

Supreme Court Takes Up 'Speech-in-Debate' This Week

By Katie Mulvaney
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PROVIDENCE — Rhode Islanders respond to scandal. In the 1970s, in the wake of Watergate, the General Assembly created a Conflict of Interest Commission intended to police lawmakers.

A decade later, outraged by a state Supreme Court chief justice's resignation amid allegations of criminal connections, voters approved changes to the state Constitution that called for the establishment of its successor, the Ethics Commission.

Now more than two decades later, the state Supreme Court will hear arguments in a case that some charge could profoundly alter the Ethics Commission's ability to do its work. Starting Wednesday, the high court will weigh whether to uphold a ruling that says the commission can't question or prosecute legislators based on their votes and other legislative actions.

The Ethics Commission says that if the ruling stands, it would cripple its authority to police unethical behavior in the General Assembly and allow legislators to run amuck.

"[The decision] would allow legislators to introduce any type of legislation and vote on anything regardless of whether it benefits them," says commission lawyer Jason M. Gramitt.

Supporters of the ruling say the state Constitution, under an ages-old principle, protects lawmakers from being questioned about actions they took while fulfilling their legislative duties, including the consideration of and voting on legislation.

"It's important to uphold the Constitution," says John A. Tarantino, Iron's attorney.

The case centers on an Ethics Commission investigation into former Senate President William V. Irons' ties to drugstore giant CVS.

Irons unexpectedly resigned in 2003 after two decades representing East Providence in the Senate. As chairman of a committee that considers health-care issues, Irons had opposed controversial legislation that would have allowed patients covered by Blue Cross & Blue Shield to get prescriptions filled at a pharmacy of their choice. CVS, one of his clients in his insurance business, wanted the bill killed, and it was later disclosed that Irons had collected hundreds of thousands of dollars in commissions on a Blue Cross policy covering CVS workers.

The Ethics Commission found probable cause that Irons broke the ethics code by using his office for financial gain and voting on legislation in which he had a substantial conflict of interest. The next step would typically have been a trial-like hearing before the commission.

But Irons took the case to Superior Court, arguing that the state Constitution's "speech-in-debate" clause provided him with legislative immunity from such prosecution. Commission lawyers contended voters "carved out a narrow exception to legislative immunity" when they amended the Constitution in 1986 to create the Ethics Commission.

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Superior Court Judge Francis J. Darigan in October sided with Irons and dismissed the ethics charges against him. He found that the "speech-in-debate" clause shielded lawmakers from being questioned or investigated by the commission based on their legislative acts.

It's that decision that will be before the state Supreme Court this week. The commission appealed Darigan's ruling, asserting that voters intended to have Ethics Commission oversight of lawmakers when they passed the 1986 amendment.

"It comes down to what was the intent of the ethics amendment," says Gramitt, who will argue for the commission Wednesday. "We have yet to meet anybody who voted for the ethics amendment who thought they were exempting legislators."

Tarantino, Irons' lawyer, disagrees, saying it is a matter of upholding the Constitution. He looks to a clause that reads: "For any speech in debate in either house, no member shall be questioned in any other place."

"The speech-in-debate privilege ... doesn't eviscerate the Ethics Commission's powers to do anything," he said. "You can take action against legislators ... you simply can't base a charge on how the legislator votes," as they did in the Irons case.

He argues the commission, if the decision stands, would remain free to investigate lawmakers for illicit, improper and illegal activities. The court will also be asked to consider Irons' request for a jury trial should the commission prevail.

The Ethics Commission was born in 1986 out of clamor for reform following state Supreme Court Chief Justice Joseph Bevilacqua's resignation and the revelation that political insiders were getting special, low-interest mortgages. Voters passed a constitutional amendment that called for the creation of an independent, nonpartisan commission to safeguard government ethics. The new body had unprecedented power to remove public officials from office and adopt its own ethics code. "The goal was to create something constitutionally mandated," that wasn't always under threat from legislators, said Sara M. Quinn, who once served as the commission's executive director. "It was a cry for stronger ethics, not to weaken them."

Then came the state banking crisis in the early 1990s, with angry throngs storming the State House. The commission moved, for the first time, to change its ethics code, without General Assembly approval.

Then-Gov. Bruce G. Sundlun sought an advisory ruling from the state Supreme Court. The court ruled in 1992 that the commission could enact its own ethics laws.

That opinion proved, Quinn says, that the court at the time was sensitive to the need for ethics stewardship.

Since 1996, 44 complaints have been filed against legislators, 15 of which ended with an ethics code violation, Gramitt said. The commission can impose fines of up to \$25,000 per violation.

Its stiffest legislative fines have gone to former state Sen. John A. Celona (\$130,000), former Senate President Joseph A. Montalbano (\$12,000), and House Majority Leader Gordon Fox (\$10,000).

Gramitt says Darigan's decision would have prevented the commission from questioning Fox as well as Celona, who ended up in prison on federal corruption charges.

The Rhode Island Affiliate of the American Civil Liberties Union, which backs Irons' position, says, so what? The commission would still be able to prosecute legislators for crimes such as bribery, according to executive director Steven Brown. The ACLU has been a persistent critic to what it views as the commission's largely unfettered powers, he said.

"Our concern is the argument the Ethics Commission has raised that the speech-in-debate doesn't apply because the ethics amendment trumps it," Brown says. "The speech-in-debate clause remains a protection for legislators."

Longtime ethics observers dispute those claims, arguing the amendment's intention is clear. The speech-in-debate clause was intended to encourage open and vigorous debate, not to be a haven for lawmakers to violate the ethics code, they say. "I think those legislators who rely on that argument are desperate," says Rae Condon, a lawyer who has advised Common Cause Rhode Island on ethics issues and was the first director of the Conflict of Interest Commission. "They have some problem and they're trying to get out of it."

Common Cause, the League of Women Voters of Rhode Island and Operation Clean Government, which filed the Irons complaint, have filed briefs supporting the commission.

"I think it will be another sad day for us if they say the legislators are not subject to the ethics code," Condon says.

If the court rules for Irons, she says, reform groups will be left to push another constitutional amendment.

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