Common Cause
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Testimony in Opposition to H 7307—An Act Relating to State Affairs and Government—Rhode Island Regulations from the Executive in Need of Scrutiny Act

When the General Assembly delegates power to administrative agencies rule-making power, it cannot retain the authority to veto those rules. If the Assembly feels that an agency has exceeded its delegated powers it can change the enabling statute. Any scheme that allows the General Assembly to maintain control over the process once the delegation has occurred is an unconstitutional "legislative veto."

The legislative veto has been found to violate the U.S. Constitution and the constitutions of at least nine states. In 1982 in the case of *I.N.S. v Chadha* the U.S. Supreme Court ruled that the power of Congress to overturn certain decisions of the Attorney General violates the U.S. Constitution. The Court reasoned that Congress's assuming the power to override an executive action violates the Constitution's requirements of bicameralism and presentment.

The new language in H 7307 reads, in part; "If the economic impact analysis demonstrates that the proposed regulation is a major regulation, the agency shall not adopt or implement the regulation unless and until the general assembly passes a legislative approval resolution specifically authorizing the regulation." While it appears that this language requires both chambers of the Assembly to approve the rule, it is still violative of our constitution because it lacks presentment. Art. IX, Section 14 of the Rhode Island Constitution requires, "Every bill, resolution, or vote (except such as relate to adjournment, the organization or conduct of either or both houses of the general assembly, and resolutions proposing amendment to the Constitution) which shall have passed both houses of the general assembly *shall be presented* to the governor [emphasis added]."

Not only has the U.S. Supreme Court found such a scheme unconstitutional, but no fewer than nine states have seen similar laws as envisioned in H 7516 declared unconstitutional by state courts:: Alaska, *State of Alaska v. A.L.I.V.E. Voluntary,* 606 P.2d 769 (Alaska 1980); Kansas, *State ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City,* 955 P.2d 1136 (Kan. 1998); Massachusetts, *Opinion of the Justices to the Senate,* 493 N.E.2d 859 (Mass. 1986); Michigan, *Blank v. Department of Corrections,* 564 N.W.2d 130 (Mich. 1997); Missouri, *Missouri Coalition for Environment v. Joint Committee on Administrative Rules,* 948 S.W.2d 125 (Mo. 1997); New Jersey, *General Assembly of State of N. J. v. Byrne,* 448 A.2d 438 (N.J.

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1982); Oregon, *Gilliam County v. Department of Environmental Quality of State of Oregon,* 849 P.2d 500 (Or. 1993), *rev'd on other grounds sub. nom. Oregon Waste Systems, Inc. v. Department of Environmental Quality of State of Oregon,* 511 U.S. 93 (1994); and West Virginia, *State ex rel. Meadows v. Hechler,* 462 S.E.2d 586 (W. Va. 1995).

In 2019, for the first time in our state's long history, Governor Gina Raimondo sued the General Assembly for enacting a similar legislative veto in Article 15 of the 2019-2020 state budget. That lawsuit, Raimondo et al. v. Mattiello et al. (R.I. 2019) was dismissed before the Superior Court ruled on the merits when the General Assembly repealed the offending provisions in February 2020. Passing H 7307 would likely invite similar litigation.

We appreciate the sponsor's desire for greater scrutiny of agency rule-making by the General Assembly. We believe the traditional tools of legislative oversight, including but not limited to legislative hearings, are a more appropriate way for the General Assembly to exercise oversight.

For these reasons we respectfully oppose H 7307.