutted this claim in three legal briefs filed from 2019 to 2021 against Catholics for Life, an anti-abortion group that in 2019 brought a lawsuit making essentially the same argument the "no" coalition is now making. That lawsuit sought, unsuccessfully, to block the Reproductive Privacy Act, which had been passed by the Rhode Island General Assembly, on the grounds that the 1986 amendment made the legislation unconstitutional.

Like the "no" coalition, Catholics for Life argued that this clause restricted women's reproductive rights.

The amendment included the following clause that explains its voter support: “No otherwise qualified person shall, solely by reason of race, gender or handicap be subject to discrimination by the state.”

Anti-abortion advocates among the convention delegates worried that a future court could interpret these vaguely specified rights as endorsing the right to an abortion. Thus, they ended the amendment with the clause stipulating the new rights shouldn’t be construed that way. As the ACLU successfully argued in its briefs, the General Assembly was free to enhance women’s reproductive rights, and the courts could protect those rights based on any constitutional provision except this new one.

In contrast, the anti-abortion group interpreted the clause as preventing the General Assembly from proposing any legislation enhancing women’s reproductive rights without first getting a constitutional amendment allowing it to do that. To support its argument, it observed that the “no” coalition made such a claim during its campaign against calling a convention in 2014. In response, the ACLU argued that the “no” coalition’s 2014 claims to the contrary were in an advocacy context, and should have “no independent weight” with the court.

I agree with the ACLU’s legal briefs filed in this case critiquing the anti-abortion group’s argument that the clause prevents the General Assembly from protecting and enhancing women’s reproductive rights.

I also agree with the briefs’ argument that the drafting history of the amendment shows that the convention did not intend to surreptitiously restrict women’s reproductive rights. Further, it wasn’t misleading when the ballot measure did not describe this clause in its ballot summary. That is, unlike the “no” coalition’s current implicit assumption in its advocacy claims, no conspiracy existed to hide the impact of this clause from the convention delegates and the public.

The “no” coalition will undoubtedly find reasons to dispute this analysis. I’d suggest that one of the ACLU’s legal briefs includes the best brief rebuttal of such claims: “[The choice

clause in 1986] was neither understood nor intended to affirmatively restrict or interfere with the exercise of reproductive rights."

The "no" coalition has promoted such bogus arguments to the public because the true reason its supporters oppose an independently elected convention — to preserve their power over the legislature — cannot be said publicly.

J.H. Snider is the editor of The Rhode Island State Constitutional Convention Clearinghouse.

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