STATE OF RHODE ISLAND

WASHINGTON, SC. **SUPERIOR COURT**

[FILED: July 12, 2024]

STILTS, LLC, A Rhode Island limited liability company,	:	
Plaintiff,	:	
v.	:	**C.A. No. WC-2023-0481**
STATE OF RHODE ISLAND and 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 Stilts, LLC's Complaint challenging the constitutionality and validity of "An Act Relating to Waters and Navigation -- Coastal Resources Management Council" (The Act) as codified in G.L. 1956 § 46-23-26 and the Plaintiff's Objection.[2] 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.

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[1] Defendants filed a Motion to Dismiss Plaintiff's Complaint; however, pursuant to Rule 56 of the Superior Court Rules of Civil Procedure, the Court converted it to a Motion for Summary Judgment. *See* Super. R. Civ. P. 56(c).

[2] While Plaintiff challenges 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

I

Facts and Travel

A

David Welch is the sole shareholder of Stilts, LLC (Stilts), a Rhode Island limited liability company. *See* Compl. ¶¶ 3, 25. In 2017, Stilts owns four residential lots (the property) located on Charlestown Beach in South Kingstown, Rhode Island. *See id*. ¶ 3; *see also* Compl., Ex. 3, Quitclaim Deed. The Quitclaim Deed describes the lots as Parcels One, Two, Three, and Four. *Id*. ¶ 26.

> "[Parcel One] of Stilts' property is bounded on the seaward side by the 'high water mark.' [Parcel Two] is bounded on the seaward side by the 'Atlantic Ocean.' [Parcel Three] of Stilts' property is bounded on the seaward side by the 'high water line.' [Parcel Four] is bounded on the seaward side by the 'mean high water mark.'" *Id*.

Mr. Welch's residence is located on the dry-sand portions of Parcel Three. *Id*. ¶ 27. Stilts "acquired the property 'with the understanding, right, and expectation that the property is for private, exclusive use, including for private family beach gatherings.'" *Id*. ¶ 30. Stilts never dedicated any parts of its property for "public beach use." *Id*. ¶ 29. As a result, "[t]here are no recorded public beach access easements or rights-of-way on the title to the land owned by Stilts." *Id*.

In 2023, The General Assembly enacted "An Act Relating to Waters and Navigation -- Coastal Resources Management Council" (The Act). 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.

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to confer power or determine rights." 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* § 47:4 (7th ed. 2023).

The consequence of the enactment was to reset where "the land held in trust by the state for the enjoyment of all of its people ends and private property belonging to 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" were extended. The rights and privileges were now exercisable to "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). That line "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*.

On October 6, 2023, Plaintiff filed its Complaint against the Defendants asserting the following claims: a taking in violation of the Fifth Amendment to the United States Constitution (Count I); an unreasonable seizure in violation of the Fourth Amendment of the United States Constitution (Count II); and inverse condemnation pursuant to the Fifth and Fourteenth Amendments of the United States Constitution (Count III). *See generally* Compl.

In summary, Plaintiff asserts that the Act "unconstitutionally takes" various portions of its property.[3] Id. ¶¶ 52-55. Further, Plaintiff asserts that "[t]he Act harms the privacy and peaceable enjoyment of [its] property, without compensation" and "diminishes and injures the use, value, and marketability of [its] property." Id. ¶¶ 59-60. In Count III, Plaintiff raises an inverse condemnation cause of action. Id. ¶¶ 70-76.

Plaintiff also insists that its property and "its right to exclude others from that property[] is protected from unreasonable seizures by the Fourth Amendment to the United States Constitution." *Id.* ¶ 63. In support, Plaintiff claims that it "has a legitimate expectation of privacy in its residential beachfront properties and surrounding curtilage." *Id.* ¶ 65. Thus, it asserts that the Act "unreasonably seized [its] land and right to exclude others by authorizing a public invasion and occupation of its property." *Id.* ¶ 67.

On January 31, 2024, the State filed its Motion to Dismiss, along with extensive exhibits and a memorandum of law (Defs.' Mem.), pursuant to Rule 12(b)(6). Accordingly, this Court converted State's Motion to Dismiss to a Motion for Summary Judgment under 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 February 29, 2024, Plaintiff filed its Objection with a memorandum of law in support and multiple exhibits (Pl.'s Obj.) Defendants filed a reply on March 14, 2024. Finally, on May

[3] Plaintiff relies upon Exhibit 3, which features the Title Documents for the property, to support its argument that The Act takes certain portions of its property in respect to different lots. *See* Compl. ¶¶ 52-55; *see also id.*, Ex. 3. For example, Plaintiff asserts that "the Act unconstitutionally takes portions of Stilts' Parcel One lying between the high water mark/seaweed line and ten feet inland of that mark." (Compl. ¶ 52.) Because this Court concludes that The Act amounts to a taking as a matter of law, hereinafter the Court addresses the property as a whole, but by parcel number.

10, 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, *Roth*[4] 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.

Article I, section 17 of the Rhode Island Constitution protects the public's right to access the shore.[5]

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

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[4] *Roth v. State of Rhode Island*, WC-2023-0440 (Sep. 25, 2023).

[5] "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.

guaranteed to the people of this state by our constitution." *Ibbison*, 448 A.2d at 732.[6] 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 determining tide lines. Years before *Ibbison*, the United States Supreme Court held that, "[t]he tideland extends to the high-water mark." *Borax Consolidated*, 296 U.S. at 22. The *Borax* Court explained that "[t]his does not mean, as petitioners contend, 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

[6] 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*.

> 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.[7]

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 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)).

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[7] 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. 3 attached to Pl.'s Obj., 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. 3 attached to Pl.'s Obj. 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* Obj., Ex. 3: 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.").

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). "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 arguments set forth by the Defendants with respect to the takings issue are nearly identical to their arguments in *Roth v. State of Rhode Island*, WC-2023-0440 (2023). Plaintiff's arguments are substantially similar to those advanced by the plaintiffs in *Roth*. However here, Plaintiffs aver that the governmental authorization of public access on private land is sometimes characterized as an "easement." (Pl.'s Obj. 14.) Notwithstanding this discrete difference in the

course of reasoning, the ultimate issue to be determined in this case remains identical to that in Roth, i.e., whether The Act—by relocating the public shore from MHT line to the inward area of the Plaintiff's property—is a *per se* taking of private property without just compensation. Therefore, this Court incorporates and adopts the reasoning and analysis from *Roth*. *See Al-Muhtaseb v. Mortgage Electronic Registration Systems, Inc.*, No. PC 2011-4578, 2012 WL 6756202, at *3 (R.I. Super. Dec. 21, 2012) (incorporating by reference reasoning and authorities relied upon in previous decisions); *see also Malinou v. Kiernan*, 105 R.I. 299, 302, 251 A.2d 530, 532 (1969) (proper for superior court clerk to incorporate Supreme Court's decision by reference in entry of judgment).

Defendants argue that the Act is constitutional based on the background principles of state law, including custom and the public trust doctrine. As to their customs argument, Defendants insist that the "rights of fishery and privileges of the shore" as provided in the Rhode Island Constitution "serve as pre-existing limitations upon [Plaintiff's] titles" to its property. (Defs.' Mem. 18.) Regarding the public trust doctrine, Defendants argue that "the purpose of [the doctrine] is to enable the State to preserve the public rights of fishery, commerce, and navigation in Rhode Island waters[.]" Therefore, The Act enables Rhode Island citizens to exercise these rights "up to ten feet (10') landward from the recognizable high tide line." *Id*. at 24, 26 (internal quotations omitted); *see also* § 46-23-26(c).

Plaintiff argues The Act amounts to an unconstitutional taking of private property by "authorizing a public easement" and invasion of Stilts land without just compensation. (Pl.'s Obj. 12.) Plaintiff grounds its argument in the background principle of state law as established in *Ibbison*. *Id*. at 18, 20. Plaintiff further argues that The Act does not codify the public trust

doctrine and that the doctrine of custom does not create broad rights in the general public. *Id*. at 22, 25.

A *per se* taking occurs when "a regulation results in a physical appropriation of property[.]" *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021). "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 v. Town of Lincoln*, 668 A.2d 321, 327 (R.I. 1995); *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").

"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 v. South Carolina Coastal Council*, 505 U.S. 1003, 1027 (1992). "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 Plaintiff's private property. Furthermore, rather than restraining the Plaintiff's use of their own property, The Act extends permanently a right of access to the public and inhibits Plaintiff's 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.

The Act reduced the Plaintiff's "bundle of rights" inherent in the ownership of property by expanding the preexisting boundary line to ten feet landward of the recognizable high tide line and confiscated the Plaintiff's property resulting in an unconstitutional taking. *See* § 46-23-26(b); *see also Lucas*, 505 U.S. at 1003.

Accordingly, this Court denies Defendants' Motion for Summary Judgment as to Counts I and III.

B

Seizure

The Court next addresses the issue of whether The Act unreasonably "seizes" the property. Defendants assert that a Fourth Amendment claim is inapplicable because the Fourth Amendment does not protect Plaintiff from private actors. (Defs.' Mem. 31.) Defendants note that "the Act does not affirmatively encourage or compel any member of the public to enter any portion of the State's '400 miles' of shoreline, let alone to enter the specific parcels owned by Stilts, LLC." *Id.* at 33. Defendants insist that "private parties do not become state actors simply by exercising rights protected by law." *Id.* at 34. Thus, "[t]he State did not direct Rhode Islanders to enter [Plaintiff]'s property." *Id.* Defendants further assert that Plaintiff's argument as to

curtilage should fail because the "unimproved, dry areas of Stilts, LLC's beachfront properties do not qualify as curtilage." *Id*. at 38.

In response, Plaintiff claims that "[t]he Act encumbers portions of Stilts' land under its home and deck (the home is on pilings) and immediately outside its windows and doors[.]" (Pl.'s Obj. 29.) Therefore, it alleges that "the Act 'authorizes the general public to enter, access, and use' property under and around its home," qualifying as a "'meaningful interference' with Stilts' 'possessory interests' in the property, and thus, as a 'seizure.'" *Id*.

"The Fourth Amendment, applicable to the states through the Fourteenth Amendment, guarantees a person's right to be secure against unreasonable searches and seizures." *State v. Foster*, 842 A.2d 1047, 1050 (R.I. 2004).[8] "Seizure" means "taking possession." *Torres v. Madrid*, 592 U.S. 306, 312 (2021) (internal quotations omitted). Moreover, "[a] seizure of property occurs when there is some meaningful interference with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). The Fourth Amendment is "wholly *inapplicable* to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official." *Id*. (emphasis added). Notably, the Fourth Amendment protects against *government* action, not private action. *See State v. Doyle*, 235 A.3d 482, 509 (R.I. 2020) ("Searches conducted by private citizens do not implicate the protections of the Fourth Amendment."); *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921) (explaining that the Fourth Amendment's "protection applies to governmental action").

[8] The Fourth Amendment to the United States Constitution states, in pertinent part, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. CONST. amend. IV.

However, a private citizen cannot assert governmental action by the "mere existence of a law or regulation enacted or promulgated by government authorities[.]" *United States v. Momoh*, 427 F.3d 137, 141 (1st Cir. 2005). If that were the case, "a private individual crossing the street at a crosswalk [would be] a government actor simply because he is compelled to obey the jaywalking laws." *Id*. Here, the Act does not mandate that Rhode Island citizens enter Plaintiff's property. Rather, the Act simply *permits* citizens to enter the property seaward of the seaweed line. Private citizens who choose to follow the Act cannot be said to be "governmental actors" for the purpose of the Fourth Amendment.

This Court acknowledges Plaintiff's argument that "the Act grants the public a right and entitlement to enter Stilts' private land"; however, this Court concludes that a takings claim is the appropriate method for Plaintiff to seek relief. *See* Pl.'s Obj. 30; *see also Cedar Point Nursery*, 594 U.S. at 149 (emphasis added) (identifying a "regulation [that] appropriates a right to invade the growers' property" as a per se physical *taking*"); *Harris*, 668 A.2d at 327 (internal citations omitted) (emphasis added) ("a *taking* must consist of the actual seizing or direct taking of specific property for public use").

Nevertheless, without governmental action, Plaintiff's Fourth Amendment claim fails.[9] Therefore, this Court grants Defendants' Motion for Summary Judgment as to Count II.

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[9] Plaintiff additionally argues that its "land immediately around its beachfront homes is constitutionally protected curtilage." (Compl. ¶ 64.) Curtilage is "[t]he area immediately surrounding and associated with the home." *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (internal citations omitted). The Supreme Court reasoned that curtilage is "generally clearly marked" and "familiar enough that it is easily understood from our daily experience." *Id*. at 7 (internal citations omitted). The classic example of curtilage is one's front porch. *See id*. In light of the foregoing, this Court need not address Plaintiff's argument because no government action exists.

IV

Conclusion

For the reasons stated above, Defendants' Motion for Summary Judgment is DENIED as to Counts I and III and GRANTED as to Count II.

Counsel shall prepare the appropriate order.

RHODE ISLAND **SUPERIOR COURT**

Decision Addendum Sheet

TITLE OF CASE:	**Stilts, LLC, a Rhode Island limited liability company v. State of Rhode Island and Rhode Island Coastal Resources Management Council**
CASE NO:	**WC-2023-0481**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**July 12, 2024**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Daniel J. Procaccini, Esq.; Colten H. Erickson, Esq.**
For Defendants:	**Sarah Whynne Finnegan Rice, Esq.**