

The Rhode Island Constitution on Economic Stewardship

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Rhode Island has yet to fulfill its mandate and its opportunity for economic stewardship. Our state constitution gives us all the right to use and enjoy Rhode Island's rich natural resources and the responsibility to preserve their values.¹ This piece of our bill of rights has driven delegations of administrative authority and some resource protective judicial decisions, but our general assembly has yet to act on all its transformative value for public policy.

In 1843, the drafters of our state constitution empowered Rhode Islanders to “enjoy and freely exercise all the rights of fishery and privileges to the shore. . .” In 1986, a state constitutional convention broadened Article 1, Section 17 to state:

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.

Rhode Island was early among states that have constitutionally established a shared general public right and responsibility for natural resource use.² Many more states have since recognized public rights to the use, enjoyment and preservation of specific natural assets.³

These provisions raise standard questions of constitutional interpretation that are

¹ R.I. CONST., Art. 1, §17.

² F.L. CONST. art. II, § 7; H.I. CONST. art XI, § 9; I.L. CONST. art. XI, § 2; L.A. CONST. art. IX, § 1; M.A. CONST. art. XCVII; M.I. CONST. art. IV, § 52; M.T. CONST. art. II, § 3 (inalienable right and responsibility to clean environment and pursuit of life's basic necessities); N.M. CONST. art. XX, § 21 (environment of fundamental importance to public and legislature must manage for maximum benefit of the people); N.Y. CONST. art. XIV, § 4 (legislature must enact policies to use and protect natural resources); P.A. CONST. art. I, § 27 (natural resources common property of all people with Commonwealth acting as trustee); V.A. CONST. art XI, § 2 (legislature manages use and protection of natural resources for general welfare).

³ A.L. CONST. art. XI, § 219.07(1) (lands and waters); C.A. CONST. art. X, § 2 (water resources); C.O. CONST. art. XVIII, § 6 (forests); I.D. CONST. art XV, § 1 (water use); M.N. CONST. art. XIII, § 12 (hunting and fishing); N.C. CONST. art. XIV, § 5. (lands and waters); U.T. CONST. art XVIII, § 1 (forests).

good subjects for scholarly review. One is whether these rights and responsibilities are self-executing or require legislative action for enforcement. Rhode Island courts have held that Article 1, section 17 was meant to be “carried into effect by legislative regulation, such regulation having for its object to secure to the whole people the benefit of the constitutional declaration, and being necessary for that purpose.”⁴ The 1986 amendments made this delegation of authority explicit. Other questions of constitutional interpretation include who is empowered to enforce these rights and whether any specific alleged right is a “fundamental right” warranting “strict scrutiny” review in due process or equal protection claims.⁵ This article focuses, instead, on our legislature’s efforts to uphold and implement the constitutional mandate.

Our general assembly has repeatedly recognized the importance of agriculture, fisheries, forestry and tourism to our economy and our general well-being⁶ and has endowed state agencies with many powers meant to fulfill Article 1, section 17. The Rhode Island Department of Environmental Management (RIDEM) was granted power to supervise and control the utilization of natural resources⁷ and to cooperate with the Economic Development Corporation in planning functions related to those resources, particularly including agriculture, fisheries and recreation.⁸

The Farmland Preservation Act of 1981 delegated authority to preserve the importance of agriculture to our quality of life and the Right to Farm Act was designed to uphold the importance of farming to our economy and well-being.⁹ The general assembly formed the Coastal Resources Management Council to protect our coastline, deemed important to our quality of life and our economy.¹⁰

The Narragansett Bay Commission was formed to “combat the discharge of pollutants into Narragansett Bay. . . [which] creates severe and detrimental ecological and economic impact upon the people of the state of Rhode Island.”¹¹ Legislation held the Water Resources Board’s job of protecting our drinking water “essential to the health, safety, and welfare of the general public, and to the continued growth and economic development of the state.”¹²

State law also created three conservation districts bestowed with the power to conserve resources for their best use for the needs of our state.¹³ Many energy laws have been crafted on the foundational intent of improving environmental quality while

⁴ Windsor et al. v. Coggeshall, 169 A. 326, 327 (R.I. 1933) citing State v. Cozzens, 2 R. I. 561 (R.I. 1850).

⁵ Riley v. RI Dept. of Env. Mngmnt., 941 A.2d 198, 206 (R.I. 2008) (no fundamental right to fish without licensing restrictions); Cherenzia v. Lynch, 847 A.2d 818, 823-24 (R.I. 2004) (no fundamental right to gather shellfish in particular waters by particular method without restrictions intended to benefit the greater public right).

⁶ RIGL §§42-82-1; 2-23-2 (agricultural operations are valuable to the state's economy and the general welfare of the state's people); 2-25-2(5) (farms and fisheries integral part of Rhode Island economy); 20-3.2-2(c) (fisheries support commercial and recreational activities that are a significant contributors to our economy); 20-3.2-2(d); 42-63-4 (economic development through tourism asset); 42-125-2(a)(5) (greenways are tourism asset that promotes economic development).

⁷ RIGL §42-17.1-2(1).

⁸ RIGL §42-17.1-2(6).

⁹ RIGL §§42-82-1; 2-23-2. See also RIGL §2-25-2(5) (farms and commercial fishing integral parts of Rhode Island economy).

¹⁰ RIGL §46-23-1(a)(2) (natural, commercial, industrial, recreational, and aesthetic assets of value to the development of this state).

¹¹ RIGL §46-25-2(2), (5).

¹² RIGL §46-15-1(1).

¹³ RIGL §2-4-12(9).

enhancing our local economy.¹⁴ Clearly, our legislature has put in place some important mechanics necessary for implementing Article 1, section 17.

The courts have upheld these administrative powers when challenged by special interests. When commercial fisherman contested RIDEM's regulations setting fishing quotas, alleging a state constitutional right of unfettered access to the fishery, our Supreme Court held that a fisherman's right is qualified by the general assembly's duty to preserve fishery resources for broader public benefit.¹⁵ The Supreme Court upheld a state statute preventing scuba divers from collecting shellfish in four coastal ponds despite invocation of the constitutional rights of fishery and privileges of the shore, concluding that "the very nature and scope of the right to fish that art. 1, sec. 17 protects is not unqualified; rather, it anticipates that reasonable legislative regulation is necessary to properly effectuate that right."¹⁶ In that decision, the Court cited its long-held resolve that "fishing must be carried on for the ultimate benefit of the people of the state and not merely for the profit and emolument of the fishermen engaged in the business."¹⁷ When a citizen claimed his right to ride a horse along the shore could not be prohibited in the summer by a town ordinance, the trial judge agreed with Judge Williams' decision to deny a motion to dismiss the Town's enforcement action concluding that the constitutional right to enjoy the shoreline "does not ensure that the exercise of such rights will be totally unburdened by any governmental regulation intended to preserve such natural resources, to secure their existence for future generations and to protect the right of all people to enjoy this state's natural beauty."¹⁸ Our courts have clearly understood and applied the need to balance individual interests in our state's rich natural resources against their preservation for public and future use.

Yet the general assembly's delegations of authority and the courts' affirmation of administrative power to defend our natural resources against special interests does not realize the full power of our constitution's pronouncement. Constitutional law dictates that "every clause must be given its due force, meaning and effect and that no word or section must be assumed to have been unnecessarily used or needlessly added."¹⁹ We must "presume the language was carefully weighed and its terms imply a definite meaning."²⁰ Article 1 section 17 states that the people of Rhode Island "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 [emphasis added]."²¹ It then holds our general assembly responsible for ensuring such security by providing adequate planning for the use of our resources.²² These are formidable obligations in our state's bill of rights, together with the freedom of religion, the prohibition of slavery and habeas corpus. If

¹⁴ RIGL §§42-140-3(1) (Office of Energy Resources to provide energy resources that enhance economic well-being, social equity, and environmental quality); 39-26-3 (renewable energy standard passed in part to create jobs in the renewable energy sector); 42-140.3-2(2) (renewable energy coordinating board formed to reduce environmental impact of energy use while creating new businesses, jobs and economic growth).

¹⁵ Riley, 941 A.2d at 208; Windsor et al v. Coggeshall, 169 A. 326, 326-327 (R.I. 1933).

¹⁶ Cherenzia, 847 A.2d at 824 (R.I. 2004).

¹⁷ Id. citing Opinion to the Senate, 87 R.I. at 38-39, 137 A.2d 525, 526 (R.I. 1958).

¹⁸ Middletown v. Wehrley, 2000 WL 343902 at *1-2 (R.I. Super. 2000).

¹⁹ Riley, 941 A.2d at 205 citing In re Advisory Opinion to the Governor, 612 A.2d at 7 (quoting Kennedy v. Cumberland Engineering Co., 471 A.2d 195, 198 (R.I.1984) and Bailey, 120 R.I. at 391, 394 A.2d at 1339).

²⁰ Id.

²¹ R.I. CONST., Art. 1, §17 (emphasis added).

²² Id.

given their “due force, meaning and effect,” our legislature must be viewed as a steward of our natural resources, not only protecting them against present threats, but also planning and setting the foundation for a robust economy that is also sustainable for future generations.

The first step in proactive planning for natural resource security is to gather information and analyze the security risks. This calls for a robust study with expert and public input, but some results can already be anticipated. One very clear threat to the secure use and enjoyment of natural resources by our populace is air quality concerns including their well-documented impact on climate change. The fact of this insecurity is evident in our frequent air quality alerts (giving rise to free bus rides in the summer) and the damage regularly caused by the increasing ferocity of our storms, made more and more ominous by rising sea levels.

Our general assembly clearly can be stewards of air quality as required by our Constitution, and such stewardship would be beneficial to our economy. The fact that our air can be impacted by sources outside of our borders does not excuse our legislature from such action. Our government must be active in national and international advocacy for improved air quality; but it can also act locally. As long as policies implemented in Rhode Island can enhance the security of our air quality and stem the risks and impacts of climate change, our constitution requires such action. Significant sources subject to local control include energy production and consumption and transportation emissions. Although some good laws and policies are on our books to help address these concerns, they have not gone far enough to provide the security required by our constitution.

There are significant opportunities to provide for natural resource security while enhancing our economy. Recently and regularly proposed climate change legislation requires much needed analysis of the impacts and causes of climate change and subsequent development of legislative and regulatory programs to mitigate them. Energy efficiency laws have been effective at reducing energy consumption and emissions and saving consumers money that can then be reinvested in our economy.

However, recent audits of low income housing in Providence and subsequent improvements led by the Green and Healthy Homes Initiative²³ demonstrate how much work remains to be done in our housing stock and how much of a positive impact that work can have on our citizenry in terms of energy and health care savings and improved educational performance. Recent legislation has enhanced the procurement of clean, local, renewable energy, offsetting the apparent and hidden cost of our current energy sourcing, but those policies do not go far enough to truly have the impacts intended.²⁴ Rhode Island is very fortunate to be home to innovative companies seeking to improve air quality and energy use around the globe.²⁵ Such endeavors warrant every bit of available state support.

The best means to reduce the impacts of transportation emissions is to reduce vehicle miles travelled by improving the service and ridership on our public transportation system. Yet, the Rhode Island Public Transit Authority has yet to provide comprehensive, statewide planning for the most effective transit modes and routes and

²³ See <http://www.greenandhealthyhomes.org>.

²⁴ See e.g., RIGL §39-26.2-1 et seq. Fortunately, the energy planning under way at the Office of Energy Resources provides data and vision to correct this deficiency. See <http://www.energy.ri.gov/energyplan/index.php>.

²⁵ See e.g., eNow at <http://www.enowenergy.com> and VoltServer at <http://www.voltserver.com>.

we continue to underfund public transit. Proper transit planning and investment promises to enhance our economy by increasing mobility and reducing the societal cost of transportation. The important transformation from fossil fuels to electric vehicles has been accelerated by Project Get Ready's installation of 50 charging stations throughout the state – setting the stage for the economic benefit of much cheaper, domestically powered transportation and huge air quality enhancement. State policies can accelerate such important transformations.

Air quality provides only one example of how resource stewardship can be better aligned with our economic policy. Many other examples are available, including but not limited to the water, energy and health benefits of progressive policies that better support Rhode Island farms and a vibrant, domestic food economy. We are fortunate that our Constitution directs our general assembly to plan for sustainable development. Now is the time to fully implement that mandate.

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