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| **STATE OF RHODE ISLAND**<br>**PROVIDENCE, SC.** | **SUPERIOR COURT** |
| **NATIONAL EDUCATION ASSOCIATION RHODE ISLAND, et al.,**<br>***Plaintiffs,*** | |
| **vs.** | **C.A. No. PC 21-05116** |
| **SOUTH KINGSTOWN SCHOOL COMMITTEE, et al.,**<br>***Defendants.*** | |

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO VOLUNTARILY DISMISS COMPLAINT PURSUANT TO RULE 41**

## I. BRIEF INTRODUCTION.

The instant dispute involves an action for declaratory judgment filed by Plaintiffs, National Education Association Rhode Island ("NEARI") and National Education Association – South Kingstown ("NEASK") (collectively referred to as "NEA" or the "Union"). The Defendants are the South Kingstown School Committee (and related Defendants) (hereinafter "School Committee Defendants") and two individuals who requested the public records in dispute (the "Requestors") and who were required to be named as indispensable parties pursuant to the Uniform Declaratory Judgments Act ("UDJA"), G.L. 1956 § 9-30-11. See Exhibit A, *Complaint, ¶ 9.*

The basis for seeking dismissal is that since the filing of the Complaint, events have occurred which have caused the claims raised in the Complaint to be moot. By stipulation, the Union and the School Committee Defendants have agreed to the dismissal of claims and Plaintiff no longer seeks any declaratory or injunctive relief. The Requestors, however, refuse to agree to

a dismissal even though the Union is no longer seeking any affirmative relief and they have filed no counterclaims. Accordingly, to the extent any aspect of the action remains, the Union respectfully requests that the Court dismiss the action in its entirety pursuant to R.I. R. Civ. P. 41(a).

## II. FACTS AND TRAVEL.

The instant dispute arose in about June 2021 when the Union became concerned that the School Committee Defendants planned to release non-public records concerning its members and/or documents that implicated the privacy interests of their members. Exhibit B, *Decision on Summary Judgment*.[1] Accordingly, on August 2, 2021, the Union filed the instant action seeking declaratory and injunctive relief. Ex. A. In the action, the Union directed its request for declaratory and injunctive relief at a limited aspect of the documents requested by the Requestors. As stated at the very first instance in the Complaint "[i]n short, this action seeks to: (a) prohibit the disclosure of non-public records; and/or (b) for those requests that call for *personally identifiable and other personnel-related information about public school teachers*, that no records be disclosed until the Court employs a balancing test that properly assesses the public interest in the records at issue measured against the teachers' individual privacy rights." Ex. A, p. 1. With respect to the request for declaratory judgment, it was limited in that Plaintiffs requested: "A. For certain categories of documents which are not public records under APRA, enter declaratory judgment that the requested records are not subject to disclosure. This category should include, but may not be limited to, *personal e-mails, labor relations materials, personnel records, disciplinary records, evaluations and other records that are incidental and do not*

[1] The detailed facts and travel are contained in this Court's decision dated June 9, 2022, and attached as Exhibit B.

*concern the official business of the School Department*. B. For certain categories of documents which are potentially public records under APRA, examine the records in camera pursuant to § 38-2-9(b) and conduct the balancing test contemplated in § 38-2-2(A)(I)(b) *to determine whether the disclosure of such records would constitute a clearly unwarranted invasion of privac*y and thus, shall not be disclosed. C. In the alternative, should certain records be subject to disclosure, to order redaction of personally identifiable information of teachers and/or other information which may lead to the identity of such teachers contained in the documents. D. Grant the Plaintiffs such other relief as this court deems just and proper." Ex. A.

Significantly, the Union only named the Requestors as parties because it was required under the UDJA. G.L. 1956 § 9-30-11. In particular, pursuant to ¶ 9, Plaintiffs averred that "Defendants Solas and Hartman are named and included only insofar as Plaintiffs are required to do so pursuant to G.L. 1956 § 9-30-11 which provides that "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." On August 5, 2021, the Union filed a motion for temporary restraining order directed at only specific types of records under consideration for disclosure by the School Department and sought to restrain only the School Committee, i.e., the Union sought no relief from or in relation to the Requestors. The School Committee filed its Answer on August 16, and the Requestors filed their Answer on August 18. *No Defendant filed a counterclaim against the Union*.

The motion for temporary injunctive relief was scheduled for argument on Monday, August 23, 2021. During the week before the hearing, the Court held a conference. During the conference, it became apparent that between the time the Union initially reached out to the

School Department and August 18, counsel for the School Department had continued working on the response to Request No. 47 and had in fact been conducting a review to determine whether the records at issue were subject to disclosure and/or whether certain records were not subject to disclosure because they implicated teacher privacy rights (or fell within another appropriate exemption). *Accordingly, because the School Department represented that it did not anticipate producing any documents described as problematic by the Union its motion, the Union withdrew its request for injunctive relief*. Ex. B, p. 7. In sum, since it was apparent that the School Department was not going to violate teacher privacy rights with its next disclosure to the Requestors, there was no need for injunctive relief.

That same day, the Union offered to voluntarily dismiss the Requestors from the action. Ex. B, p. 7. The Union made this offer because at least one Requestor had publicly complained about being "sued," by the Union for seeking records about her child (even though, to date, there still is no verifiable evidence that either Requestor has a child enrolled in school in the South Kingstown School District). Either way, if the Requestors did not want to participate, the Union offered them a way out of the lawsuit on August 23, within three (3) weeks of the filing of the Complaint. The Requestors declined. Id.

On or about August 20, the Requestors filed a motion for summary judgment. The motion for summary judgment filed by the Requestors was directed at the issue of whether the Union had standing to pursue the action in the first place and whether the anti-SLAPP defense applied. The Requestors asked the Court to rule that as a matter of law it succeeded on the anti-SLAPP defense and to award attorneys' fees.

While the motion was pending, or about September 22, 2021, the Union reached out to the School Department to (a) confirm that the 90,000 pages of Savastano e-mails had been

produced after an appropriate balancing test as promised; and (b) to inquire whether any other requests that implicated privacy concerns were paid for and scheduled to be produced. **Counsel for the School Department confirmed that none of the other requests had been paid for, and thus, no other records at issue were scheduled for disclosure.**

From the Union's perspective, it was likely that events that occurred since the filing of the lawsuit (the School Department's representations regarding its intentions not to produce records which would implicate teacher privacy, among other things) rendered the Union's Complaint moot. However, given the standard applicable to voluntary dismissal, see infra, it made sense to await the outcome of the motion for summary judgment.

The Court issued its decision on June 9, 2022. In short, the Court denied the Requestors motion for summary judgment. Ex. B. It concluded that the Union did have standing to file suit at the outset, that the defense raised by the Requestors was fact-dependent and could not be resolved at the summary judgment stage. Importantly, the Court determined that there was a dispute about whether the exercise of rights asserted by the Requestors was a sham in the first place. In other words, there was a significant question about whether the anti-SLAPP defense was meritorious.

Following the issuance of the decision, counsel for the Union wrote to all Defendants counsel as follows:

> "In follow up to the proposed order, and given the fact that there has been no change in circumstances since the argument on the summary judgment motion (no non-public documents have been released nor does it appear the SC has any imminent plans to do so) the Union proposes that the parties agree that the case shall be dismissed, no interest, costs or attorneys' fees to either party and execute a dismissal stipulation pursuant to Rule 41." Exhibit C, *E-mail Chain*.

Counsel for the School Committee agreed and thus, a dismissal stipulation of the claims by the Union against the School Committee Defendants has been filed. Exhibit D, *Dismissal Stipulation*. Counsel for the Requestors did not agree. In particular, Requestors' counsel responded that:

> "Because [the Requestors] still have affirmative relief under the anti-SLAPP statute, and because the Court found fact questions regarding [Requestors'] anti-SLAPP claim, we cannot agree to a dismissal at this point." Ex. C.

Accordingly, because the Requestors assert that they have a right to pursue its "anti-SLAPP claim" it can require the Union to maintain the action it no longer seeks to pursue. However, although the Requestors style their defense as an "anti-SLAPP claim," it is actually not a counterclaim. But more importantly, regardless of the Defendant Requestors desire to litigate over a claim the Union *no longer seeks to pursue given the doctrine of mootness*, this Court has the discretion to dismiss the instant action at the request of the Union based on the particular facts and circumstances present. As the following makes clear, the action should be dismissed pursuant to Rule 41.

## III. STANDARD OF REVIEW.

"Rule 41(a)(2) provides for a plaintiff's voluntary dismissal of an action. According to Super. R. Civ. P. 41(a)(1) (Rule 41(a)(1)), if a motion is brought before an adverse party's answer or before an adverse party's motion for summary judgment, dismissal may occur without an order of the Court. Alternatively, a Plaintiff can bring a voluntary dismissal without a Court order where all parties have signed an agreement and filed a stipulation. See Rule 41(a)(1) Furthermore, '[u]nless otherwise stated in the [order], the dismissal [under this paragraph] is without prejudice * * * ' Rule 41(a)(1).

*If an adverse party has already served its answer, has filed a motion for summary judgment, or has objected to dismissal, a plaintiff may bring a motion for voluntary dismissal by order of the Court*. See Rule 41(a)(2). Rule 41(a)(2) provides that, '[e]xcept as provided in paragraph (1) * * * an action shall not be dismissed at the plaintiff's instance save upon order of the court and *upon such terms and conditions as the court deems proper*.' Rule 41(a)(2). In such circumstances, a Court may grant the plaintiff's motion for voluntary dismissal—either with prejudice or without—***despite an adverse party's objection, after a careful review of the particular circumstances of the case***. See Barnes-De-La-Texera v. San Jorge Children's Hosp., 62 F. Supp. 3d 212, 215 (D.P.R. 2014) (citing Colon-Cabrera v. Esso Standard Oil Co., 723 F.3d 82, 87 (1st Cir. 2013)) (emphasis added).

The above-mentioned factors act as merely a guide for the trial judge, with whom discretion ultimately rests. See Tyco Labs., Inc. v. Koppers Co., 627 F.2d 54, 56 (7th Cir. 1980). Furthermore, no mandate exists that requires strict adherence to each and every factor, and all factors need not be resolved in favor of the moving party before dismissal is appropriate. See Doe v. Urohealth Sys., Inc., 216 F.3d 157, 160 (1st Cir. 2000)." Belac v. 3M Co., No. PC-16-0544, 2017 R.I. Super. LEXIS 70, at *5-6 (Super. Ct. Apr. 20, 2017).

Pursuant to Rule 41, "dismissal without prejudice is the norm, 'unless the court finds that the defendant will suffer legal prejudice.' * * * The mere prospect of a subsequent lawsuit does not constitute such prejudice." Cabrera v. Esso Standard Oil Co. P.R., 723 F.3d 82, 87 (1st Cir. 2013).

## IV. ARGUMENT.

The Union asserts that dismissal is appropriate under Rule 41(a)(2) based on the facts and particular circumstances of the instant case. First, the instant action never sought substantive

relief against the Requestors. As stated in the Verified Complaint, the only reason the Requestors were named was because they were indispensable parties under the UDJA. Ex. A. If the Union were to seek a declaration regarding what documents could be produced by the School Department, the Union was required to name the Requestors. The Union did not ask for injunctive relief to prevent or require the Requestors to do or not do anything. In fact, when the Requestors initially complained (publicly) about being included in this action (alleging that they as "parents" had been "sued" by the Union for exercising their constitutional rights) the Union offered to dismiss them from the action. This offer was made on August 23, within weeks of the initial filing of the case.

The Union has conducted no discovery and has not sought to prosecute the original claims because they are now moot. As noted supra, once it was determined that there was no longer risk of public disclosure, the Union has taken no steps to prosecute the action other than defending against the motion for summary judgment filed by the Requestors.

In Belac, this Court held that "[b]y requiring the Court's approval, Rule 41(a)(2) allows a trial judge to first evaluate whether dismissal will cause *prejudice* to any party; such a review ensures that no prejudice will result from a voluntary dismissal. See Doe, 216 F.3d at 160 (quoting P.R. Mar. Shipping Auth. v. Leith, 668 F.2d 46, 50 (1st Cir. 1981)). In considering whether dismissal will result in prejudice to an adverse party, a Court should consider the following factors: *1) the efforts and costs incurred by the defendants in preparation for trial; 2) excessive delay and want of diligence in the plaintiff's litigation; 3) the legitimacy (or lack thereof) of the explanation for the need to take a dismissal; and 4) whether a summary judgment motion has been filed by the defendant*." Id. at *7 (internal citations omitted). In the instant case (filed in 2021) the parties have engaged in no discovery, no trial preparation, and thus, the

Requestors cannot claim prejudice due to proximity to trial. In terms of lack of diligence or delay, the Union offered to dismiss the Requestors at the outset, and now that the summary judgment issues have been resolved, it has filed this motion. The Union's reasons for dismissal are consistent with the position it has taken since the time of the motion for temporary injunctive relief. While the Union asserted it had standing to bring the action in the first place, that is a different inquiry than whether the Union determined that the claims were rendered moot by the School Committee's decision not to produce certain non-public documents related to teachers which were at the heart of the original filing. Finally, there is no longer any summary judgment motion pending. In fact, the motion that was filed was denied. Accordingly, there is no *prejudice* to the Requestors that would prevent dismissal.

Dismissal on the motion of the Plaintiff under these circumstances is consistent with available precedent on the issue. For example, in Belac, the plaintiff filed a personal injury action against a number of defendants in this Court. Id. at *2. The parties engaged in significant discovery efforts including a number of depositions and motion practice. Two defendants filed motions for summary judgment on the issue of liability – both argued that "a lack of product identification and insufficient causal connection," meant that both were entitled to judgment as a matter of law in their favor which would have disposed of plaintiff's personal injury claims against them. Id. at *2-3.

Certain defendants alleged that the court lacked jurisdiction over the action. The plaintiff wanted to dismiss the action and re-file it in Pennsylvania. The two defendants that had motions for summary judgment objected to dismissal, arguing that given the extensive discovery and pending motions for summary judgment, both would suffer prejudice if the case was dismissed and re-filed in Pennsylvania. Because the plaintiff requested dismissal *without prejudice* (to re-

file) the Court found that both defendants would be prejudiced (both would have to conduct discovery a second time and re-file motions in Pennsylvania). Id. at *9-10. Accordingly, the Court granted the plaintiff's motion with respect to all defendants except the two with the pending summary judgment motions.

The instant case is easily distinguished. The Union has not asserted any claim for damages against the Requestors. The Requestors have not incurred any efforts defending against liability and have no pending summary judgment motion on liability. But perhaps more significantly, the Union is not seeking to re-file its action elsewhere which would cause the Requestors to have to re-litigate any issues already resolved or pending. Dismissal is not sought to pursue the same issue in another forum, but to end the controversy that originally existed and that has now been rendered moot.

Accordingly, this case is more akin to KRA (Driveshaft) Acquisition, LLC v. Capaldi, 2008 R.I. Super. LEXIS 77 (R.I. Super., filed June 30, 2008). KRA filed its action seeking a declaratory judgment concerning shared property so that it could pursue construction of a Dunkin Donuts. Id. at *2. The defendants were the co-owners and the Department of Transportation ("DOT"). In 2007, the plaintiffs filed a motion to dismiss alleging that events have occurred since filing of the complaint that rendered their request for declaratory judgment moot. The Court granted the plaintiffs motion without prejudice contemplating that, in the future, "should DOT condition approval of the revised PAP application upon a signed mutual assent agreement with the Capaldis, [p]laintiffs would have no recourse in the court system tosettle their dispute," if the motion as granted with prejudice. Id. The Capaldis filed a motion for fees and costs, which was also denied.

Significantly, the Court found that because the action was moot the litigants no longer

had a stake in the outcome and dismissal was appropriate.

It is anticipated that the Requestors will argue they have some type of stake or right in pursuing the anti-SLAPP defense. To be clear, if the underlying action is moot, then so is this type of defense (i.e., there is no claim to defend against). The parties asserting the anti-SLAPP defense are seeking immunity from suit. The dismissal of the underlying claim renders the claim for immunity moot – there is nothing that exists from which to claim immunity. In short, the defense is extinguished.

But even if it the defense was not extinguished, the fact that the Requestors had a defense to assert or pursue does not prohibit dismissal because whether the existence of a defense prohibits dismissal is still appropriate "providing that consideration of all the equities in the case warrant such a conclusion." See, e.g., Arias v. Cameron, 776 F.3d 1262, 1275 (11th Cir. 2015) (granting plaintiff's motion to dismiss pursuant to Rule 41 despite defendant's argument that it would lose its statute-of-limitations defense if the claim was re-filed). In a Massachusetts case, the Superior Court addressed this type of argument in response to a Rule 41 motion filed by a plaintiff. In doing so, the Court noted:

> "The Defendant's real reason for opposing voluntary dismissal is that they now have a tactical advantage over Westmoreland, having defeated class certification under Massachusetts law in this action, that would be lost if Westmoreland is allowed to end this case and seek class certification in federal court.
>
> But a defendants' loss of the upper hand in a pending proceeding, or a plaintiff's countervailing gain of some 'tactical advantage' by dismissing an action without prejudice and then pursuing the same claims in some other forum, is no reason to deny a motion for voluntary dismissal. * * * In re OvaScience, Inc. Stockholder Litig., 35 Mass. L. Rep. 72 (2018) (internal citations omitted).

In this case, given the Union has no plans to re-file, the reasons in favor of granting dismissal are even more persuasive.

## V. CONCLUSION.

The Union originally filed this action seeking a determination of rights in relation to certain non-public records. There no longer exists such a need for a determination, given how the School Committee Defendants have responded to the requests at issue. Given there is no need to pursue the original request, that it is moot, that no counterclaims exist and no actual legal prejudice will result to the Requestor Defendants, dismissal is appropriate and within the Court's discretion under Rule 41.

Based on the foregoing, the Union respectfully requests that the Court grant the instant motion.

Plaintiffs,
NEARI and NEASK,
By their Attorney,

/s/ Carly Beauvais Iafrate

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## CERTIFICATION

I hereby certify that, on the 21st day of June 2022, I filed and served this document through the electronic filing system and that it is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System to counsel of record.

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| **STATE OF RHODE ISLAND**<br>**PROVIDENCE, SC.** | **SUPERIOR COURT** |
| **NATIONAL EDUCATION ASSOCIATION OF RHODE ISLAND, and NATIONAL EDUCATION ASSOCIATION – SOUTH KINGSTOWN,**<br>***Plaintiffs,***<br><br>**vs.**<br><br>**SOUTH KINGSTOWN SCHOOL COMMITTEE, by and through its members, Christie Fish, Kate McMahon Macinanti, Melissa Boyd, Michelle Brousseau and Paula Whitford, SOUTH KINGSTOWN SCHOOL DEPARTMENT, by and through its Acting Interim Superintendent Ginamarie Masiello, NICOLE SOLAS, and JOHN DOE HARTMAN,**<br>***Defendants.*** | **C.A. No. PC 21- 05116** |

## VERIFIED COMPLAINT

1. This is an action for declaratory judgment and other relief concerning the appropriate treatment of various records requests pursuant to the Access to Public Records Act ("APRA"), G.L. 1956 § 38-2-1 et seq. In short, this action seeks to: (a) prohibit the disclosure of non-public records; and/or (b) for those requests that call for personally identifiable and other personnel-related information about public school teachers, that no records be disclosed until the Court employs a balancing test that properly assesses the public interest in the records at issue measured against the teachers' individual privacy rights.

## JURISDICTION

2. The jurisdiction of this Court is invoked, in part, pursuant to the Uniform Declaratory Judgments Act ("UDJA"), G.L. 1956 § 9-30-1 et seq., APRA, § 38-2-9, G.L. 1956 §§ 8-2-13 and 8-2-14.

## PARTIES

3. Plaintiff, National Education Association of Rhode Island ("NEARI") is a labor organization certified by the Rhode Island State Labor Relations Board to represent certified teachers in the State of Rhode Island for purposes of collective bargaining.

4. Plaintiff, National Education Association – South Kingstown ("NEASK") is the local bargaining unit for certified teachers employed by the South Kingstown School Department. To the extent the local and the statewide organization are referred to collectively, they will be referred to as the "Union" or "NEA."

5. Defendant South Kingstown School Committee ("School Committee"), is sued by and through its members, Christie Fish, Kate McMahon Macinanti, Melissa Boyd, Michelle Brousseau and Paula Whitford.

6. Defendant South Kingstown School Department ("School Department") is sued by and through its Acting Interim Superintendent, Assistant Superintendent Ginamarie Masiello. The terms School Committee and School Department may be used interchangeably.

7. Defendant Nicole Solas ("Solas") is an individual who has submitted approximately two hundred (200) separate requests for records from the School Department.

8. Defendant John Doe Hartman ("Hartman") is in individual who has submitted approximately twenty (20) separate requests for records from the School Department.

9. Defendants Solas and Hartman are named and included only insofar as Plaintiffs are required to do so pursuant to G.L. 1956 § 9-30-11 which provides that "[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding."

## STATEMENT OF FACTS

10. Since 1975, the NEA has been certified as the exclusive representative for collective bargaining on behalf of South Kingstown's certified teachers.

11. Since 1975, NEARI has negotiated a series of collective bargaining agreements ("CBA") with the School Department that set forth the terms and conditions of employment for NEA members.

12. The relationship between NEA and the Defendant, School Committee is also governed by state law, specifically, the Certified School Teachers' Arbitration Act ("Michaelson Act"), G.L. 1956 § 28-9.3-1 et seq.

13. In or about April 2021, Defendant Solas, sent an e-mail to the Principal of a South Kingstown School with a list of questions and/or requests for records designed to gather information about, among other things, whether the school teaches critical race theory or otherwise includes it and other related concepts in its curriculum. Appendix A, *Solas E-Mail*.

14. The Principal recommended Solas file a request for public records pursuant to APRA concerning the information she was seeking. App. A.

15. By June 2, 2021, Solas filed about two hundred (200) APRA requests, many of which contain multiple requests within the request. Appendix B, *List of Pending APRA Requests.*

16. At one point, the School Committee considered whether it should file a lawsuit to obtain relief from the excessive number of requests by Solas.

17. Following the discussion of a possible challenge to Solas' APRA requests, Solas appeared on Fox News and on various websites, garnering national attention to her dispute with the School Committee concerning her requests, and her concerns regarding the critical race theory. Appendix C, *Internet Articles*.

18. The requests made by Solas call for a vast variety of records. App. B.

19. Following Solas' requests, the School Department received additional requests from other individuals and entities. App. B.

20. For example, there are a vast number of requests from another individual, Defendant John Doe Hartman. App. B.

21. From April 2021 to July 2021, the School Department received over three hundred (300) APRA requests. App. B.

22. The requests include, but are not limited to, requests for records that may relate to labor relations which do not constitute public records. For example, on May 16, 2021, Solas submitted Request No. 48 which calls for "digital copies pertaining to the AFL-CIO in the last four months." App. B, p. 1

23. The "AFL-CIO" is an acronym for the American Federation of Labor and Congress Industrial Organizations. It is a federation of unions that includes the NEA.

24. Solas also submitted Request No. 100 which calls for "digital copies of public documents relating to Patrick Crowley in the months of March, April, and May 2021." App. B, p. 1.

25. Patrick Crowley is a NEARI employee and Rhode Island AFL-CIO official.

26. The requests include, but are not limited to, requests for records that relate to teacher discipline and performance.

27. For example, Request No. 158 submitted by Defendant Hartman calls for "all complaints against Robin Wildman. App. B, p. 2.

28. Wildman is a retired teacher and former member of NEA.

29. Request No. 182 by Solas calls for "all disciplinary actions and relevant details taken against *any teacher* in the school district in the past three years. If actions or details are not public information, provide how many disciplinary actions are private *and against which teachers*." App. B, p. 2 (emphasis added).

30. Request No. 202 by Solas calls for records related to a song performed by the South Kingstown High School choir and for records reflecting "what qualifications Ryan Muir [has] to talk about race and equality with choir students?" App. B, p. 2.

31. Ryan Muir is a teacher and member of NEA.

32. Request No. 241 submitted by Defendant Hartmann, requests records such as "CVs, contracts, job descriptions and all documents related to hiring of the first 50 teachers listed in the staff directory on the website of South Kingstown High School." App. B, p. 3.

33. The requests include, but are not limited to, requests that call for teacher e-mails.

34. The so-called "teacher e-mail requests" are, for the most part, not broken down by type or category of e-mail and without regard to whether the e-mails are private or public or contain personally identifiable information.

35. For example, Request No. 164 calls for all e-mails between Linda Savastano (the former Superintendent) and Robin Wildman for a period of two years. App. B, p. 2.

36. Request No. 85 submitted by Solas calls for "digital copies of emails of Michael Alper in March 2021." App. B, p. 1.

37. Michael Alper is a teacher and member of NEA.

38. Request No. 86 submitted by Solas calls for "digital copies of e-mails of Amber Lambert for the month of March." App. B, p. 1.

39. Amber Lambert is a teacher and member of NEA.

40. The requests include requests for e-mails of various administrators who are not members of NEA.

41. For example, Request No. 47 by Solas calls for "digital copies of Linda Savastano's emails in the last six months." App. B, p. 1.

42. Request No. 59 by Solas calls for "exactly one hour's worth of work to provide digital copies of Linda Savastano's most recent emails." App. B, p. 1.

43. For example, Request No. 297 by Hartman calls for "all Savastano emails from May 17, 2021, to the date this request is fulfilled." App. B, p. 4.

44. Linda Savastano is the former Superintendent of South Kingstown who recently resigned amidst controversy at least partially involving Solas.

45. Based on the scope of the requests concerning Savastano's e-mails, upon information and belief, a response would call for communications between teachers who are NEA members and Savastano that are not public records or would otherwise not be subject to disclosure because disclosure would constitute a clearly unwarranted invasion of personal privacy.

46. On or about July 13, 2021, the Defendant School Committee responded to one of the recent APRA requests by releasing a total of about 6,500 pages of documents.

47. At this time, there remain many pending requests that are under consideration by the School Department as reflected by Appendix B.

## COUNT I

### Declaratory Judgment
### G.L. 1956 § 9-30-1

48. Plaintiffs hereby incorporate by reference Paragraphs 1 through 47 of the Verified Complaint as if fully set forth herein.

49. The Rhode Island APRA was first enacted in 1979.

50. Section 38-2-1 provides that the clear legislative purpose of APRA is *twofold* – (a) "to facilitate public access to public records," *but also to (b) "to protect from disclosure information about particular individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy*." (emphasis added).

51. Accordingly, pursuant to § 32-2-2, not all records kept by public bodies are considered public records subject to disclosure pursuant to APRA.

52. For example, public records are only those that are "made or received pursuant to law or ordinance or in connection with the *transaction of official business* by any agency." § 38-2-2(4) (emphasis added).

53. For example, although public bodies may keep many types of records, those that are kept incidental to other purposes which are not related to the transaction of official business are not public records.

54. For example, personal e-mails of NEA members that are unofficial private writings not related to the official business of the School Department do not become public records just because they are kept or received by a public body.

55. Although public policy typically weighs in favor of disclosure *when records are public*, these principals are not without legal limits. The APRA system is not an alternative to the civil discovery process and is not to be used for abusive purposes or a fishing expedition – it

was not intended "to empower the press and the public with *carte blanche* to demand all records held by public agencies." Direct Action for Rights and Equality v. Gannon, 713 A.2d 218, 222 (R.I. 1998).

56. APRA excludes from public disclosure certain categories of documents.

57. For example, "[a]ny identifiable evaluations of public-school employees made pursuant to state or federal law or regulation" are not public records subject to disclosure under APRA. § 38-2-2(Z).

58. In addition, "Reports and statements of strategy or negotiation involving labor negotiations or collective bargaining," are not public records. § 38-2-2(H).

59. Furthermore, communications that constitute concerted activity pursuant to the State Labor Relations Act (G.L. 1956 § 28-7-1 et seq.) and the Michaelson Act are not public records, including communications among bargaining unit members concerning labor relations matters or communications between bargaining unit members and union officials concerning labor relations matters.

60. In addition, "[p]ersonnel and other personal identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of privacy pursuant to 5 U.S.C. § 552 et seq.;" are not public records subject to disclosure under APRA. § 38-2-2(4)(A)(I)(b) (emphasis added).

61. When a record contains personal identifiable information that may constitute a clearly unwarranted invasion of privacy, a balancing test must be conducted that considers the public interest in the record at issue, weighed against the privacy interests implicated by disclosure of the report. See, e.g., Department of the Air Force v. Rose, 425 U.S. 352, 96 S.Ct. 1592, 1599, 48 L.Ed.2d 11, 21 (1976); Lyssikatos v. Narragansett Police Department, Public Record Case No. 21-12 (R.I. Department of the Attorney General, April 15, 2021); Lyssikatos v. Goncalves, PC 2017-3678 (Long, J., 3/18/19).

62. The School Department is not required to produce thousands of documents, or to produce thousands of documents in redacted form, absent this Court conducting a balancing test considering the requests that implicate § 38-2-2(4)(A)(I)(b).

63. Redaction of records is not always sufficient to safeguard privacy concerns.

64. Upon information and belief, the School Committee is in the process of gathering and reviewing documents to respond to the requests pending in Appendix B.

65. It is anticipated that teacher records will be produced that will be of a personal nature and will contain the identities of the teachers engaged in the personal communication as well as other communications that relate to personnel issues, disciplinary issues, performance issues, medical issues and issues not related to the official business of the School Department.

66. It is further anticipated that teacher records will be produced that may or will contain discussions about union-related activities which are not public records subject to disclosure.

67. It is further anticipated that teacher e-mails will be produced that may or will contain discussions about critical race theory curriculum or other issues of "interest" to the requestors that will contain individual teachers' names and personally identifiable information.

70. Given the circumstances of the requests, it is likely that any teachers who are identifiable and have engaged in discussions about things like critical race theory will then be the subject of teacher harassment by national conservative groups opposed to critical race theory.

WHEREFORE, the Plaintiffs respectfully pray that this Honorable Court:

A. For certain categories of documents which are not public records under APRA, enter declaratory judgment that the requested records are not subject to disclosure. This category should include, but may not be limited to, personal e-mails, labor relations materials, personnel records, disciplinary records, evaluations and other records that are incidental and do not concern the official business of the School Department.

B. For certain categories of documents which are potentially public records under APRA, examine the records in camera pursuant to § 38-2-9(b) and conduct the balancing test contemplated in § 38-2-2(A)(I)(b) to determine whether the disclosure of such records would constitute a clearly unwarranted invasion of privacy and thus, shall not be disclosed.

C. In the alternative, should certain records be subject to disclosure, to order redaction of personally identifiable information of teachers and/or other information which may lead to the identity of such teachers contained in the documents.

D. Grant the Plaintiffs such other relief as this court deems just and proper.

## COUNT II

### Injunctive Relief

71. Plaintiffs hereby incorporate by reference Paragraphs 1 through 70 of the Verified Complaint as if fully set forth herein.

WHEREFORE, the Plaintiffs respectfully pray that this Honorable Court:

A. Temporarily, preliminarily and permanently restrain the School Department Defendants from providing responses to any of the pending requests referenced in Appendix B and this Verified Complaint until a determination can by made by this Court that the School Department is required to produce such documents.

B. Temporarily, preliminarily and permanently restrain the School Department Defendants from providing responses to any of the pending requests referenced in Appendix B and this Verified Complaint until this Court conducts an appropriate in camera review pursuant to § 38-2-9(b).

C. Grant the Plaintiffs such other relief as this court deems just and proper.

Plaintiffs,
NEARI
NEA-SK
By their Attorney,

/s/ Carly Beauvais Iafrate

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**VERIFICATION**

I, Jennifer Azevedo, Esq., Deputy Executive Director of the National Education Association Rhode Island, under oath depose and say that I am familiar with the allegations of the Complaint and the factual matters contained therein and to the best of my knowledge and belief same are true.

Jennifer Azevedo

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

Subscribed and sworn to before me this 2nd day of August 2021.

Notary Public
my comm exp 5/18/24

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 6/21/2022 11:35 AM
Envelope: 3676714
Reviewer: Victoria H

**STATE OF RHODE ISLAND**

**PROVIDENCE, SC.** **SUPERIOR COURT**

**(FILED: June 9, 2022)**

| | | |
|---|---|---|
| **NATIONAL EDUCATION ASSOCIATION OF RHODE ISLAND AND NATIONAL EDUCATION ASSOCIATION - SOUTH KINGSTOWN** | : | |
| ***Plaintiffs,*** | : | |
| **v.** | : | **C.A. No. PC-2021-05116** |
| **SOUTH KINGSTOWN SCHOOL COMMITTEE, BY AND THROUGH ITS MEMBERS, CHRISTIE FISH, KATE MCMAHON MACINANTI, MELISSA BOYD, MICHELLE BROUSSEAU AND PAULA WHITFORD, SOUTH KINGSTOWN SCHOOL DEPARTMENT, BY AND THROUGH ITS ACTING INTERIM SUPERINTENDENT GINAMARIE MASIELLO, NICOLE SOLAS, AND JOHN DOE HARTMAN,** | : | |
| ***Defendants.*** | : | |

**DECISION**

**REKAS SLOAN, J.** Defendants Nicole Solas (Solas) and Adam Hartman (Hartman) (Solas and Hartman will be referred to collectively as the Parents) have moved for summary judgment arguing, first, that the Plaintiffs, National Education Association of Rhode Island (NEARI) and National Education Association - South Kingstown (NEASK), lack standing to bring this action and, second, that the Parents are immune from suit under Rhode Island's Anti-SLAPP statute, G.L. 1956 chapter 33 of title 9. Plaintiffs filed a timely objection. Jurisdiction is proper pursuant to the Uniform Declaratory Judgments Act, G.L. 1956 chapter 30 of title 9, the Access to Public Records Act, G.L. 1956 chapter 2 of title 38, at law under G.L. 1956 §§ 8-2-13 and 8-2-14, and Rule 56 of

the Superior Court Rules of Civil Procedure. For the reasons set forth herein, the Parents' Motion for Summary Judgment is denied.

## I

## Facts and Travel

In April 2021, Solas sent an e-mail to the principal of a South Kingstown public school requesting records and information regarding the teaching of critical race theory and other related concepts within the South Kingstown school's curriculum because her child was a prospective kindergartener in the South Kingstown public school system. (Verified Compl. ¶ 13); *see* Verified Compl., App. A.; *see also* Parents' Mot. for Summ. J. 3. Upon receipt of Solas' request, the principal recommended to Solas that she file a request for public records pursuant to the Rhode Island Access to Public Records Act, G.L. 1956 chapter 2 of title 38 (APRA). (Verified Compl. ¶ 14.) Within the next approximate two-month period, Solas filed about 200 APRA requests. (Verified Compl. ¶ 15, App. B.) Defendant South Kingstown School Department (School Department) considered filing a lawsuit to obtain relief from the numerous requests by Solas. (Verified Compl. ¶ 16.) Solas' records requests and the School Department's response prompted local and national media attention. *Id.* ¶ 17. The media attention brought forth additional APRA requests from other individuals. (Verified Compl. ¶ 19, App. B.) Approximately 300 APRA requests were filed from April 2021 to July 2021, and roughly 100 requests remained outstanding as of July 14, 2021, shortly before the filing of the instant complaint. (Pls.' Mem. Obj. Ex. B, Barden Aff. ¶ 25.)

Solas' records request sought several categories of materials, including documents related to labor relations and labor officials. (Verified Compl. ¶¶ 22, 24, 25.) Her requests further sought records relating to "teacher discipline and performance," "teacher e-mails," and "e-mails of

various administrators who are not members of [NEARI or NEASK]," which Plaintiffs argued may contain personally identifiable information and/or constitute an invasion of personal privacy. *Id.* ¶¶ 26, 29, 33-45.

In response to a July 13, 2021 e-mail sent by Plaintiffs' counsel inquiring whether any of the APRA requests implicated the privacy rights of any members of NEARI or NEASK, the South Kingstown School Committee (School Committee) instructed Plaintiffs' counsel that they had to submit their own APRA request to obtain the list of outstanding APRA requests and responses. (Pls.' Mem. Obj. 5.) Plaintiffs were concerned that of the one hundred outstanding APRA requests, the documents requested included information that did not constitute a "public record" under APRA."[1] (Verified Comp. ¶ 22; Pls.' Mem. Obj. 6-9.)

On August 2, 2021, Plaintiffs filed a Verified Complaint requesting a declaratory judgment and injunctive relief against the Defendants, School Committee and School Department (School Committee and School Department will be referred to collectively as the School Defendants), and the Parents. *See* Verified Compl. Plaintiffs sought to

> "(a) prohibit the disclosure of non-public records; and/or (b) for those requests that call for personally identifiable and other personnel-related information about public school teachers, that no records be disclosed until the Court employs a balancing test that properly assesses the public interest in the records at issue measured against the teachers' individual privacy rights." (Verified Compl. ¶ 1.)

[1] Section 38-2-2(4) states, in pertinent part:

"For the purposes of this chapter, the following records shall not be deemed public:"

> "(A)(I) (b) Personnel and other personal individually identifiable records otherwise deemed confidential by federal or state law or regulation, or the disclosure of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552 *et seq*. . . ."

The Parents moved for summary judgment pursuant to Rule 56 of the Superior Court Rules of Civil Procedure asserting that (1) the Plaintiffs do not have standing to bring this action, and (2) the Parents are immune from suit under Rhode Island's Anti-SLAPP statute, G.L. 1956 chapter 33 of title 9 (Anti-SLAPP statute). *See* Parents' Mot. for Summ. J.

Plaintiffs objected to the Parents' Motion for Summary Judgment claiming that they do have standing under the Uniform Declaratory Judgment Act, G.L. 1956 chapter 30 of title 9 (UDJA), and that Anti-SLAPP immunity fails for a number of reasons, including that it is inapplicable because the Plaintiffs made clear in their Verified Complaint that there was no claim for liability against the Parents to which conditional immunity could apply. (Pls.' Mem. Obj. 1-2); *see also* Verified Compl. ¶ 9.[2] Alternatively, the Plaintiffs argued that in the event the Court finds the Anti-SLAPP statute applicable, the Parents' Motion for Summary Judgment should be denied on grounds that there are genuine issues of material fact that would preclude a resolution of the Anti-SLAPP immunity claim at this stage. (Pls.' Mem. Obj. 1-2); *see* Verified Compl. ¶¶ 48-70(A-D), 71(A-C).

## 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.'" *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012) (quoting *Beacon*

[2] "Defendants Solas and Hartman are named and included only insofar as Plaintiffs are required to do so pursuant to G.L. 1956 § 9-30-11 which provides that '[w]hen declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.'" (Verified Compl. ¶ 9.)

*Mutual Insurance Co. v. Spino Brothers, Inc.*, 11 A.3d 645, 648 (R.I. 2011) (internal quotation omitted)); *see* Super. R. Civ. P. 56. In deciding a motion for summary judgment, the Court "views the evidence in the light most favorable to the nonmoving party." *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013). Finally, the Rhode Island Supreme Court has warned that "summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously." *Cruz v. Daimler Chrysler Motors Corp*., 66 A.3d 446, 451 (R.I. 2013) (internal quotation omitted).

## III

## Analysis

### A. Rhode Island Access to Public Records Act

APRA was enacted "to facilitate public access to governmental records which pertain to the policy-making functions of public bodies and/or are relevant to the public health, safety, and welfare." *Rhode Island Federation of Teachers, AFT, AFL-CIO v. Sundlun*, 595 A.2d 799, 800 (R.I. 1991); *see also* § 38-2-1. It is also the legislative intent behind APRA to protect from disclosure information about "individuals maintained in the files of public bodies when disclosure would constitute an unwarranted invasion of personal privacy." *Pontbriand v. Sundlun*, 699 A.2d 856, 867 (R.I. 1997) (quoting § 38-2-1).

Further, in *Rhode Island Federation of Teachers*, the Rhode Island Supreme Court addressed whether APRA provided a remedy to compel nondisclosure in the event that a public official or body was about to disclose material that may be entitled to an exemption pursuant to § 38-2-2. *See Rhode Island Federation of Teachers,* 595 A.2d at 800; *see also* § 38-2-2. The plaintiff in *Rhode Island Federation of Teachers* sought injunctive relief against the disclosure by the governor of certain information relating to special pension benefits authorized by the General

Assembly, claiming the records were exempt from disclosure under APRA. *Rhode Island Federation of Teachers,* 595 A.2d at 799. On appeal, the Rhode Island Supreme Court upheld the trial justice's denial of plaintiff's request for injunctive relief, finding that APRA does *not* afford a "remedy to persons or entities seeking to *block* disclosures of records;" instead, APRA only "provides a remedy [to those who] are *denied* access to [such] public records." *Id.* at 800 (emphasis added). Following the Court's decision in *Rhode Island Federation of Teachers*, the Rhode Island Supreme Court's holding was reaffirmed in *Pontbriand. Pontbriand,* 699 A.2d at 867 (holding that APRA does not afford a person or entity the right to prevent the release of private information)*; see In re New England Gas Co.*, 842 A.2d 545, 547 (R.I. 2004).

The D.C. Circuit[3] addressed this exact issue with respect to the Freedom of Information Act (5 U.S.C. § 552) (FOIA) which is the federal version of APRA and similarly "provides for actions requiring disclosure but not actions to prevent disclosure of documents . . . ." *Sears, Roebuck & Co. v. General Services Administration*, 553 F.2d 1378, 1381 (D.C. Cir. 1977). In *Sears*, the plaintiff brought a declaratory judgment action to prevent the government from disclosing certain documents that were requested pursuant to FOIA. *See id.* The D.C. Circuit noted that such cases have come to be known as "reverse freedom of information case[s]." *Id*. at 1380. The court further noted that "the 'actual controversy' here is whether the records sought are exempt from disclosure under the FOIA, and that Sears has a right to a declaratory judgment on

[3] "Federal FOIA cases filed by the media are concentrated in just a few federal court districts. Almost six in ten FOIA cases (58.5%) are filed in Washington, D.C.—not surprising since the primary defendant in federal FOIA cases are federal agencies that are often based in the nation's capital. In fact, FOIA statute allows any FOIA suit to be filed in D.C. even if neither the plaintiff nor the requested records are physically located there." When FOIA Goes to Court: 20 Years of Freedom of Information Act Litigation by News Organizations and Reporters, https://foiaproject.org/2021/01/13/foialitigators2020/ (last visited June 3, 2022).

this issue." *Id*. at 1381. The court held that a declaratory judgment action was the appropriate vehicle to decide whether the records being sought were exempt from disclosure under the FOIA. *Id*.

Here, Plaintiffs' action clearly sought to "prohibit the disclosure of non-public records…. (Verified Compl. ¶ 1), however, the Rhode Island Supreme Court has made it clear that APRA does "not provide [a] . . . remedy to persons or entities seeking to *block* disclosures of records[.]" *Rhode Island Federation of Teachers,* 595 A.2d at 800 (emphasis added). Therefore, this Court notes that the Plaintiffs could not, as a matter of law, block the disclosure of records under APRA by requesting injunctive relief. *See id.* The Plaintiffs withdrew their request for injunctive relief at the hearing before the Court on August 23, 2021 and offered to dismiss the Parents from the lawsuit under Rule 41 of the Superior Court Rules of Civil Procedure, again reiterating that the Parents were nominally added only because the UDJA requires the naming of all interested parties.[4] The Parents rejected that offer and the Plaintiffs' request for declaratory judgment remains. *See Sears, Roebuck & Co.*, 553 F.2d 1378.

**B. Standing**

The conclusion that the Plaintiffs are not entitled to injunctive relief under APRA does not address the issue of standing based on the Rhode Island Supreme Court's guidance. Where, as here, a plaintiff's standing to pursue the action is challenged,

> "the focal point shifts to the claimant, not the claim, and a court must determine if the plaintiff 'whose standing is challenged is a proper party to request an adjudication of a particular issue and *not whether the issue itself is justiciable' or, indeed, whether or not it should be litigated*." *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005)

[4] "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." Section 9-30-11.

> (emphasis added) (quoting *Flast v. Cohen*, 392 U.S. 83, 99-100 (1968)); *see also Key v. Brown University*, 163 A.3d 1162, 1168 (R.I. 2017) ("the court must focus 'on the party who is advancing the claim rather than on the issue the party seeks to have adjudicated"') (quoting *N & M Properties, LLC v. Town of West Warwick*, 964 A.2d 1141, 1145 (R.I. 2009).

In other words, even if the Plaintiffs would not be successful on the remaining Count for declaratory judgment, that does not mean that they do not have standing. This Court must determine if the Plaintiffs are "a proper party to request an adjudication of a particular issue," and for purposes of the standing analysis, must not look at the merits of the underlying APRA issues. *See McKenna*, 874 A.2d at 226. The Court begins by analyzing standing in general.

**(1) Standing in General**

"Standing is a threshold inquiry into whether the party seeking relief is entitled to bring suit." *Narragansett Indian Tribe v. State*, 81 A.3d 1106, 1110 (R.I. 2014) (citing *Blackstone Valley Chamber of Commerce v. Public Utilities Commission*, 452 A.2d 931, 932, 933 (R.I. 1982)). The Rhode Island Supreme Court has described the requirements for standing as '"whether the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise."' *Pontbriand*, 699 A.2d at 862 (quoting *Rhode Island Ophthalmological Society v. Cannon*, 113 R.I. 16, 22, 317 A.2d 124, 128 (1974)). A plaintiff must have suffered "an injury in fact … [-] an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual *or imminent*, not conjectural or hypothetical." *Pontbriand*, 699 A.2d at 862 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)) (emphasis added and internal quotation marks omitted).

In *Pontbriand*, the governor of Rhode Island had released bank depositors' account information to the media to encourage passage of legislation providing compensation to depositors

of closed state banks and credit unions that were not covered by federal deposit insurance. *Pontbriand*, 699 A.2d at 860-61. The depositors sued the governor seeking injunctive relief and a declaration under APRA that the governor's actions were illegal. *Id*. at 861. Both parties filed for summary judgment, and the trial court granted summary judgment in favor of the governor and an appeal followed. *Id*. The Rhode Island Supreme Court held that although the depositors were not entitled to the relief requested, that is, a declaration that the release of such records was unlawful, they did have legal standing. *Id*. at 862. The Court had "little difficulty in determining that all the depositors have standing…." *Id*. The depositors claimed that the release of information invaded a legally protected interest resulting in concrete and particularized harm, and the Court held "[n]othing more is required for standing." *Id*.

Since the Plaintiffs are organizations, this Court must consider that additional factor and apply the relevant case law on organizational standing[5] to frame the standing analysis.

**(2) Organizational Standing**

Although the standing inquiry normally focuses on whether the plaintiffs suffered an injury in fact that is concrete and particularized, organizations have standing to maintain actions for their members under the concept of "organizational standing" if certain elements are satisfied. *See In re Review of Proposed Town of New Shoreham Project*, 19 A.3d 1226, 1227 (R.I. 2011) (citing *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 181 (2000)). The Rhode Island Supreme Court recognizes organizational standing but cautions that for an organization to have standing for claims of its members, '"[m]ere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or

[5] Organizational standing is also sometimes referred to as "associational standing."

'aggrieved'...."' *Blackstone Valley Chamber of Commerce*, 452 A.2d at 933 (quoting *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972)).

The modern doctrine of organizational or associational standing as adopted in Rhode Island evolves from three United States Supreme Court cases. In *United Food and Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544 (1996) (*UFCW*), the United States Supreme Court held that an organization may sue to redress its members' injuries without having to show that the organization itself was injured. *See UFCW*, 517 U.S. at 551-55. Specifically, the *UFCW* Court addressed the prior holding in *Warth v. Seldin*, 422 U.S. 490 (1975), in which the United States Supreme Court found that "[an] association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought [the] suit." *UFCW*, 517 U.S. at 552; *see Warth*, 422 U.S. at 511. Subsequently, in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977), the United States Supreme Court elaborated on the associational standing requirements originally established in *Warth*. *Hunt*, 432 U.S. at 333. *Hunt* specified three requirements of associational standing, which have been adopted by Rhode Island:

> "(1) its members would otherwise have standing to sue in their own right;
>
> "(2) the interests it seeks to protect are germane to the organization's purpose; and
>
> "(3) neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members."

*Hunt*, 432 U.S. at 333; *see In re Review of Proposed Town of New Shoreham Project*, 19 A.3d at 1227 (citation omitted).

It is well settled that labor organizations, as collective bargaining representatives for their members, have generally been recognized as possessing standing to sue on behalf of their members

in the same manner as any other organization. *See Arena v. City of Providence*, 919 A.2d 379, 388-89 (R.I. 2007); *see also UFCW*, 517 U.S. 544. Plaintiff NEARI is a labor organization certified by the Rhode Island Labor Relations Board to represent certified teachers in Rhode Island for collective bargaining purposes. (Verified Compl. ¶ 3.) Plaintiff NEASK is the local bargaining unit for certified teachers employed by Defendant School Department. *Id.* ¶ 4. As stated in *UFCW*, a labor organization can possess associational standing to bring actions on behalf of its members in the same manner as other associations, provided that the three prongs of the analysis are met. *See UFCW*, 517 U.S. at 555.

The Court now analyzes whether the Plaintiffs meet the requirements for organizational standing.

**(a)**

**Do the members of the Plaintiff organizations otherwise have standing to sue in their own right?**

To satisfy the first prong of organizational standing, Plaintiffs must establish that their own members would have individual standing to sue. *See Lujan*, 504 U.S. at 560. As mentioned above, general standing is established if an individual has (1) "suffered an 'injury in fact'—an invasion of a legally protected interest [that] is . . . concrete and particularized;" (2) there is a "causal connection between the injury and the conduct complained of[,] [i.e.] the injury [is] 'fairly trace[able] to the challenged action of the defendant, and not . . . th[e] result of the independent action of some third party not before the court'"; and (3) the injury must be "likely" rather than merely "speculative" so that the injury will be "redressed by a favorable decision." *Id.* at 560-61 (internal quotations omitted).

The *Lujan* Court went on to state that:

> "When the suit is one challenging the legality of government action or inaction, the nature and extent of facts that must be averred (at the summary judgment stage) or proved (at the trial stage) in order to establish standing depends considerably upon whether the plaintiff is himself an object of the action (or forgone action) at issue. If [the plaintiff] is, there is ordinarily little question that the action or inaction has caused [plaintiff] injury, and that a judgment preventing or requiring the action will redress it." *Lujan*, 504 U.S. at 561-62.

Here, Plaintiffs maintain that the individual members of NEARI and NEASK would have standing on their own to bring suit individually because the Parents' records requests impact the individual members' personal and identifiable records, which are non-public under APRA, and, if released, would cause the individual members immediate injury to their privacy. (Pls.' Mem. Obj. 12, 16.) It seems obvious that individual teachers/members have a colorable claim of interest in preserving their privacy, especially as it pertains to non-public records, the disclosure of which would, as a practical matter, impede or destroy their ability to protect that privacy interest. Thus, the individual teachers/members of NEARI and NEASK would have standing to bring suit in their own right because they would suffer immediate injury if such personal and identifiable records, which are non-public under APRA, were released by the School Defendants. (Pls.' Mem. Obj. 16-17.)

The Parents claim that a party cannot seek a declaratory judgment without already having a stand-alone cause of action, that is, that there be a justiciable controversy, and the Parents assert that none exist here. (Parents' Reply 3.) (citing *Langton v. Demers*, 423 A.2d 1149 (R.I. 1980)). "In other words, the party seeking a declaratory judgment must 'advance allegations claiming an entitlement to actual and articulable relief.'" *Id.* (quoting *McKenna*, 874 A.2d at 227); *see also In re New England Gas Co.*, 842 A.2d at 553. This Court is mindful that the Rhode Island Supreme Court has recognized that Rhode Island is a "notice pleading" state, and, pursuant to such standard,

a claimant need not provide an exhaustive complaint to proceed. Our Supreme Court held in *Konar v. PFL Life Insurance Co.*, 840 A.2d 1115 (R.I. 2004):

> "Pursuant to Rule 8(a)(1) of the Superior Court Rules of Civil Procedure, a claim for relief must contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.' Although a plaintiff's complaint need not 'set out the precise legal theory upon which his or her claim is based,' the complaint must give 'the opposing party fair and adequate notice of the type of claim being asserted.'" *Konar*, 840 A.2d at 1118 (quoting *Hendrick v. Hendrick*, 755 A.2d 784, 791 (R.I. 2000) (further quoting *Bresnick v. Baskin*, 650 A.2d 915, 916 (R.I. 1994) and *Haley v. Town of Lincoln*, 611 A.2d 845, 848 (R.I. 1992)).

Although Plaintiffs' Verified Complaint did not plead a violation of privacy laws, it was averred sufficiently to give fair and adequate notice of the type of claim being asserted. (Verified Compl. ¶¶ 1, 54, 60, 61, 63, 65); (Pls.' Mem. Obj. 5, Ex. E).

This Court finds that the individual members of the Plaintiff organizations would otherwise have standing to sue in their own right, and therefore, the first prong to establish organizational standing is satisfied.

**(b)**

**Are the interests Plaintiffs seek to protect germane to the organization's purposes?**

The second requirement for Plaintiffs to establish organizational standing is that the interests Plaintiffs seek to protect must be germane to Plaintiffs' organizational purpose. *See UFCW*, 517 U.S. at 551. An interest is "germane" to an organization's purpose when the subject of its members' claim "raises an assurance that the association's litigators will themselves have a stake in the resolution of the dispute, and thus be in a position to serve as the defendant's natural adversary." *UFCW*, 517 U.S. at 545; *see Hunt*, 432 U.S. at 335.

Here, Plaintiffs are labor organizations, certified by the State of Rhode Island and the Town of South Kingstown to represent certified teachers for collective bargaining purposes. (Verified Compl. ¶¶ 3-4.) Moreover, the Collective Bargaining Agreements (CBAs) between Plaintiffs and Defendant School Committee govern the terms and conditions of their members' employment. (Verified Compl. ¶ 11, Pls.' Mem. Obj. 2, Ex. B, Barden Aff. ¶ 4.) By Plaintiffs' very role, the organizations' purpose is "germane" to protecting the interests of their members because some of the records requested concern documentation created because of their members' employment. (Pls.' Mem. Obj. 6, Ex. B, Barden Aff.) Plaintiffs maintain that of the one hundred outstanding APRA requests, some relate to "teacher discipline and performance" and "teacher e-mails," which may include documents concerning their members' employment and may also include non-public personally identifiable information. (Pls.' Mem. Obj. 6, Ex. B, Barden Aff. ¶ 18; Verified Compl. ¶¶ 26, 29, 33-45.)

This Court finds that Plaintiffs have established that the interests they seek to protect are germane to the organizations' purpose, and therefore, Plaintiffs have successfully established the second prong of organizational standing. *See UFCW*, 517 U.S. at 554.

**(c)**

**Does either the claim asserted or the relief requested require the participation of the Plaintiffs' individual members in the lawsuit?**

The final requirement for Plaintiffs to establish organizational standing is that neither the claim asserted, nor the relief requested, *requires* the participation of individual members in the lawsuit. *Hunt*, 432 U.S. at 335; *see also In re Review of Proposed Town of New Shoreham Project*, 19 A.3d at 1227 (citation omitted). Given this last prong, organizational standing is generally

limited to cases where an organization seeks declaratory or injunctive relief, rather than damages. *See Warth*, 422 U.S. at 515.

> "[T]o justify any relief the association must show that it has suffered harm, or that one or more of its members are injured. But, apart from this, whether an association has standing to invoke the court's remedial powers on behalf of its members depends in substantial measure on the nature of the relief sought. If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured. Indeed, in all cases in which we have expressly recognized standing in associations to represent their members, the relief sought has been of this kind." *Id*. (citations omitted).

The *Warth* Court held that a plaintiff organization did not have organizational standing to pursue *breach of contract* claims because the organization suffered no damages, and any damages suffered were only by certain members and not the entire membership, and not in an equal degree. *Id.* Any injury suffered would be particular to the individual member concerned, and thus the proof of injury would require individualized proof. *Id.* at 492. For a party to obtain an award of damages, each member who claims an injury *must be a party to the suit*, and thus, the *Warth* Court held that the organization has no standing to claim damages on behalf of the injured members in this type of breach of contract claim. *Id*.

Here, the Plaintiffs were mindful to request the type of relief that the United States Supreme Court in *Warth* indicated was appropriate, and this Court finds that neither the claim asserted (declaratory judgment), nor the relief requested (injunctive relief) requires the participation of the individual members of the Plaintiff unions—NEARI and NEASK. *UFCW*, 517 U.S. at 554.

Applying *Hunt's* three-prong test, this Court finds that Plaintiffs have standing.

### C. Rhode Island Anti-SLAPP Statute

The Parents' second argument in their Motion for Summary Judgment is that they are immune from liability under the Anti-SLAPP statute[6] because the Plaintiffs' action interferes with the Parents' constitutional and statutory rights to petition government and to speak on a matter of public concern. (Parents' Mot. for Summ. J. 8-12.)

The Plaintiffs argue generally that the Anti-SLAPP statute is inapplicable altogether because they assert that they were required to name the Parents in the lawsuit to comply with the party-in-interest requirements of § 9-30-11 under the UDJA. (Pls.' Mem. Obj. 35.) Essentially, Plaintiffs claim the lawsuit was not "directed at" the purportedly protected activity. (Pls.' Mem. Obj. 29.) This argument ignores the Plaintiffs' own Verified Complaint, which specifically states, "[t]his is an action for declaratory judgment *and other relief*…." (Verified Compl. ¶ 1) (emphasis added). In addition, Plaintiffs sought to "prohibit the disclosure of non-public records…," which is not declaratory relief. *Id.* Although Count I of the Verified Complaint seeks a declaratory judgment, Count II seeks injunctive relief. (Verified Compl.) Despite the Plaintiffs withdrawing the request for injunctive relief, the fact remains that this was not solely an action under the UDJA.

Further, the Plaintiffs also argue that the Anti-SLAPP statute does not apply because the Plaintiffs have made no claim for liability against the Parents to which conditional immunity could even apply and are not seeking any relief against the Parents. (Pls.' Mem. Obj. 2.) Rather, Plaintiffs brought this action to prevent a limited number of documents from being released by the School Defendants. (Pls.' Mem. Obj. 7.) The Court has already found that injunctive relief could not be available to Plaintiffs in any event. A request for public records under APRA is a finely

[6] A party raising Anti-SLAPP immunity may do so in the same unitary proceeding in which it is raised. *See Palazzo v. Alves*, 944 A.2d 144, 151 (R.I. 2008).

tuned process between a requestor and a governmental body, and any attempted intervention by a third party other than for declaratory relief sufficiently affects a requestor so as to be considered a claim for relief. *See Sears, Roebuck & Co.*, 553 F.2d 1378.

Plaintiffs argue, in the alternative, that if the Court finds the Anti-SLAPP statute is applicable, the record contains no evidence that the Plaintiffs brought the lawsuit for harassment purposes, and therefore, Anti-SLAPP immunity fails. (Pls.' Mem. Obj. 37.) Plaintiffs claim that the Parents have failed to present evidence that the Plaintiffs' lawsuit was brought to "harass or to chill a valid exercise of constitutional rights." *Id.* The Parents disagree that they are required to make that showing. (Parents' Reply 6.) According to the statutory framework of the Anti-SLAPP statute, the Parents argue that, "an assessment of whether the Union filed this case in order to harass Parents … occurs *only after* immunity is established, not as requirements to establish immunity." *Id.* at 6-7; *see* § 9-33-2(d). Thus, the Parents maintain that to establish immunity under Anti-SLAPP, the Court need not make a finding whether the Plaintiffs' lawsuit was brought with an intent to harass or inhibit the exercise of their rights at this time. *See* Parents' Reply 7. The plain language of § 9-33-2(d)[7] makes it clear that the harassment inquiry occurs after a court grants a motion asserting immunity. *See* § 9-33-2(d).

The Anti-SLAPP statute "was enacted to prevent vexatious lawsuits against citizens who exercise their First Amendment rights of free speech and legitimate petitioning by granting those activities conditional immunity from punitive civil claims." *Alves v. Hometown Newspapers, Inc.*,

[7] "If the court grants the motion asserting the immunity established by this section[,] [t]he court shall award compensatory damages and may award punitive damages upon a showing by the prevailing party that the responding party's claims, counterclaims, or cross-claims were frivolous or were brought with an intent to harass the party or otherwise inhibit the party's exercise of its right to petition or free speech under the United States or Rhode Island constitution." Section 9-33-2(d).

857 A.2d 743, 752 (R.I. 2004); *see Hometown Properties, Inc. v. Fleming*, 680 A.2d 56, 61 (R.I. 1996). The Anti-SLAPP statute itself details the policy behind the statute's enactment and the goal of protecting free speech and furthering the democratic process:

> "The legislature finds and declares that full participation by persons and organizations and robust discussion of issues of public concern before the legislative, judicial, and administrative bodies and in other public fora are essential to the democratic process, that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances; that such litigation is disfavored and should be resolved quickly with minimum cost to citizens who have participated in matters of public concern." Section 9-33-1.

On the other hand, the Rhode Island Supreme Court described the limited nature of the "Anti-SLAPP defense" in detail in *Sisto v. America Condominium Association., Inc.*, 68 A.3d 603, 615 (R.I. 2013). Acknowledging the danger that could be created by over-application of the Anti-SLAPP defense, the *Sisto* Court admonished that there needs to be a balance with respect to the applicability of the Anti-SLAPP statute. *Sisto*, 68 A.3d at 615. "As we previously recognized in *Palazzo v. Alves*, 944 A.2d 144 (R.I. 2008), the Anti-SLAPP statute[:]

> 'pit[s] two sets of fundamental constitutional rights against each other: (1) defendants' rights of free speech and petition and (2) plaintiffs' rights of access to the judicial system and rights to non-falsely maligned reputations. Solutions to [this] problem must not compromise any of these rights. Plaintiffs must be able to bring suits with reasonable merit and defendants must be protected from entirely frivolous intimidation * * * in public affairs.' *Id.* at 150 n. 11 (quoting John C. Barker, *Common-Law and Statutory Solutions to the Problem of SLAPPs*, 26 Loy. L.A. L.Rev. 395, 397–98 (1993))." *Sisto*, 68 A.3d at 615.

For these reasons, the Court explained, "the anti-SLAPP statute should 'be limited in scope,' and '[g]reat caution should be the watchword in this area.' *Id*. at 150, 150 n. 10." *Sisto,* 68 A.3d at 615 (quoting *Palazzo,* 944 A.2d at 150).

The Anti-SLAPP statute affords a party conditional immunity from civil suit in cases where the party is exercising the right of petition or of free speech under the United States or Rhode Island Constitutions, and the immunity will bar civil claims that challenge the petition or free speech except if the petition or speech constitutes a sham under the Anti-SLAPP statute. *See Alves*, 857 A.2d at 752. To fall within the purview of the Anti-SLAPP statute, the speech or petition must constitute a "written or oral statement made in connection with an issue of public concern." Section 9–33–2(e).

Once a defendant demonstrates that the challenged activity falls within the definition of free speech or petition contemplated by § 9–33–2(e), the burden shifts to the party challenging the defendant's activity to show that the activity constitutes a "sham" under the Anti-SLAPP statute. Section 9–33–2(e); *Alves*, 857 A.2d at 753. Section 9–33–2(a) defines "sham" as: "The petition or free speech will be deemed to constitute a sham … only if it is both … (1) [o]bjectively baseless … and … (2) [s]ubjectively baseless…." Section 9–33–2(a).

The *Sisto v. America Condominium* case is instructive and provides a framework for the Court to analyze whether Anti-SLAPP immunity applies. *Sisto*, 68 A.3d at 615. In *Sisto*, the Rhode Island Supreme Court breaks down the Anti-SLAPP immunity analysis into three elements:

(a) whether the petition to the governmental body constitutes an exercise of his or her right of petition or of free speech;

(b) the correspondence must deal with a matter of public concern; and

(c) the petition or free speech must not constitute a sham. *Sisto*, 68 A.3d at 615.

The Court will now analyze each of the three elements necessary to establish Anti-SLAPP immunity as outlined in *Sisto*. *See id.*

**(a)**

**Exercise of Right to Petition or of Free Speech**

The first question in determining immunity under the Anti-SLAPP statute is whether the petition to the governmental body constitutes an "exercise of his or her right of petition or of free speech[.]" See § 9–33–2(a). Under § 9–33–2(e), "a party's exercise of its right of petition or of free speech" is defined to mean

> "any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other governmental proceeding; or any written or oral statement made in connection with an issue of public concern." Section 9–33–2(e).

The Parents argue that the Plaintiffs' action was directed at the Parents because they were exercising their constitutional and statutory rights to obtain public records from the government. (Parents' Mot. for Summ. J. 11-12.) Solas' original inquiry was made to Defendant School Committee when she asked what her daughter's school curriculum would entail for the upcoming school year. *Id.* at 2-3. Solas was directed by the School Defendants' officials to "submit formal public records requests under APRA[.]" Id. at 3. The Plaintiffs argue that the lawsuit was not directed at the Parents and that they were named merely because they were required to do so under the UDJA. (Pls.' Mem. Obj. 35.)

This Court finds that the Parents' APRA request is a written statement made before or submitted to a governmental body and the Parents' actions in making APRA requests constitutes an exercise of their right of free speech and petition as defined in the Anti-SLAPP statute, and thus Plaintiffs have satisfied the first element in asserting Anti-SLAPP immunity. *See* § 9-33-2(a).

**(b)**

**Matter of Public Concern**

The second question in determining whether immunity is applicable under the APRA statute is whether the activity deals with a "matter of public concern." *Sisto*, 68 A.3d at 615. The Parents argue their public records requests were seeking records under APRA, a statute that specifically serves the purpose of ensuring public access to records regarding "issues of public concern." (Parents' Mot. for Summ. J. 10; *see* § 9-33-2(e); *see also Pontbriand*, 699 A.2d at 867.) Plaintiffs concede that although some of the Parents' requests involve matters of public concern, they argue that the limited and specific requests that they were concerned about do not involve matters of public concern. (Pls.' Mem. Obj. 41.)

Section 9-33-2(e) defines protected "free speech" as used in § 9-33-2(a) to include any written or oral statement made in connection with "an issue of public concern." Section 9-33-2(e). The Rhode Island Supreme Court considered the meaning of "issues of public concern" in *Global Waste Recycling, Inc. v. Mallette*, 762 A.2d 1208 (R.I. 2000), finding that the phrase has a long, distinguished, and unchallenged meaning. *Global Waste Recycling, Inc.*, 762 A.2d at 1214 (citing *Connick v. Myers*, 461 U.S. 138 (1983)). Issues of public concern are any issues "fairly considered as relating to any matter of political, social, or other concern to the community …." *Connick*, 461 U.S. at 146.

Here, the Parents requested information from Defendant School Committee, a public body, regarding the activities of public officials, on matters relating to public education. (Parents' Mot. for Summ. J. 10.) Specifically, the Parents sought information pertaining to the curriculum, teacher discipline records, and teacher training. *See* Verified Compl., App. B. The "operations

and functions of public school bodies and the manner in which [students] are educated in public schools are . . . 'issues of public concern.'" (Parents' Mot. for Summ. J. 10); *see* § 9-33-2(e).

This Court agrees with the Parents' arguments and finds that their APRA requests pertain to a matter of public concern,[8] and therefore, the Parents' APRA requests satisfy the second element for Anti-SLAPP immunity. *See* § 9-33-1.

**(c)**

**Petition or Speech Must Not Constitute a Sham**

Although the Court has found that the Parents have established that "an exercise of free speech or right of petition in connection with a matter of public concern is implicated," the Court must also determine whether "[P]laintiff[s] [can] prove that such conduct is a sham" under the Anti-SLAPP statute. *Alves*, 857 A.2d at 753. As determined by the analysis below, the Court cannot make this determination at the summary judgment stage.

Whether the Parents' APRA request constitutes a sham is determined through an analysis under § 9-33-2(a). *See Alves*, 857 A.2d at 753; *see also Sisto*, 68 A.3d at 615. Under § 9–33–2(a)

> "[t]he petition or free speech constitutes a sham only if it is not genuinely aimed at procuring favorable government action, result, or outcome, regardless of ultimate motive or purpose. The petition or free speech will be deemed to constitute a sham as defined in the previous sentence only if it is both:
>
> > "(1) Objectively baseless in the sense that no reasonable person exercising the right of speech or petition could realistically expect success in procuring the government action, result, or outcome, and
> >
> > "(2) Subjectively baseless in the sense that it is actually an attempt to use the governmental process itself for its own direct effects. Use of outcome or result of the governmental process

[8] The Court is specifically not making a finding, at this juncture, that all of the Parents' requests are "public records" under APRA.

> shall not constitute use of the governmental process itself for its own direct effects." Section 9-33-2.

**(i) Objectively baseless**

The Parents argue that their records requests are not objectively baseless because the Parents "can and should 'realistically expect success in procuring' government action, i.e., responsive records." (Parents' Mot. for Summ. J. 12.) The Court agrees that many of the Parents' APRA requests fit this description; however, the Court finds that the Parents could *not* "realistically expect success in procuring government action, i.e., responsive records" to *all* of their APRA requests. Some of the Parents' APRA requests, as phrased, appear to be seeking non-public records that are exempt from disclosure, even if in part.[9] For example,[10] Request No. 145 attached as Appendix B to the Verified Complaint, seeks "[a]ll documents related to the hiring of Ginamarie Masiello; all performance reviews." (Verified Compl. App. B.) Similarly, Request No. 151 seeks "CV of Coleen Smith; all documents related to her hiring; job performance reviews." *Id.* Request No. 237 seeks "CVs, contracts, job descriptions, and all documents related to hiring of the first 50 teachers listed in the staff directory on the website of South Kingstown High School." *Id.*

It is entirely possible that the Parents were looking only for records other than those deemed non-public under APRA; however, the Court notes that some of the Parents' requests were

[9] Section 38-2-2(4)(A)(I)(b) of APRA specifically states that "the following records shall not be deemed public: … [p]ersonnel and other personal individually identifiable records otherwise deemed confidential by federal or state law or regulation…" Section 38-2-2(4)(A)(I)(b).

Also, § 38-2-2(4)(Z) of APRA specifically states that "[a]ny individually identifiable evaluations of public school employees made pursuant to state or federal law or regulation" shall not be deemed public records. Section 38-2-2(4)(Z).

[10] This list is not exhaustive.

carefully phrased in an attempt to specifically exclude "non-public information." For example, Request No. 182 seeks "[a]ll disciplinary actions and relevant details taken against any teacher in the school district in the past three years. *If actions or details are not public information*, provide how many disciplinary actions are private and against which teachers." *Id.* (emphasis added). Based on the current record, the Court can only infer that the former requests were seeking non-public information and that the latter was carefully crafted to seek only public information under APRA.

The Parents further argue that their APRA requests satisfy the objective standard because pursuant to APRA, "*unless specifically exempted*, all records maintained or kept on file by any public body… 'shall be public records and every person or entity shall have the right to inspect and/or copy those records.'" (Parents' Mot. for Summ. J. 12) (emphasis added); *see* § 38-2-3. In addition, the Parents assert that there is a presumption in the law favoring disclosure. *See Providence Journal Co. v. Convention Center Authority*, 774 A.2d 40, 46 (R.I. 2001) (holding the basic policy of APRA favors public disclosure of the records of governmental entities). This is true, but again, only if the records being sought are not specifically exempted. *See* § 38-2-3(a) ("*Except as provided in § 38-2-2(4)*, all records maintained or kept on file by any public body… shall be public records…") (emphasis added). Therefore, viewing the evidence in the light most favorable to the nonmoving party, this Court finds that based on the current record, some of the Parents' APRA requests are objectively baseless.

**(ii) Subjectively baseless**

Next, the Parents argue that they have successfully established that their APRA request was not subjectively baseless because the Plaintiffs were not "hindered" or "delayed" by the Parents' record requests. (Parents' Mot. for Summ. J. 15.) Rather, the Parents argued their records

request was a legitimate means to obtain *public* information. *Id.* Again, as the Court noted above, some of the Parents' requests appeared to seek non-public information.

Section 9-33-2(a)(2) defines subjectively baseless activity as the "attempt to use the governmental process itself for its own direct effects." *Karousos v. Pardee*, 992 A.2d 263, 270 (R.I. 2010). Instinctually, an analysis of whether the requests were subjectively baseless seems inappropriate for resolution through a motion for summary judgment. During oral argument, the Court inquired of counsel for the Parents whether the Court could decide whether the APRA request was subjectively baseless under the summary judgment standard. The Parents cited to *Pound Hill Corp., Inc. v. Perl*, 668 A.2d 1260 (R.I. 1996), where the Rhode Island Supreme Court suggested the courts must inquire whether litigants "utilized the process itself rather than the intended outcome in order to hinder and delay plaintiff."[11] *Id; Pound Hill Corp.*, 668 A.2d at 1264; *see also* Parents' Mot. for Summ. J. 15.

The *Pound Hill Corp.* decision predated the enactment of § 9-33-2's definition of "subjectively baseless," which replaced the "hindered or delayed" standard. *Pound Hill Corp,* 668 A.2d at 1264. Moreover, in *Pound Hill Corp.*, the Rhode Island Supreme Court vacated an order granting summary judgment and remanded the case to the Superior Court for a trial on the issue of whether defendants' petitioning activities constituted a sham, finding that "genuine issues of fact exist concerning whether certain actions taken by defendants were objectively baseless and utilized the process itself rather than the intended outcome in order to hinder and delay plaintiff[.]" *Id.*

[11] *Pound Hill Corp*. predated the enactment of § 9-33-2 and thus the Rhode Island Supreme Court followed the case law and principles of the Noerr-Pennington doctrine, which derives from a line of federal antitrust cases, but is based on the First Amendment right to petition government.

More recently, the Rhode Island Supreme Court affirmed the grant of summary judgment to a defendant, finding that the defendant's petitioning activity was not a sham, and therefore, the defendant was entitled to immunity under the Anti-SLAPP statute. *See Karousos,* 992 A.2d at 272. In *Karousos,* the plaintiff "was unable to offer any facts that would suggest that [the defendant's] appeal was motivated by anything other than outcome of the process." *Id.* at 271. Due to the plaintiff's inability to put forth competent evidence as required under the summary judgment standard, the *Karousos* Court granted summary judgment in favor of the defendant. *Id.* (citations omitted).

On summary judgment, it is well settled that "the moving party bears the initial burden of establishing the absence of a genuine issue of fact." *See McGovern v. Bank of America, N.A.,* 91 A.3d 853, 858 (R.I. 2014) (citation omitted). Then the burden shifts and "[t]he party opposing summary judgment bears the burden of proving, by competent evidence, the existence of facts in dispute" by affidavits or otherwise. *See Henry v. Media General Operations, Inc.,* 254 A.3d 822, 834 (R.I. 2021) (citations omitted). In deciding a motion for summary judgment, the Court must view the evidence in the light most favorable to the nonmoving party. *Mruk,* 82 A.3d at 532.

Plaintiffs argue that their Verified Complaint

> "presents ample evidence that the motivation of the [Parents] was to use the process to inundate the School Department or to harass teachers they believed supported Critical Race Theory and not to actually obtain all the records at issue. Again, given the [Parents'] failure to provide evidentiary support for its motivation, in light of the Verified Complaint and affidavit, the issue is not appropriate for [summary] judgment as a matter of law…." (Pls.' Mem. Obj. 43.)

The Parents presented no counter-affidavit.

Viewing the evidence in the light most favorable to the nonmoving party, this Court finds a genuine issue of material fact exists as to whether the Parents' records requests constitute a sham

pursuant to § 9-33-2(a)(1)-(2). Because the Court finds that some of the Parents' APRA requests could be deemed objectively baseless, and because the Court cannot rule at the summary judgment stage on whether the requests were subjectively baseless, the Parents have failed to establish the final element to successfully assert Anti-SLAPP immunity.

## IV

## Conclusion

For the above stated reasons, this Court **DENIES** the Parents' Motion for Summary Judgment because the Plaintiffs had standing to bring a Declaratory Judgment Action and because there are genuine issues of material fact as to the Parents' assertion of Anti-SLAPP immunity.

The parties shall confer on a form of order.

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 6/21/2022 11:35 AM
Envelope: 3676714
Reviewer: Victoria H

**RHODE ISLAND SUPERIOR COURT**
***Decision Addendum Sheet***

| | |
|---|---|
| **TITLE OF CASE:** | **National Education Association of Rhode Island, et al. v. South Kingstown School Committee, et al.** |
| **CASE NO:** | **PC-2021-05116** |
| **COURT:** | **Providence County Superior Court** |
| **DATE DECISION FILED:** | **June 9, 2022** |
| **JUSTICE/MAGISTRATE:** | **Rekas Sloan, J.** |
| **ATTORNEYS:** | |
| **For Plaintiff:** | **Carly B. Iafrate, Esq.** |
| **For Defendant:** | **Giovanni D. Cicione, Esq.**<br>**Aubrey L. Lombardo, Esq.** |

**From:** Jonathan Riches
**To:** ciafrate@verizon.net; Stephen Silverman; "Aubrey Lombardo"; "Giovanni Cicione"
**Subject:** RE: Proposed Order
**Date:** Friday, June 17, 2022 2:19:47 PM

Hi Carly,

Because Parent Defendants still have affirmative relief under the anti-SLAPP statute, and because the Court found fact questions regarding Parents' anti-SLAPP claim, we cannot agree to a dismissal at this point.

We would be happy to discuss a stipulation and any fact-finding necessary so that we can bring this matter back to the court for a final judgment.

Please let me know if you have any questions.

Best,

Jon

**Jon Riches**
Director of National Litigation & General Counsel
Goldwater Institute | www.GoldwaterInstitute.org
*The Goldwater Institute accomplishes real results for liberty by working in state courts, legislatures, and communities nationwide to advance, defend, and strengthen the freedom guaranteed by the constitutions of the United States and the fifty states.*



**From:** ciafrate@verizon.net <ciafrate@verizon.net>
**Sent:** Tuesday, June 14, 2022 11:29 AM
**To:** Jonathan Riches <jriches@goldwaterinstitute.org>; Stephen Silverman <ssilverman@goldwaterinstitute.org>; 'Aubrey Lombardo' <alombardo@hcllawri.com>; 'Giovanni Cicione' <g@cicione.law>
**Subject:** RE: Proposed Order

All –

In follow up to the proposed order, and given the fact that there has been no change in circumstances since the argument on the summary judgment motion (no non-public documents have been released nor

does it appear the SC has any imminent plans to do so) the Union proposes that the parties agree that the case shall be dismissed, no interest, costs or attorneys' fees to either party and execute a dismissal stipulation pursuant to Rule 41.

If you folks can let me know if you are in agreement by close of business Friday, that would be helpful. Otherwise, I will file a motion.

Thank you,

Carly

Carly Beauvais Iafrate, Esq.
Law Office of Carly Beauvais Iafrate, PC
408 Broadway, 1st Floor
Providence, RI 02909
(401) 421-0065
(401) 837-4777 (cell)
***Please note new address.**

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**From:** ciafrate@verizon.net <ciafrate@verizon.net>
**Sent:** Tuesday, June 14, 2022 11:33 AM
**To:** 'jriches@goldwaterinstitute.org' <jriches@goldwaterinstitute.org>; 'ssilverman@goldwaterinstitute.org' <ssilverman@goldwaterinstitute.org>; 'Aubrey Lombardo' <alombardo@hcllawri.com>; 'Giovanni Cicione' <g@cicione.law>
**Subject:** Proposed Order

All,

Please see attached a proposed order relative to the recent decision of the Court. Please let me know if you have any comments or proposed changes.

Thank you,

Carly

Carly Beauvais Iafrate, Esq.
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***Please note new address.**

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 6/21/2022 11:35 AM
Envelope: 3676714
Reviewer: Victoria H

| | |
|---|---|
| **STATE OF RHODE ISLAND**<br>**PROVIDENCE, SC.** | **SUPERIOR COURT** |
| **NATIONAL EDUCATION ASSOCIATION RHODE ISLAND, and NATIONAL EDUCATION ASSOCIATION – SOUTH KINGSTOWN,**<br>***Plaintiffs,***<br><br>**vs.**<br><br>**SOUTH KINGSTOWN SCHOOL COMMITTEE, by and through its members, Christie Fish, Kate McMahon Macinanti, Melissa Boyd, Michelle Brousseau and Paula Whitford, SOUTH KINGSTOWN SCHOOL DEPARTMENT, by and through its Acting Interim Superintendent Ginamarie Masiello, NICOLE SOLAS, and ADAM HARTMAN,**<br>***Defendants.*** | **C.A. No. PC 21- 05116** |

## DISMISSAL STIPULATION

The below named parties, by and through the undersigned attorneys of record, hereby stipulate and agree that pursuant to R.I. Rule Civ. Pro. 41(a)(1)(B), Plaintiffs' claims against Defendant South Kingstown School Committee, by and through its members, and the South Kingstown School Department, by and through its Superintendent ("South Kingstown Defendants") may be dismissed. No costs or fees to either party.

Plaintiffs,
By their Attorney,

/s/ Carly Beauvais Iafrate

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South Kingstown Defendants,
By their Attorney,

/s/ Aubrey Lombardo

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