STATE OF RHODE ISLAND PROVIDENCE, SC.	SUPERIOR COURT
STATE OF RHODE ISLAND, *Plaintiff*, v. AECOM TECHNICAL SERVICES, INC., AETNA BRIDGE COMPANY, ARIES SUPPORT SERVICES, INC., BARLETTA HEAVY DIVISION, INC. BARLETTA/AETNA I-195 WASHINGTON BRIDGE NORTH PHASE 2 JV, COLLINS ENGINEERS, INC., COMMONWEALTH ENGINEERS & CONSULTANTS, INC., JACOBS ENGINEERING GROUP, INC., MICHAEL BAKER INTERNATIONAL, INC., PRIME AE GROUP, INC., STEERE ENGINEERING, INC., TRANSYSTEMS CORPORATION, and VANASSE HANGEN BRUSTLIN, INC., *Defendants*.	C.A. NO. PC-2024-4526 ORAL ARGUMENT REQUESTED

DEFENDANT JACOBS ENGINEERING GROUP, INC.'S MOTION TO DISMISS

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure, and for the reasons set forth in the accompanying Memorandum of Law, Defendant Jacobs Engineering Group, Inc. ("Jacobs") respectfully moves to dismiss all claims brought against it by the State of Rhode Island in its Complaint.

WHEREFORE, Jacobs respectfully requests that the Court (1) grant Jacobs's Motion to Dismiss; (2) dismiss all claims against Jacobs without leave to amend; and (3) grant any other relief as the Court deems just and necessary.

/s/ Michael R. Creta
Michael R. Creta (#9535)
michael.creta@klgates.com
John C. Blessington, *pro hac vice forthcoming*
john.blessington@klgates.com
K&L GATES LLP
One Congress Street
Suite 2900
Boston, MA 02114
Telephone: (617) 951-9101
Fax: (617) 261-3175

Dated: October 31, 2024

CERTIFICATE OF SERVICE

I hereby certify that, on the 31st day of October 2024, I filed and served this document through the electronic filing system on all registered users. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's electronic filing system.

/s/ Michael R. Creta
Michael R. Creta

Case Number: PC-2024-04526
Filed in Providence/Bristol County Superior Court
Submitted: 11/1/2024 10:49 AM
Envelope: 4863923
Reviewer: Alexandra R.

STATE OF RHODE ISLAND PROVIDENCE, SC.	SUPERIOR COURT
STATE OF RHODE ISLAND, *Plaintiff*, v. AECOM TECHNICAL SERVICES, INC., AETNA BRIDGE COMPANY, ARIES SUPPORT SERVICES, INC., BARLETTA HEAVY DIVISION, INC. BARLETTA/AETNA I-195 WASHINGTON BRIDGE NORTH PHASE 2 JV, COLLINS ENGINEERS, INC., COMMONWEALTH ENGINEERS & CONSULTANTS, INC., JACOBS ENGINEERING GROUP, INC., MICHAEL BAKER INTERNATIONAL, INC., PRIME AE GROUP, INC., STEERE ENGINEERING, INC., TRANSYSTEMS CORPORATION, and VANASSE HANGEN BRUSTLIN, INC., *Defendants*.	C.A. NO. PC-2024-4526 ORAL ARGUMENT REQUESTED

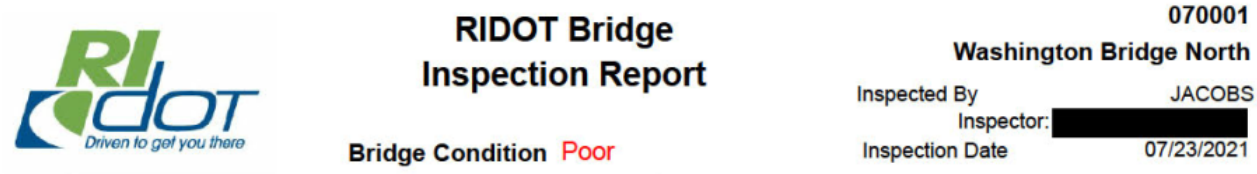
DEFENDANT JACOBS ENGINEERING GROUP, INC.'S
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure, Defendant Jacobs Engineering Group, Inc. ("Jacobs") submits this Memorandum of Law in Support of its Motion to Dismiss. Jacobs seeks dismissal of all claims brought against it by the State of Rhode Island (the "State") in its Complaint.

I. INTRODUCTION

The State fails to identify any damages that were caused by Jacobs. At best, the Complaint's allegations can be read to infer that the State's old bridge has deteriorated to the point of needing replacement. The State does not allege that Jacobs's inspection of the Washington

Bridge caused such deterioration. Nor does the State allege that the deterioration of the Washington Bridge was reversible at the time of Jacobs's inspection. The State cannot make these allegations, because as admitted in the Complaint, the deterioration of the Washington Bridge was a decades-known problem. Punctuating this fact, Jacobs unambiguously told the State the Washington Bridge was in "poor" condition in Jacobs's inspection report:[1]



Through its 43-page, 20-count Complaint, the State seeks to have thirteen of its contractors who performed work related to the Washington Bridge over the past decade, including Jacobs, pay for the cost of replacing the bridge. The claims directed at Jacobs are misguided and should never have been brought.

As noted above and alleged in the Complaint, the poor condition of the Washington Bridge has been known to the State for many years. As early as 1992, "important concerns with the Washington Bridge" were reported, including "deterioration at the ends of the concrete drop-in beams." Compl. ¶¶ 34–36. Similarly, "significant deterioration was discovered in the supports of the cantilever drop-in beam connections" in 1998 and the Washington Bridge was reported to be in "poor condition" and in need of "major repair" in 2011. *Id.* ¶¶ 40–45. More recently, in a 2019 federal grant application, the State, through RIDOT, admitted that the Washington Bridge was

[1] Jacobs's July 21, 2023 Washington Bridge inspection report is both referenced in the Complaint (Compl. ¶ 74) and subject to judicial notice because it is publicly available on the Rhode Island Department of Transportation ("RIDOT") website. https://www.dot.ri.gov/projects/WashingtonBridgeClosure/docs/Inspections/2021-07-23%20Report.pdf; *see Berberian v. New England Tel. & Tel. Co.*, 330 A.2d 813, 815 (R.I. 1975) (stating that "any facts and laws of which the trial court could properly take judicial notice" can be considered in connection with a Rule 12(b)(6) motion); *Hamilton v. Ballard*, 161 A.3d 470, 475 (R.I. 2017) (recognizing that the "Court may take judicial notice of public records").

"nearing a permanent state of disrepair," the "existing bridge structure and current on-and off-ramps are decaying and must be addressed immediately," the "Washington Bridge is in poor structural condition," and "the Washington Bridge has been forced to operate well beyond the bounds of its anticipated capacity for decades."[2]

Two years after the State's significant admissions concerning the Washington Bridge's poor condition, and more than two and a half years before the bridge's closure, Jacobs inspected the bridge in July 2021. Compl. ¶ 73(g). Again, at the top of every page in its inspection report in bright red font, and consistent with the State's prior admissions and the findings of other parties, Jacobs reported the Washington Bridge's condition as "Poor." Jacobs did the job it was hired to perform—it inspected the Washington Bridge and reported its findings to the State. Nonetheless, and despite the extremely limited nature of Jacobs involvement in this dispute (Jacobs is only referenced by name a single time in the "Facts" section of the Complaint), the State now contends that Jacobs did not perform its inspection properly and is somehow liable for unspecified damages. On that basis, the State brings the following four claims against Jacobs: (1) breach of contract (Count XIII); (2) negligence (Count XIV); (3) declaratory judgment regarding non-contractual indemnity (Count XIX); and (4) declaratory judgment regarding contribution (Count XX).

Pursuant to Rhode Island Superior Court Rule of Civil Procedure 12(b)(1) and 12(b)(6), the claims against Jacobs must be dismissed for three reasons. ***First***, the economic loss doctrine bars the State's negligence claim because the only alleged damages are "purely economic losses." To the extent the State has any viable claims (which Jacobs expressly denies), such claims are limited to an alleged breach of contract. ***Second***, the State's breach of contract claim does not

[2] The Washington Bridge Rehabilitation and Redevelopment Project, FFY2019 Build Grant Application, Rhode Island Department of Transportation (RIDOT), dated July 15, 2019, *publicly available at* https://www.dot.ri.gov/accountability/docs/GRANTS/2019_BUILD_Washington_Bridge_Narrative.pdf.

comply with basic pleading requirements because it is missing essential factual allegations. In particular, the Complaint fails to adequately allege which specific contractual provisions were breached by Jacobs, or explain how a breach of those provisions caused the State to suffer harm. *Third*, the declaratory judgment claims do not present an "actual controversy" that is ripe for judicial review. Instead, the claims effectively act as a placeholder for potential claims that may, or may not, arise at some unspecified date in the future.

For these reasons, which are discussed in further detail below, the claims against Jacobs must be dismissed.

II. LEGAL STANDARD

Pursuant to Rules 12(b)(1) and 12(b)(6), a complaint must be dismissed if the Court lacks subject matter jurisdiction or it fails to state a claim upon which relief can be granted, respectively. The purpose of a motion to dismiss is to "test the sufficiency of the complaint." *Pontarelli v. Rhode Island Dep't of Elementary & Secondary Educ.*, 176 A.3d 472, 476 (R.I. 2018) (internal quotation marks omitted). In particular, a motion to dismiss "allows a court to dispose of a proceeding at an early stage if the complaint fails to set forth provable facts under which relief can be granted." *Leone v. Mortg. Elec. Registration Sys.*, 101 A.3d 869, 873 (R.I. 2014). In assessing a motion to dismiss, "the Court need not credit conclusory allegations, bald assertions or unsupportable conclusions." *Doe ex rel. his Parents, Nat. Guardians v. E. Greenwich Sch. Dep't*, No. C.A. PC. 2004-0697, 2004 WL 2821639, at *8 (R.I. Super. Dec. 3, 2004); *see Palazzo v. Alves*, 944 A.2d 144, 154–55, n.17 (R.I. 2008) (affirming dismissal of claim because plaintiffs' complaint only contained "unsupported and conclusory allegations").

III. ARGUMENT

As noted above, the State's claims against Jacobs should be dismissed for three reasons. First, the State's negligence claim is barred by the economic loss doctrine. Second, the State has failed to adequately plead a breach of contract claim. Third, the State's two declaratory judgment claims are not ripe for judicial review.

a. The State's negligence claim against Jacobs is barred by the economic loss doctrine.

"The economic loss doctrine provides that 'a plaintiff is precluded from recovering purely economic losses in a negligence cause of action.'" *Hexagon Holdings, Inc. v. Carlisle Syntec Inc.*, 199 A.3d 1034, 1042 (R.I. 2019) (quoting *Franklin Grove Corp. v. Drexel*, 936 A.2d 1272, 1275 (R.I. 2007)). "[U]nder this doctrine, a plaintiff may not recover damages under a negligence claim when the plaintiff has suffered no personal injury or property damage." *Id.* (quoting *Franklin Grove Corp.*, 936 A.2d at 1275). The Rhode Island Supreme Court has expressly recognized that "[w]here there are damages in the construction context between commercial entities, the economic loss doctrine will bar any tort claims for purely economic damages", and that, "[i]n such a context, a party who is injured must resort to contract law for recovery." *Id.* (internal quotation marks omitted); *see Bos. Inv. Prop. No. 1 State v. E.W. Burman, Inc.*, 658 A.2d 515, 517 (R.I. 1995) ("[I]f tort and contract remedies were allowed to overlap, particularly in the construction industry, "certainty and predictability in allocating risk would decrease and impede future business activity.") (internal quotation marks omitted).

While the State broadly alleges "physical damages to its property and economic damages" in connection with its negligence claim (Compl. ¶ 153), the alleged property *damage* is limited to

deterioration of the Washington Bridge itself.[3] *See, e.g.*, *id.* ¶¶ 92 (alleging that the tie-down rods at piers 6 and 7 were either compromised or failed), 95 (alleging "widespread deterioration of the [Washington Bridge's] post-tensioning system"). Critically, the economic loss doctrine bars a negligence claim when the only alleged property damage involves damage to the property at the center of the dispute. *See Hart Eng'g Co. v. FMC Corp.*, 593 F. Supp. 1471, 1482 n.11 (D.R.I. 1984) ("Economic loss, for purposes of this discussion, *encompasses the costs associated with repair and-or replacement of a defective product*, or loss of profits consequent thereto, apart from any injury or damage to *other property*.") (emphasis added and internal quotation marks removed); *Alejandre v. Bull*, 159 Wash. 2d 674, 684, 153 P.3d 864, 869 (Wash. 2007) ("The key inquiry is the nature of the loss and the manner in which it occurs, i.e., are the losses economic losses, with economic losses distinguished from personal injury or injury to *other property*.") (emphasis added);[4] *Wyman v. Ayer Properties, LLC*, 469 Mass. 64, 69, 11 N.E.3d 1074, 1079–80 (Mass. 2014) ("Economic loss includes damages for inadequate value, costs of repair and replacement of the defective product or consequent loss of profits without any claim of personal injury or damage to other property. Essentially, where the negligent design or construction of a product leads to damage only to the product itself, the recovery for economic loss is in contract, and the economic loss rule bars recovery in tort.") (internal quotation marks and citations omitted).

Rhode Island Supreme Court precedent clearly establishes that deterioration of the Washington Bridge, including any associated repair or replacement costs, is considered purely economic harm that cannot sustain a negligence claim. *See Hexagon Holdings*, 199 A.3d at 1037,

[3] Considering this case, fortunately, does not involve the complete failure of the Washington Bridge or an accident caused by bridge failure, it is not surprising that the alleged property damage is limited to deterioration of the actual bridge.

[4] The Rhode Island Supreme Court has stated that it "has looked to the Supreme Court of Washington for guidance on [the economic loss doctrine]." *Franklin Grove Corp.*, 936 A.2d at 1275.

1042–43 (R.I. 2019) (holding that the economic loss doctrine barred a negligence claim against a subcontractor-roof installer for replacement costs of allegedly leaky roof); *Bos. Inv. Prop. No. 1 State*, 658 A.2d at 515–18 (recognizing that the economic loss doctrine could preclude a negligence claim against a general contractor for the "costs to remedy the defects" caused by leaking office building windows and erosion problems with a parking lot); *see also Alejandre*, 159 Wash. 2d at 684–85 (holding that a failed septic system involved "purely economic damages" and recognizing that "defects evidenced by internal deterioration" are characterized as economic losses"). For purposes of the economic loss doctrine analysis, there is no difference between the deterioration of a septic tank (*Alejandre*, 159 Wash. 2d at 684–85) versus the "deterioration of the [Washington Bridge's] post-tensioning system" (Compl. ¶ 95).

Further, the Rhode Island Supreme Court has explained that sophisticated parties, such as the State, should "utilize contract law to protect themselves from economic damages." *Bos. Inv. Prop. No. 1 State*, 658 A.2d at 517; *see Franklin Grove Corp.*, 936 A.2d at 1275 ("Our rationale for abiding by the economic loss doctrine centers on the notion that commercial transactions are more appropriately suited to resolution through the law of contract, than through the law of tort."); *see also Triton Realty Ltd. P'ship v. Almeida*, No. C.A. PC04-2335, 2006 WL 2089255, at *4 (R.I. Super. July 25, 2006) ("The economic loss doctrine was created specifically to induce commercial entities to allocate their foreseeable financial risks through the utilization of contract law rather than tort law."). Indeed, the State has brought a breach of contract claim against Jacobs that contains all of the same substantive allegations as its negligence claim. *Compare* Compl. ¶¶ 157 (alleging that Jacobs breached its inspection contract by failing to conduct a detailed review of the Washington Bridge structure file, conduct an inspection of the Washington Bridge in conformance with the contract, and recommend needed repairs), *with* 161 (alleging that Jacobs breached its duty

of care by negligently failing to conduct a detailed review of the Washington Bridge structure file, conduct an inspection of the Washington Bridge in conformance with the standard of care, and recommend needed repairs). Where binding Rhode Island law dictates that commercial transactions between sophisticated parties are better resolved through contract law, and where it is alleged that the parties did in fact enter into a contract concerning the relevant subject matter, the Court should not entertain a negligence claim.

Thus, for all of the above reasons, the State's negligence claim is precluded by the economic loss doctrine and must be dismissed. *See Triton Realty Ltd. P'ship v. Almeida*, No. CIV.A. 04-2335, 2005 WL 1984454, at *6 (R.I. Super. Aug. 17, 2005) (granting Rule 12(b)(6) motion and dismissing negligence claim due to the economic loss doctrine).

b. The State fails to adequately allege a breach of contract claim against Jacobs.

The State fails to adequately allege a breach of contract claim against Jacobs for two reasons. First, the Complaint fails to allege any specific contractual provisions that Jacobs purportedly breached. Second, apart from conclusory and unsupported allegations, there is nothing in the Complaint to suggest that any of Jacobs's alleged contractual breaches caused the State harm.

Regarding the first deficiency, the Complaint alleges that the "State and Jacobs Engineering are parties to a 2019 inspection contract." Compl. ¶ 155. This "2019 inspection contract" is not attached to the Complaint, no contractual language is quoted, and no specific contract provisions are cited. In fact, given the vague description of "2019 inspection contract," it is unclear which specific document is being referenced, or whether it is even a single document. The lack of any allegations concerning the relevant contractual obligations falls well short of the State's Rule 8(a)

obligation to provide Jacobs with fair notice of the claim being asserted. Jacobs should not be left guessing which alleged contractual obligations the State relies on to support its claim.

Significantly, numerous courts across the country have expressly recognized that alleging specific contractual provisions that have been breached is a baseline requirement for bringing a breach of contract claim. *See, e.g.*, *Burt v. Bd. of Trustees of Univ. of Rhode Island*, 523 F. Supp. 3d 214, 220–21 (D.R.I. 2021) ("When alleging a breach, plaintiffs must 'describe, with substantial certainty, the specific contractual promise the defendant failed to keep.'") (quoting *Brooks v. AIG SunAmerica Life Assur. Co.*, 480 F.3d 579, 586 (1st Cir. 2007)); *Calvanese v. Bank of Am.*, No. CV 15-30151-MGM, 2015 WL 7737330, at *7 (D. Mass. Dec. 1, 2015) (holding that "failure to describe in the amended complaint the specific contractual obligations Defendant allegedly breached with 'substantial certainty' provides a sufficient basis for outright dismissal of [the breach of contract] claim.") (citing First Circuit authority); *Certified Flooring Installation, Inc. v. Young*, No. CV 23-158-DLB-CJS, 2024 WL 2060852, at *3 (E.D. Ky. May 6, 2024) ("For a breach of contract claim to survive a Rule 12(b)(6) motion to dismiss [], a plaintiff must adequately plead the specific contract provision breached.") (internal quotation marks omitted); *Satvati v. Allstate Northbrook Indem. Co.*, 634 F. Supp. 3d 792, 797 (C.D. Cal. 2022) ("To survive a motion to dismiss, a plaintiff must identify a specific contract provision breached by the defendant."); *Wolff v. Rare Medium, Inc.*, 210 F. Supp. 2d 490, 494 (S.D.N.Y. 2002), *aff'd*, 65 F. App'x 736 (2d Cir. 2003) ("When pleading the[] elements [of breach of contract], a plaintiff must identify the specific provision of the contract that was breached as a result of the acts at issue.").

Even if the State had alleged the specific contractual obligations purportedly breached by Jacobs, however, the breach of contract claim would still fail to mee the fundamental pleading requirements because there are no factual allegations demonstrating how Jacobs's alleged breach

caused the State to suffer harm. *See Fogarty v. Palumbo*, 163 A.3d 526, 541 (R.I. 2017) ("In a breach-of-contract claim, the plaintiff must prove both the existence and breach of a contract, and that the defendant's breach thereof caused the plaintiff's damages."); *Bradbury v. Deutsche Bank Nat'l Tr. Co. as Tr. for GSAMP Tr.* 2005-WMC1, No. CV 18-690WES, 2020 WL 1815897, at *5, n.10 (D.R.I. Apr. 10, 2020) (concluding that a breach of contract claim was "subject to Fed. R. Civ. P. 12(b)(6) dismissal because the complaint ha[d] no factual allegation permitting the inference … that the [plaintiffs] were damaged …").

Jacobs's involvement in this dispute is limited to a 2021 inspection in which it reported the Washington Bridge's condition as "poor." This inspection occurred two years *after* the State admitted that the Washington Bridge was "near a permanent state of disrepair," and two and a half years before the bridge's closure in December 2023. Considering the State was well aware of the bridge's poor condition for years, the allegations in the Complaint do not demonstrate that Jacobs's 2021 inspection resulted in damages to the State (never mind replacement costs for the entire bridge). Rather than alleging any facts demonstrating causation and harm, the State simply alleges, in conclusory fashion, that it has suffered unspecified "physical damages to its property and economic damages" as a "direct and proximate result" of Jacobs's alleged breaches. Compl. ¶ 158. Without any factual support, these conclusory assertions of causation and damages are entitled to no consideration, even at the pleadings stage. *See Palazzo*, 944 A.2d at 154–55, n. 17; *Doe ex rel. his Parents, Nat. Guardians*, 2004 WL 2821639, at *8.

Because the State has failed to adequately allege the basic requirements for a breach of contract claim, the breach of contract claim against Jacobs must be dismissed.

c. The State's declaratory judgment claims against Jacobs are not ripe for judicial review.

Counts XIX (declaratory judgment regarding non-contractual indemnity) and XX (declaratory judgment regarding contribution) against Jacobs must be dismissed because they are not ripe for judicial review.

As the Rhode Island Supreme Court has recognized, a "party seeking declaratory relief must present the court with an actual controversy" and not simply a "potential dispute." *Providence Tchrs. Union v. Napolitano*, 690 A.2d 855, 856 (R.I. 1997); *see Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997) ("It is well established in this state that a necessary predicate to a court's exercise of its jurisdiction under the Uniform Declaratory Judgments Act is an actual justiciable controversy."). "[T]hat which is not ripe for decision cannot and should not be decided in a declaratory-judgment action." *Sasso v. State*, 686 A.2d 88, 91 (R.I. 1996). Any petition for declaratory relief "which is based on facts and circumstances which may or may not arise at a future date is of necessity unripe and abstract." *Berberian v. Travisono* ("*Berberian II*"), 332 A.2d 121, 124 (R.I. 1975).

Here, instead of alleging a ripe "actual controversy," the State has alleged, at best, a "potential dispute" that may, or may not, arise at a future date. Notably, the State concedes that its declaratory judgment claims are premised on potential future events—in particular, the possibility of becoming liable to unidentified third parties one day. Compl. ¶¶ 184 ("*To the extent that in the future*, the State *may be held liable* to one or more third parties as a result of the active fault and wrongful conduct of … Jacobs Engineering[,] … the State … is entitled to indemnity …") (emphasis added); 188 ("*To the extent that in the future*, the State *may be held liable* to one or more third parties as a tortfeasor, the State is entitled to contribution from … Jacobs Engineering …") (emphasis added).

In addition to this significant concession, there is a complete lack of factual allegations in the Complaint demonstrating the existence of a current controversy. Among other deficiencies, the Complaint is devoid of any allegations that the State has been subject to a lawsuit, demand, or even a threat of legal action relating to the Washington Bridge. In other words, there is nothing to suggest that the "State may be held liable to one or more third parties" beyond speculative conjecture. *See id*. The State also fails to identify any of the "one or more third parties" that it "may be held liable to" at some point, describe the types of claims such parties could potentially bring or harm they have suffered, or explain how the State could potentially be a joint tortfeasor in connection with those claims. By failing to allege any of this information, the State has not pled the requisite elements for the underlying causes of action for its declaratory judgment claims. *See*, *e.g.*, *R & R Assocs. v. City of Providence Water Supply Bd.*, 724 A.2d 432, 434 (R.I. 1999) (holding that one of the elements of an equitable indemnification claim is that "the party seeking indemnity must be liable to a third party"); *Wampanoag Grp., LLC v. Iacoi*, 68 A.3d 519, 522 (R.I. 2013) (holding that a contribution claim requires joint tortfeasors who are "both liable in tort to the original plaintiff and their respective wrongful conduct caused the same injury to the original plaintiff") (internal quotation marks omitted).

Last, although the State contends its declaratory judgment claims are "ripe for determination" (Compl. ¶¶ 186, 190), this conclusory allegation is not supported by any facts and should not be credited by the Court. *See Palazzo*, 944 A.2d at 154–55, n. 17; *Doe ex rel. his Parents, Nat. Guardians*, 2004 WL 2821639, at *8. Indeed, in the same sentence that the State asserts the declaratory judgment claims are ripe, the State simultaneously acknowledges that there could be "future contingencies." Compl. ¶¶ 186, 190.

In short, the State's declaratory judgment claims are an invitation to render an impermissible advisory opinion on undefined, future events that may never occur. *See Sullivan*, 703 A.2d at 751 ("A declaratory-judgment action may not be used for the determination of abstract questions or the rendering of advisory opinions, nor does it license litigants to fish in judicial ponds for legal advice.") (internal quotation marks and citations omitted). Without anything beyond a hypothetical, potential liability to unidentified third parties, the State's declaratory judgment claims are not ripe and must be dismissed. *See Berberian II*, 332 A.2d at 124 (affirming dismissal of declaratory judgment claim that was "based on facts and circumstances which may or may not arise at a future date" and, therefore, was "unripe and abstract"); *see also Sasso*, 686 A.2d at 91 (refusing to provide declaratory relief concerning speculative and as yet unrealized future factual scenarios).[5]

IV. CONCLUSION

For the foregoing reasons, Jacobs respectfully requests that the Court (1) grant Jacobs's Motion to Dismiss; (2) dismiss all claims against Jacobs without leave to amend; and (3) grant any other relief as the Court deems just and necessary.

[5] On a final note, it is worth mentioning that the State's negligence claim cannot serve as the underlying basis for its declaratory judgment claims because the negligence claim is barred by the economic loss doctrine. *See Franklin Grove Corp.*, 936 A.2d at 1278 ("This Court concludes, therefore, that the economic loss doctrine bars the plaintiff from asserting this negligence claim against TNT. Accordingly, the economic loss doctrine also bars the defendants from recovering against TNT under either an indemnification or contribution action when the primary cause of action would fail.").

Michael R. Creta
Michael R. Creta (#9535)
michael.creta@klgates.com
John C. Blessington, *pro hac vice forthcoming*
john.blessington@klgates.com
K&L GATES LLP
One Congress Street
Suite 2900
Boston, MA 02114
Telephone: (617) 951-9101
Fax: (617) 261-3175

Dated: October 31, 2024

CERTIFICATE OF SERVICE

I hereby certify that, on the 31st day of October 2024, I filed and served this document through the electronic filing system on all registered users. The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's electronic filing system.

/s/ Michael R. Creta
Michael R. Creta