

OFFICE OF THE MINORITY CONSTITUTIONAL ADVOCATE

A Rhode Island Pilot for Institutionalized Dissent, Independent Complaint
Review, and Prosecutorial Integrity Oversight

Policy Design Paper

October 2026

“precautions are as much needed against this, as against any other abuse of power.”

— *John Stuart Mill, On Liberty*

Scope note: This paper addresses structural risks created when substantial legal and prosecutorial authority is concentrated in a single elected office. It does not allege misconduct or partisan abuse by any particular Attorney General. Rhode Island already has judicial, electoral, professional-discipline, legislative, and budgetary checks; the proposal focuses on the absence of a standing internal institution authorized to develop, preserve, and present a materially different view.

Executive Summary

Rhode Island places unusually broad legal authority in one elected Attorney General. The Attorney General heads the department, supervises it, appoints assistants, and directs the powers and duties of those assistants. Rhode Island case law also recognizes broad discretion in the office, particularly over criminal prosecution. [1][3][5]

That concentration has advantages: democratic accountability, unified litigation strategy, and clear responsibility. It also creates a structural vulnerability. When a major policy choice, litigation position, discovery dispute, or institutional practice is contested, there is no standing internal office whose job is to develop the strongest lawful competing analysis, put disagreement into the official record, hear complaints about the Attorney General's own office, and independently investigate serious integrity concerns.

This paper proposes a three-year pilot Office of the Minority Constitutional Advocate ("MCA"). The office would be administratively housed within the Department of Attorney General for budget and shared-services purposes, but would operate under a written independence charter. Its role would be to create an institutional counterweight without creating a second Attorney General and without transferring core prosecutorial powers.

- **Pre-decision participation.** The Advocate receives notice of significant policy and litigation-policy meetings, sits in on those meetings, and receives the materials needed to evaluate proposed action.
- **Minority Reports.** When the Advocate materially disagrees, the Advocate may issue a written Minority Report. The report becomes part of the permanent decision record and may not be edited or suppressed by the Attorney General.
- **Independent public grievance channel.** People who believe they were mistreated by the Attorney General's Office may submit complaints to a unit outside the chain that made the challenged decision.
- **Prosecutorial integrity review.** The office may investigate credible allegations of evidence suppression, discovery misconduct, false or misleading presentations, retaliation, abuse of process, or comparable conduct.
- **Reports to courts.** When an investigation concerns a pending or completed case, retained counsel may seek permission to place an investigative report or appropriate filing before the court; the judge retains all adjudicative power.
- **Independent litigation voice.** Where a substantial nonfrivolous competing constitutional position exists, retained counsel may seek leave to file an amicus brief or seek intervention where permitted by applicable rules. The AG will by default grant amicus leave wherever the Court may.
- **Fiscal accountability.** The office maintains a Taxpayer Savings Ledger and reports realized savings separately from estimates, recoveries, and nonfinancial outcomes.

Pilot budget: approximately \$950,000 annually. Using FY2027 enacted figures, that is about 2.4% of the Attorney General's \$39.37 million general-revenue appropriation and about 1.8% of the office's \$53.37 million total appropriation. [11] The proposed pilot would be funded from existing Attorney General general-revenue resources legally available for reallocation, rather than by diverting federal grants or restricted receipts.

The pilot is intentionally testable. After three years, Rhode Island would have actual data on the number of complaints resolved, policies changed, Minority Reports issued, integrity investigations completed, court filings accepted, and dollars verifiably saved or recovered. The administrative pilot cannot, by itself, grant independent subpoena power, command a court to accept a filing, or bind a future Attorney General; those features would require later legislation, court-rule changes, or constitutional action as appropriate.

1. The Structural Problem

1.1 Concentrated authority in a single elected legal office

Article IX, section 12 of the Rhode Island Constitution preserves the Attorney General's established powers and allows additional duties and powers to be prescribed by law. State statute makes the Attorney General the head of the department, gives the Attorney General supervision over it, and provides that assistant attorneys general perform their duties under the Attorney General's advice and direction. [1][3] The Supreme Court has repeatedly described the office as occupying a unique constitutional position and has recognized the Attorney General as the state official vested with prosecutorial discretion. [5][6]

The concern addressed here is therefore not that the Attorney General lacks external legal constraints. Courts review cases; the Supreme Court regulates attorneys; the General Assembly controls appropriations and may prescribe duties

by law; and voters elect the Attorney General to a four-year term. [1][2][6] The narrower problem is that the existing structure does not institutionalize a durable internal dissenting voice with its own staff, records, complaint channel, and authority to preserve disagreement before a decision hardens into official policy.

1.2 Electoral victory does not eliminate minority interests

John Stuart Mill’s warning about the “tyranny of the majority” was directed at a basic democratic problem: accountability to an electoral majority does not itself ensure that minority views will be considered before governmental power is exercised. [14] The proposed office translates that concern into an administrative mechanism. It does not give the electoral minority a veto. It gives the minority an institutional voice, a record, and access to lawful channels of review.

1.3 Existing complaint systems do not solve complaints about the decision-maker itself

The Attorney General’s Office currently administers public complaint systems in areas including consumer protection, civil rights, health care, and open government. [9] Those systems serve important purposes, but they are necessarily operated by the same department. A person whose grievance concerns the Attorney General’s own employees, litigation conduct, disclosure practices, or institutional treatment presents a different oversight problem. The MCA would provide a dedicated channel for that class of complaint.

1.4 Prosecutorial integrity issues are unusually consequential

Rhode Island Rule of Professional Conduct 3.8(d) requires prosecutors to make timely disclosure of evidence or information known to the prosecutor that tends to negate guilt or mitigate the offense, subject to protective orders. [7] Allegations involving favorable evidence, discovery obligations, false testimony, or other integrity issues can affect liberty, case outcomes, retrials, post-conviction litigation, and public confidence. An independent review function can investigate facts without transferring the constitutional power to prosecute or dismiss charges.

2. Proposed Solution: Office of the Minority Constitutional Advocate

The proposed MCA is a small, independently functioning office funded from the Attorney General’s appropriation. It is designed as a counterweight, not a rival prosecution service. Its organizing principle is simple: significant exercises of public legal power should be capable of receiving a documented, competent, independent challenge from inside the institution before citizens must rely entirely on outside litigation.

Design rule: The Advocate may investigate, analyze, dissent, recommend, retain counsel, and seek lawful access to courts. The Advocate does not prosecute crimes, dismiss charges, direct prosecutors, bind the State to settlements, or veto the Attorney General.

2.1 Leadership and qualifications

The qualifications for the Minority Constitutional Advocate should be the same as the qualifications for the office of Attorney General. For an administrative pilot, the Attorney General would designate the Advocate by written order and commit the office to a fixed independence charter. A later permanent version could link the office to the second-place candidate in the Attorney General election, but that electoral mechanism should be separately reviewed for statutory and constitutional implementation.

The Advocate may retain attorneys, investigators, experts, and other professional services when needed. Court appearances and filings must comply with the rules of the tribunal, including rules governing who may practice before it.

3. Functions of the Office

1. **Policy-meeting participation.** The Advocate receives timely notice of significant policy, enforcement, constitutional, and litigation-policy meetings and may attend personally or through the Deputy Advocate. The

office receives relevant nonprivileged supporting material and, within lawful confidentiality restrictions, material necessary to conduct meaningful review.

2. **Pre-decision constitutional and policy review.** Before a major policy is finalized, the Advocate may identify constitutional risk, unintended consequences, inconsistent treatment, conflicts with prior positions, factual gaps, or less restrictive alternatives.
3. **Minority Reports as part of the official record.** If the Advocate materially disagrees with a significant decision, the Advocate may issue a written Minority Report. The report is attached to or indexed with the final decision, retained permanently, and may not be edited, suppressed, or rewritten by the Attorney General. Confidential appendices may be segregated where law or court order requires.
4. **Public grievances concerning the Attorney General's Office.** Any person may submit a complaint alleging unfair, arbitrary, discriminatory, retaliatory, abusive, misleading, or otherwise improper treatment by the office or its personnel. The MCA acknowledges receipt, determines jurisdiction, and provides a written disposition or explanation when review is declined.
5. **Prosecutorial integrity review.** The office may investigate credible allegations involving suppression or concealment of evidence, discovery failures, Brady/Giglio-type issues, materially false or misleading evidence or testimony, retaliation, abuse of process, conflicts of interest, or comparable misconduct affecting fairness.
6. **Independent factual investigation.** The Advocate may interview willing witnesses, review records lawfully available to the office, preserve evidence, retain experts, and request relevant information from AG personnel. During the pilot, compulsory process is limited to powers already lawfully available; independent subpoena power would require separate legal authorization.
7. **Reports of Investigation to courts.** When a matter relates to a pending or completed judicial proceeding, retained counsel may seek leave to submit a Report of Investigation, amicus filing, motion, or other procedurally authorized submission. The report may describe facts found, evidence located, conflicting accounts, and recommendations. The court—not the Advocate—determines whether a violation occurred and what remedy is available.
8. **Amicus and intervention function.** Where a substantial nonfrivolous competing legal or constitutional position exists, retained counsel may seek leave to file an amicus brief or seek intervention where applicable law allows. Rhode Island Rule 24 recognizes intervention when a statute confers rights to intervene and also provides permissive intervention in specified circumstances. [8]
9. **Independent legal and expert resources.** The Advocate controls a retained-services budget for outside counsel, forensic specialists, technical experts, auditors, or additional investigators. These resources are used matter-by-matter instead of building a large permanent litigation staff.
10. **Systemic pattern review.** The office may aggregate complaints and investigations to identify recurring problems—such as discovery practices, property handling, responsiveness, conflicts, or inconsistent treatment—while protecting confidential information.
11. **Referral authority.** When a matter is outside the MCA's jurisdiction or belongs with another body, the office may refer it to an appropriate court, inspector general, ethics body, disciplinary authority, law-enforcement agency, or other entity, subject to law and confidentiality.
12. **Annual transparency report.** The office reports the number and categories of complaints, matters accepted or declined, Minority Reports issued, policies modified, court filings attempted and accepted, systemic recommendations, expenditures, and response times. Sensitive or sealed matters are reported only in aggregated or lawful form.
13. **Taxpayer Savings Ledger.** The fiscal analyst records verified savings, avoided expenditures, recoveries, and estimated savings in separate categories, with methodology disclosed. Estimated savings are never presented as realized cash savings.
14. **Confidentiality and anti-retaliation safeguards.** Complaint identities and investigative material are protected to the extent allowed by law. The independence charter should prohibit retaliation for good-faith cooperation with the MCA and require prompt preservation of potentially relevant records.

4. Powers the Office Would Not Have

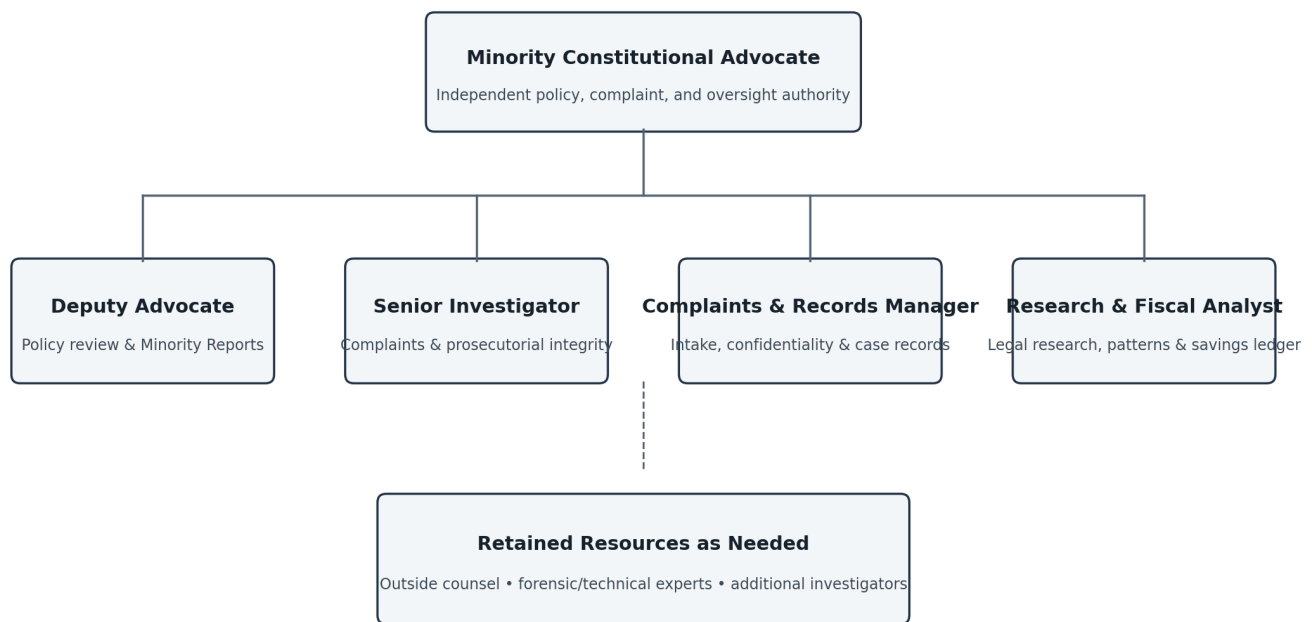
- No power to initiate or dismiss a criminal prosecution.

- No power to enter a nolle prosequi or direct charging decisions.
- No supervisory authority over assistant or special assistant attorneys general.
- No authority to direct police or a grand jury.
- No unilateral power to issue compulsory process unless separately granted by law.
- No authority to bind the State to a settlement or concede a legal position on behalf of the State.
- No power to invalidate a conviction, suppress evidence, impose discipline, or order a remedy; those powers remain with courts or other competent authorities.
- No veto over the Attorney General’s lawful exercise of office.
- No obligation to oppose the Attorney General merely for the sake of opposition. The office acts only when there is a material, nonfrivolous basis for a different position.

These exclusions are central to constitutional design. Rhode Island decisions recognize prosecutorial discretion as a core power of the Attorney General and have rejected arrangements that transfer that power to another branch. [5][6] The MCA therefore supplies information, dissent, investigation, and advocacy without becoming a competing prosecutor.

5. Organization

The pilot is deliberately small. Five permanent positions provide continuity, while specialized legal and technical capacity is retained only when needed.



Shared administrative services may remain with the Attorney General; substantive files and conclusions remain segregated.

Figure 1. Proposed five-person pilot organization. Retained resources are engaged matter-by-matter.

Position	Principal responsibilities
Minority Constitutional Advocate	Leads office; attends major policy meetings; decides when to issue Minority Reports; determines which complaints and investigations to pursue; approves court-report strategy and retained resources.

Deputy Advocate / Director of Policy	Tracks policy calendar; prepares pre-decision analysis; drafts Minority Reports; maintains decision-record index; substitutes at meetings when needed.
Senior Investigator	Conducts interviews and factual review; handles prosecutorial-integrity matters; preserves evidence; coordinates experts and retained investigators.
Public Complaints & Records Manager	Runs complaint intake; acknowledges submissions; manages confidentiality, case files, deadlines, records requests, and complainant communications.
Research & Fiscal Analyst	Performs constitutional/policy research; identifies patterns; maintains performance measures and Taxpayer Savings Ledger; prepares annual reports.

6. Operational Independence Inside the Attorney General’s Budget

For a pilot created by administrative order, “independence” would be operational rather than constitutionally separate. Existing law states that the Attorney General supervises the department and that department employees are not subject to control by another person. [3][4] An Attorney General can therefore create internal independence by written delegation and self-limitation, but the order cannot make that independence irrevocable against the same or a future Attorney General.

The administrative order should nevertheless contain enforceable internal rules for the term of the pilot:

- The Attorney General may not edit, delay, suppress, or rewrite a Minority Report.
- The Advocate controls the office’s case selection, investigative conclusions, retained-services budget, and internal work product within the approved appropriation.
- The Advocate receives direct access to major policy meetings and materials, subject to law, privilege, security classifications, and court orders.
- Complaint and investigative files are access-controlled and segregated from ordinary departmental systems except where access is legally necessary.
- Routine payroll, procurement, facilities, and base IT may be shared with the Attorney General to avoid duplicative overhead.
- Any Attorney General decision to overrule an administrative-access request or restrict the MCA must be documented in writing and preserved in the office record.

7. Funding Mechanism and Pilot Budget

The proposal replaces the earlier 10% concept with a smaller test budget calibrated to a five-person office. The pilot would be financed from unrestricted general-revenue resources within the Attorney General’s appropriation that are legally available for the purpose. Federal funds and restricted receipts would not be diverted unless their governing terms independently permit the expenditure.

FY2027 enacted appropriations provide the Attorney General with \$39,369,297 in general revenue and \$53,371,935 in total funding, including \$2.675 million in capital funding. [11] A \$950,000 pilot equals approximately 2.41% of general revenue and 1.78% of the total appropriation. Relative to the noncapital total, it is approximately 1.87%.

Budget item	Annual amount
Five FTE personnel — planning assumption using AG average loaded FTE cost	\$740,890
Independent retained counsel	\$125,000
Specialized investigators / forensic or technical experts	\$35,000
Secure complaint and case-management systems	\$15,000
Records, transcripts, filing, copying, and service	\$10,000

Training, travel, and public meetings	\$6,000
Annual report, website, and public-information materials	\$4,000
Communications and ordinary office expenses	\$5,000
Contingency reserve	\$9,110
TOTAL	\$950,000

Budget assumption: OMB's FY2027 Attorney General personnel summary reports an average salary-and-benefit cost of \$148,178 per FTE. Five times that amount is \$740,890. This is a planning proxy, not a proposed salary schedule. [12]

The proposed scale is consistent with other small Rhode Island oversight/advocacy offices. For example, the FY2027 budget materials show six authorized FTEs for the Office of the Mental Health Advocate and approximately \$1.015 million in total personnel cost; the enacted FY2027 appropriation for the new Office of Inspector General is \$1.3 million. [10][13] These comparisons do not establish identical duties, but they show that a sub-\$1 million to low-\$1 million office is within the scale of existing Rhode Island oversight and advocacy functions.

8. Fiscal Test: Can the Pilot Pay for Itself?

The pilot should not promise savings that public data cannot yet prove. Instead, it should establish a measurable break-even target of \$950,000 per year and publish the underlying calculations.

OMB's FY2027 Attorney General personnel budget identifies approximately \$1.954 million in legal-services purchased services. Separately, the enacted state budget includes \$1.85 million for tort court awards and \$900,000 for wrongful-conviction awards. [11][12] Those figures provide scale, but they are not all attributable to the Attorney General and are not all avoidable. They therefore should not be booked as prospective savings.

- **Count as realized savings only when documented.** Examples include an outside-counsel invoice avoided, a settlement or judgment reduced with a defensible causal link, duplicative litigation ended earlier, or a recoverable expenditure actually returned to the State.
- **Track estimated avoided costs separately.** Potential future liability avoided may be reported, but it should not be combined with cash savings.
- **Use marginal rather than average cost where appropriate.** For incarceration or staffing effects, the ledger should count actual costs that can be avoided, not automatically multiply a statewide average cost by the number of people affected.
- **Report nonfinancial outcomes separately.** Fairer process, quicker disclosure, documented dissent, corrected policy, and restored confidence may be important outcomes even when they do not create a cash saving.

Three-year fiscal test: A constant \$950,000 annual budget produces a three-year gross pilot cost of \$2.85 million. The final evaluation should state (1) total realized savings and recoveries; (2) estimated avoided costs; (3) additional costs caused by the pilot, if any; and (4) material nonfinancial outcomes. The result should be auditable and should not merge these categories.

9. How the Pilot Would Operate

15. **Policy track.** Major proposal is calendared → MCA receives notice/materials → Advocate participates in meeting → Advocate either concurs, takes no position, or issues Minority Report → final decision and Minority Report are archived together.
16. **Complaint track.** Complaint received → acknowledgement → jurisdiction/triage decision → investigation or referral → written disposition → systemic issue flagged if pattern emerges.
17. **Integrity track.** Credible allegation of disclosure or prosecutorial misconduct → preservation request → factual investigation → retained counsel review where needed → Report of Investigation → court submission sought if a pending/completed case warrants judicial attention.
18. **Litigation track.** Significant public-law case identified → Advocate determines whether a materially different nonfrivolous position exists → counsel retained → amicus or intervention sought under applicable rules → filing becomes public unless sealed.

19. **Fiscal track.** Each completed matter receives a fiscal-impact entry → analyst distinguishes realized savings, recoveries, estimated avoided costs, and nonfinancial outcomes → annual independent review.

10. Legal Boundaries of an Administrative Pilot

An incoming Attorney General has statutory authority to supervise the department and to employ staff, special counsel, and investigators within appropriated resources. [3][4] That supports creation of a substantial internal pilot. It does not mean every feature of a permanent independent office can be created by administrative order.

Issue	Pilot boundary
Independent subpoena power	An internal order should not assume a new compulsory-process power that existing law does not clearly confer. The 2026 Inspector General statute shows that Rhode Island can grant subpoena authority by statute and provide judicial enforcement. [10]
Guaranteed court filing rights	The Attorney General cannot order a court to accept a Minority Report or amicus filing. Court rules control filing, intervention, standing, sealing, and participation. [8]
Transfer of prosecutorial discretion	Core charging and dismissal authority must remain with the Attorney General. Rhode Island cases treat prosecutorial discretion as a fundamental power of that office. [5][6]
Binding future administrations	A present Attorney General can establish a strong independence charter for the pilot, but a later Attorney General could alter an internal order unless the office is institutionalized by law or constitutional provision.
Budget restrictions	The pilot should use general-revenue resources legally available for reallocation and avoid grant or restricted-receipt funds whose conditions do not authorize the MCA's work.

11. Three-Year Evaluation Framework

The pilot should begin with preannounced measures so success is not defined after the fact. Recommended measures include:

- Number of significant policy meetings attended and matters reviewed before decision.
- Number of Minority Reports issued and percentage resulting in a modified final policy.
- Number of public complaints received, accepted, declined, referred, and resolved; median response time.
- Number of prosecutorial-integrity reviews opened and closed; categories of allegation; corrective actions taken.
- Number of court reports, amicus briefs, or intervention motions attempted and accepted.
- Number of matters in which evidence or information was newly disclosed as a result of MCA review.
- Number and type of systemic recommendations and whether they were adopted.
- Realized fiscal savings and recoveries, with supporting documentation.
- Estimated avoided costs, reported separately and with methodology.
- Pilot operating cost and any added cost imposed on other AG units.
- Complaints or findings concerning retaliation, access obstruction, or suppression of MCA work.
- Independent qualitative review by OMB, Auditor General, or another agreed evaluator at the end of the pilot.

12. Path From Pilot to Permanent Structure

If the pilot demonstrates value, Rhode Island could consider legislation or a constitutional amendment establishing a durable office. A permanent design could address selection, term, removal, guaranteed funding, independent subpoena authority, intervention rights, confidentiality, and succession. The most significant question would be whether the office should be directly tied to the second-place candidate in the Attorney General election. That mechanism would strengthen electoral legitimacy but should be separately examined against Rhode Island's constitutional provisions governing election to state office and the Attorney General's preserved powers. [1][2]

The pilot is therefore designed to test the function before fixing the final constitutional form. It asks a narrower empirical question: does institutionalized dissent, independent complaint review, and prosecutorial-integrity oversight improve decision quality and accountability at a cost that Rhode Island can justify?

Conclusion

The proposed Minority Constitutional Advocate is not a second Attorney General and is not intended to paralyze elected authority. It creates four things the present internal structure does not institutionalize in one place: a seat for independent dissent before major decisions, a permanent Minority Report in the official record, a complaint channel for grievances about the Attorney General's own office, and an investigative path for serious integrity concerns that can reach a court through lawful procedure.

A five-person, approximately \$950,000 pilot keeps the experiment small enough to evaluate. It can be funded from the Attorney General's existing general-revenue appropriation if legally available resources are reallocated, while shared administrative services avoid unnecessary duplication. The office's continued existence should depend on evidence: whether it improves policy, protects process, resolves complaints, identifies serious errors, and produces measurable fiscal or institutional value.

Sources and Authorities

- [1] Rhode Island Constitution, Article IX, § 12 — powers and duties of Attorney General. <https://rilegislature.gov/riconstitution/Constitution/C09.aspx>
- [2] Rhode Island Constitution, Article III and Article IV — qualifications for office; election and term of Attorney General. <https://rilegislature.gov/riconstitution/Constitution/ConstFull.aspx>
- [3] R.I. Gen. Laws § 42-9-1 — Attorney General as head of department; assistants under advice and direction. <https://webserver.rilegislature.gov/Statutes/TITLE42/42-9/42-9-1.HTM>
- [4] R.I. Gen. Laws § 42-9-11 — staff, special counsel, investigators, and departmental control. <https://webserver.rilegislature.gov/statutes/TITLE42/42-9/42-9-11.htm>
- [5] Rhode Island Supreme Court, *State v. Lead Industries Association, Inc.*, 951 A.2d 428 (R.I. 2008) — broad discretion and constitutional role of Attorney General. https://www.courts.ri.gov/Opinions/04-63_7-2-08.pdf
- [6] Rhode Island Supreme Court authorities discussing prosecutorial discretion and the Special Prosecutor advisory opinion. <https://www.courts.ri.gov/Opinions/14-148.pdf>
- [7] Rhode Island Supreme Court Rules, Article V, Rule 3.8(d) — prosecutor disclosure responsibilities. https://www.courts.ri.gov/attorney-resources/Documents/Supreme-Rules-Article5_oct%202023.pdf
- [8] Rhode Island Superior Court Rules of Civil Procedure, Rule 24 — intervention. https://www.courts.ri.gov/Miscellaneous%20Orders/Amd-Superior_Ct_Rules-Civil_Procedure_Rules_of_Practice_Rules_Governing_Arbitration_of_Civil_Matters_%28Order_Rules%2910-31-14.pdf
- [9] Rhode Island Attorney General complaint resources — consumer, civil rights, health care, and open government. <https://riag.ri.gov/i-want>
- [10] 2026 Rhode Island Public Law establishing the Office of Inspector General — independent administrative agency, investigative authority, subpoenas. <https://webserver.rilegislature.gov/PublicLaws/law26/law26084-03.htm>
- [11] FY2027 Rhode Island enacted appropriations — Attorney General funding; tort and wrongful-conviction awards; Inspector General appropriation. <https://webserver.rilegislature.gov/BillText26/HouseText26/Article-001-SUB-A.htm>
- [12] Rhode Island OMB FY2027 Attorney General Budget Volume — personnel cost, legal services, program structure. https://omb.ri.gov/sites/g/files/xkgbur751/files/2026-01/FY%202027_Volume%20IV_AG_0.pdf
- [13] Rhode Island OMB FY2027 Office of the Mental Health Advocate Budget — six FTE and personnel-cost comparison. https://omb.ri.gov/sites/g/files/xkgbur751/files/2026-01/FY%202027_Volume%20II_MHA.pdf
- [14] John Stuart Mill, *On Liberty* (1859), Project Gutenberg. <https://www.gutenberg.org/files/34901/34901-h/34901-h.htm>