



INSTITUTE FOR JUSTICE

Statement by Benjamin Field in support of H5223

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Email Only

Hon. Robert E. Craven

Chairperson, House Judiciary Committee

Rhode Island General Assembly

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The Institute for Justice¹ supports H5223, the Rhode Island Civil Rights Enforcement Act. It will ensure that every Rhode Islander has a remedy when their constitutional rights are violated.

The Rhode Island constitution defines the bounds of government power and recognizes residents' inviolable rights against infringement by government departments and officials. Unfortunately, Rhode Island currently has no sure mechanism to enforce those fundamental rights. To borrow the words of James Madison in Federalist No. 48, the rights guaranteed by the state constitution are mere "parchment barriers" without a mechanism to enforce them.

H7636 provides just such an essential mechanism. It ensures that victims of constitutional violations can have a court enjoin ongoing violations and provide compensation to remedy any harm caused. As the bill explains, this places the cost of constitutional violations in the right place: on the government departments or officials who violated the constitution and could have avoided doing so, rather than on the innocent person who had their rights violated through no fault of their own.

Rhode Island currently has no statutory means to vindicate constitutional rights, and its courts have refused to recognize such remedies. Victims of constitutional violations must instead turn, if anywhere, to federal law. But that means that constitutional guarantees without a federal match are left unenforced. Moreover, the U.S. Supreme Court has invented doctrines over the last several decades—such as qualified immunity, absolute immunity, and municipal immunity—that leave victims of fundamental-rights violations without a remedy. Nor can victims seek compensation against the state government under federal law. Rather than delegate its people's rights to a federal judiciary often hostile to victims of civil-rights violations, Rhode Island should enact a way to enforce its own proud constitution.

In doing so, you would join about half the states—spanning the country from New York to Michigan to California—which recognize rights of action to enforce their constitutions, either by legislation or judicial decision. The Institute for Justice has fought to expand this number, most recently successfully encouraging the Nevada Supreme Court to recognize such a right of action. As that court eloquently put it, "Constitutional rights must [be] enforceable," lest they "become all but 'a mere hope.'" *Mack v. Williams*, 522 P.3d 434, 446 (2022).

The Institute for Justice asks you to vote for H5223.

cc: Members of House Judiciary Committee (email only) (HouseJudiciary@rilegislature.gov)

¹ The Institute for Justice is a national public-interest law firm headquartered in Arlington VA. See www.IJ.org for its litigation and advocacy to protect state and federal constitutional rights.