Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 7/21/2022 4:46 PM
Envelope: 3718474
Reviewer: Victoria H

STATE OF RHODE ISLAND, PROVIDENCE, SC.	**SUPERIOR COURT**
NATIONAL EDUCATION ASSOCIATION OF RHODE ISLAND, and NATIONAL EDUCATION ASSOCIATION – SOUTH KINGSTOWN, ***Plaintiffs,*** **vs.** **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 Massiello, NICOLE SOLAS, and JOHN DOE HARTMAN,** ***Defendants.***	**C.A. No. PC21-05116**

DEFENDANT PARENTS' RENEWED MOTION FOR SUMMARY JUDGMENT

Defendants Nicole Solas and Adam Hartman ("Parents") hereby move for summary judgment and submit the following memorandum of law in support of their Motion for Summary Judgment.

Plaintiffs National Education Association Rhode Island ("NEARI") and National Education Association South Kingstown ("NEASK") (collectively, "Plaintiffs" or "Union") filed this action to prevent the release of records under the Access to Public Records Act ("APRA") and named Parents as defendants because Parents submitted public records requests. As a result, this is a textbook strategic lawsuit against public participation ("SLAPP").

The Anti-SLAPP statute applies if the Parents are being sued for making (1) "any written or oral statement … to a legislative, executive, or judicial body, or any other

governmental proceeding" (2) that deals with "a matter of public concern" and (3) is not a "sham." R.I. Gen. Laws § 9-33-2(a), (e); *see also Sisto v. Am. Condo. Ass'n, Inc.*, 68 A.3d 603, 615 (R.I. 2013). This Court has already ruled that this case was directed at Parents for (1) exercising their petition and speech rights under the APRA on (2) a matter of public concern. *See* Decision of June 9, 2022 at 20–22. Thus, the question is whether the Parents' APRA requests were a "sham." The Union bears the burden of proving that, and this Court denied Parents' previous summary judgment motion *solely* because that question remained an open one. *Id*. at 27. Yet now, despite *two* opportunities to do so, the Union has chosen not to attempt to meet this burden of proof. Instead, it is asking the Court to dismiss the case, falsely claiming it is moot.[1] But that motion essentially proves that the Parents are entitled to summary judgment here. The *unrebutted* evidence shows that Parents' APRA requests were lawful, legitimate attempts to receive public information and were not a "sham." The Union has failed to even attempt to prove otherwise. Consequently, this Court should find that anti-SLAPP immunity applies, and enter judgment in favor of Parents.

[1] As explained in the accompanying Opposition to the Motion to Dismiss, this mootness argument is itself a sham. The Union is contending that a fact that *existed at the time the complaint was filed*, and which the Union claims it just now learned, has rendered the case moot. But a case cannot be rendered moot by a fact that existed at the time the complaint was filed. Instead, the Union is simply conceding that the case should not have been brought to begin with, and that, had the Union done its due diligence at the outset, it would not have filed the case.

INTRODUCTION

The Union sued the Parents in an unprecedented attempt to enjoin the statutory public records process and stop Parents from obtaining public information in good faith about the operations of their government. Parents responded to the complaint by moving for summary judgment, on the grounds that, *inter alia,* they are immune from suit under Rhode Island's anti-SLAPP statute. R.I. Gen. Laws § 9-33-2. The Court denied that motion on the grounds that the Union might, and must, prove that the Parents' APRA requests were a "sham." Decision at 27.

To emphasize: this Court's Order held that the *sole* reason that the Parents were not entitled to summary judgment is that the Union could potentially prove that the Parents' APRA requests were a sham. But for that one factual dispute, the Parents would be entitled to judgment.

But now the Union has failed—indeed, has not even attempted—to carry its burden of proof on that point. Indeed, it has failed twice. First, in response to Parents' initial Motion for Summary Judgment, the Union presented *no evidence* that Parents' public records requests were either "objectively" or "subjectively baseless," or submitted for any reason other than obtaining public information about the operations of public entities. Second, although this Court found "genuine issues of material fact" on the "sham" element, *id.* at 27, the Union has failed to offer *any* evidence to prove up this element—indeed, it has not even sought discovery—and has instead asked this court to dismiss this case. That Motion to Dismiss, however, constitutes the Union's definitive failure to satisfy its burden under the anti-SLAPP statute, and definitively shows that the

Parents *are* entitled to judgment on their anti-SLAPP motion. The unrebutted evidence shows that Parents' APRA requests were neither objectively nor subjectively baseless—which means judgment should be entered in favor of Parents.

STATEMENT OF FACTS

This lawsuit was originally brought because two parents wanted to know what their public school would be teaching their daughter in kindergarten.

In 2021, the Parents enrolled their daughter in kindergarten at Wakefield Elementary School within the South Kingstown School District. Affidavit of Nicole Solas ¶ 4, attached as Ex. A ("Affidavit"). When Nicole Solas enrolled her daughter, she did what any responsible parent would do, and asked the principal what her daughter would be taught in the upcoming school year. *Id.* ¶ 5.

Rather than answer the questions of a concerned parent, school officials directed Nicole to submit formal public records requests under APRA. *Id.* ¶ 6; Compl. at ¶ 14. So, she did. Affidavit ¶¶ 7–8.

After Ms. Solas submitted her public records requests, school officials and their attorneys told her she would have to pay thousands of dollars for them to comply with several of the requests. *Id.* ¶ 9; Exhibit 1 to Mot. for Summ. J. ("MSJ")(May 14, 2021 Letter to Solas).

Nicole then paid for some of the records to get answers to questions the school had up to that point refused to provide. But instead of receiving answers, let alone comprehensive record responses, what she got was page after page of heavily (often

completely) redacted documents. Affidavit ¶¶ 11–12. (Examples of the thousands of pages of redacted documents are attached as Exhibit 3 to the MSJ.)

Unsatisfied with such inadequate responses to basic questions about their daughter's education, and unable to pay onerous fees for public information, the Parents then submitted narrower requests so they could understand the costs associated with each request and determine whether they were able and willing to pay for responsive records. Affidavit ¶ 10; *see also* Exhibit 2 to MSJ (Responses to May 14, 16, 18, 2021 APRA Requests).

Apparently viewing the Parents' requests as too numerous, the School Committee then threatened to sue Nicole. On June 2, 2021, the School Committee Defendants placed on the Committee's agenda "[f]iling lawsuit against Nicole Solas to challenge filing over 160 APRA requests." Exhibit 4 to MSJ. Not surprisingly, the School Committee's actions met with widespread community disapproval.

At the same time the School Committee was planning to sue Nicole, the Union also started discussions about her. On August 2, 2021, Plaintiffs filed this lawsuit against the Parents, and requested a Temporary Restraining Order and Preliminary Injunction, contending that the records she requested would reveal teacher records "of a personal nature," as well as records "about union-related activities," which the Union contends are not subject to public disclosure. Compl. ¶¶ 65–66.

Then the Union filed this lawsuit, naming Parents as Defendants even though the School Committee had been processing the Parents' APRA requests, and were aggressively applying APRA exemptions to those requests, *see* MSJ Exhibits 1–3,

including with the assistance of capable outside counsel. Exhibit 5 to MSJ. The Union specifically sought an injunction to "restrain the School Department Defendants from providing responses to any of the pending [records] requests." Complaint ¶ 71(A).

The Parents answered the Complaint, asserting among other affirmative defenses that it violated the anti-SLAPP statute. *See* Answer, Affirmative Defense Number 7. The Parents also sought attorney fees and costs, and compensatory and punitive damages pursuant to § 9-33-2(d).

On August 20, 2021, Parents moved for summary judgment, contending that: (1) the Union lacked standing pursuant to *Rhode Island Federation of Teachers v. Sundlun*, 595 A.2d 799 (R.I. 1991), and (2) the Union's lawsuit constitutes a SLAPP under R.I. Gen. Laws § 9-33-1, because the Union filed it specifically because Parents exercised their constitutional and statutory rights to petition government and speak on matters of public concern.

On June 9, 2022, this Court denied summary judgment on the Parents' anti-SLAPP claim.[2] It agreed that Parents met the first two of the three elements for an anti-

[2] The Court also found that the Union had standing. Parents continue to dispute the Union's standing because the APRA does *not* provide a "remedy to persons or entities seeking to block disclosure of records." *Rhode Island Federation of Teachers*, 595 A.2d at 800. The Court found that the Union has standing under the Uniform Declaratory Judgment Act ("UDJA"), but that is only true if the Union can articulate "some legal hypothesis" entitling it to relief. *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005). The Court recognized that "[the Union's] Verified Complaint did not plead a violation of privacy laws," but held that a violation of privacy laws was nonetheless "averred sufficiently to give fair and adequate notice of the type of claim being asserted." Order at 13. Yet the Union disavowed having any other basis for relief apart from the UDJA, a point emphasized by the Union's newly filed Motion to Dismiss. As a result, Parents contend that the Union continues to lack standing, unless the Union can identify some

SLAPP motion, but on the third element, the Court said the Union could prevail if it proved up its assertion that the Plaintiffs' APRA requests were a "sham." Decision at 27.

This "sham" element was the *sole* reason the Court denied summary judgment to Parents. The Union also bears the burden of proving that Parents' APRA requests were a sham. If it cannot do so, Parents are entitled to summary judgment under the anti-SLAPP law. The Union, however, has not only failed to offer any evidence on this factual issue—the sole issue withholding summary judgment from the Parents—but has failed to even pursue discovery on that matter, and is now seeking to abandon the case on the plainly illusory notion that the case has somehow been rendered moot. Because that theory is meritless, the sole conclusion available is that the Union has not and cannot prove up the "sham" element—and therefore that Plaintiffs are entitled to summary judgment under the anti-SLAPP statute.

ARGUMENT

I. The Union's case violates Rhode Island's anti-SLAPP statute because it was directed at Parents' right to submit APRA requests.

This case is a textbook example of a SLAPP. It was brought by the Union against the Parents *specifically because* the Parents exercised their constitutional and statutory rights to petition government and to speak on matters of public concern. Decision at 20–22.

---

legal claim for relief *apart from* the UDJA. Consequently, Parents have filed concurrent with this Motion a Motion for a More Definitive Statement requesting that the Union identify a proper legal cause of action.

The Rhode Island General Assembly enacted the Anti-SLAPP statute to encourage "full participation by persons and organizations and robust discussion of issues of public concern." R.I. Gen. Laws § 9-33-1. The law's purpose is "to secure the vital role of open discourse on matters of public importance, and we shall construe the statute in the manner most consistent with that intention." *Hometown Props., Inc. v. Fleming,* 680 A.2d 56, 62 (R.I. 1996). Under the anti-SLAPP statute, a person is immune from "*any* civil claim … directed at [that person's] petition or free speech" activity. R.I. Gen. Laws § 9-33-2(a) (emphasis added).

Immunity applies under the anti-SLAPP statute if three elements are met: (1) the defendant is being sued based on a "written or oral statement… made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding"; (2) that statement deals with "a matter of public concern"; and (3) that statement was not a "sham." R.I. Gen. Laws § 9-33-2(a), (e); *Sisto,* 68 A.3d at 615.

In ruling on Parents' initial anti-SLAPP motion, this Court found that "Parents' APRA request is a written statement made before or submitted to a governmental body," Decision at 20 and that their requests "pertain[ed] to a matter of public concern." *Id.* at 22. Thus, Parents have satisfied the first two elements of anti-SLAPP immunity.

But the Court withheld summary judgment from Parents on the *sole* basis that there was a dispute of fact regarding the third element—whether or not Parents' APRA requests were a "sham." *Id.* at 27. The Union bears the burden of proving this one element. If it cannot, Parents would be entitled to judgment on their anti-SLAPP motion.

The Parents' APRA requests do not constitute a "sham," and the Union cannot—and has now expressly abandoned any attempt to—prove otherwise.

II. Parents' APRA requests were not a "sham."

A. The Union has failed to carry its burden of proof that Parents' APRA requests are a "sham."

Because this Court already found that the Parents were engaged in free speech and petitioning activities on a matter of public concern, the first two of the three elements for an anti-SLAPP motion have already been met. *Sisto*, 68 A.3d at 615. Parents would therefore be entitled to summary judgment but for the third element—i.e., whether their APRA requests were a "sham." On this element, the Court has held that there is a dispute of material fact. Decision at 27.

The *Union* bears the burden of proof on this factual dispute, *Alves v. Hometown Newspapers, Inc.*, No. CIV.A.2001-1030, 2002 WL 475282, at *5 (R.I. Super. Ct. Mar. 14, 2002), *aff'd*, 857 A.2d 743 (R.I. 2004) ("Once the [Parents] demonstrate[ ] that the published statements meet the definition of free speech or petition … the burden shifts to the [Union] to show that the published statements constitute a sham.").

In this case, the Union has failed to carry its burden—*twice*. First, in response to the Parents' initial summary judgment motion, it offered *no evidence* that Parents' APRA requests were "objectively" or "subjectively" baseless. This is true even though it was incumbent on the Union to offer evidence of objective and subjective baselessness or point to some dispute of fact on this question. *CACH, LLC v. Potter*, 154 A.3d 939, 944 (R.I. 2017) ("In failing to produce any evidence in opposition to the motion for summary

judgment, [the Defendant] failed to comply with the requirements [of a Rule 56 motion for summary judgment].").

Then this Court ruled on summary judgment that there was a factual dispute—giving the Union another opportunity to marshal evidence to prove that Parents' APRA requests were a "sham." And, again, the Union did not do so. Instead, it filed a Motion to Dismiss.

Thus, the Union has offered *no* evidence that the APRA requests were a sham. This is crucial because the "sham" element was the *sole* basis on which this Court denied summary judgment to the Parents; it held that the Union *might and must* prove up the "sham" element. But for that one factual dispute, the Parents would be entitled to summary judgment on their anti-SLAPP motion. And the Union bears the burden of proving that element in order to prevail. As the Rhode Island Supreme Court has observed, a party opposing a summary judgment motion "must do more than simply show that there is some metaphysical doubt as to the material facts." *UXB Sand & Gravel, Inc. v. Rosenfeld Concrete Corp.*, 599 A.2d 1033, 1037 (R.I. 1991) (citation omitted); *see also Brochu v. Santis*, 939 A.2d 449, 452 (R.I. 2008) ("A party facing summary judgment may not rest upon mere allegations or denials in the pleadings, mere conclusions, or mere legal opinions.") (internal citations omitted)). Unless the Union proves up this element, Parents are entitled to summary judgment.

By abandoning any effort to prove up that one remaining factual issue—or even to attempt to do so[3]—the Union has effectively conceded this issue—and consequently, the Parents are entitled to judgment on their anti-SLAPP motion.

B. The APRA requests were genuine free speech and petitioning activity, not a "sham."

Even if the Union did attempt to discharge its burden of proof, it would fail, because the Parent's APRA requests were not a sham.

Under the anti-SLAPP statute, petition or free speech activities are a sham only if they are *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 shall not constitute use of the governmental process itself for its own direct effects.

R.I. Gen. Laws § 9-33-2(a)(1), (2). These are *conjunctive* factors, and the Union faces a high bar in proving these factors (or would, if it tried). Indeed, the Rhode Island Supreme Court has "*never* … held that a defendant's actions were objectively baseless" despite having "several occasions" to do so. *Karousos v. Pardee*, 992 A.2d 263, 269 (R.I. 2010) (emphasis added).

The Union cannot prove either factor, because the *unrebutted* evidence shows that Parents' APRA requests are not a "sham."

[3] The Union admits it "has conducted no discovery" on this issue. Mem. Of Law in Supp. Of Mot. to Voluntarily Dismiss Compl. ("Mot.), at 8.

1. Parents' APRA requests are not objectively baseless.

First, the Parents can and should "realistically expect success in procuring" government action, i.e., responsive records. Under the 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." R.I. Gen. Laws § 38-2-3(a). Additionally, the presumption is always in favor of disclosure. *Cf. Providence J. Co. v. Convention Ctr. Auth.*, 774 A.2d 40, 46 (R.I. 2001) ("[T]he basic policy of APRA favors public disclosure of the records of governmental entities."); *The Rake v. Gorodetsky*, 452 A.2d 1144, 1147 (R.I. 1982) (courts should interpret ambiguous provisions of APRA in a manner consistent with its stated purpose of facilitating public access to public records). Given the broad definition of public records, and the presumption in favor of disclosure, the Parents reasonably and realistically expected that they would have success in receiving records responsive to their requests.

Significantly, the Parents' APRA request not only sought public records regarding public education activities from public officials—but it was filed *at the express direction of the school principal*. Affidavit ¶¶ 6–7, Ex. 2. It thus appears that even the School Committee believed that the Parents would receive information responsive to their questions through the public records process.

The Union, too, believes—and has alleged—that the Parents *can* "realistically expect success" in procuring responsive records. In fact, that is the entire basis of the Union's suit. In its Complaint, the Union alleges that "records *will be produced* that will be of a personal nature," and that "records *will be* produced that may or will contain

discussions about union-related activities." Compl. ¶¶ 65–66 (emphasis added). In other words, the Union itself admits that the Parents' records requests *will* be fulfilled under the requirements of the APRA law. And that means the Union *concedes* that Parents *can* "realistically expect success in procuring … government action, result, or outcome" on their APRA requests. R.I. Gen. Laws § 9-33-2(a)(1). In other words, the Complaint establishes that the records requests are not "objectively baseless."

In its previous order, this Court said that "Parents could not realistically expect success in procuring government action, i.e., responsive records to *all* of their APRA requests." Decision at 23 (internal quotations omitted). Specifically, the Court observed that some of Parents' APRA requests were phrased to "exclude 'non-public information.'" *Id.* at 24. But, respectfully, these requests were merely a reasonable recognition by the Parents that some records, or portions of records, might be properly withheld—and were a disclaimer of any request of those documents. In other words, use of this phraseology is evidence that Parents were only seeking information subject to the APRA, and not information not subject to the APRA. What's more, the use of "public" or "non-public" phraseology in a public records request is irrelevant to the question of whether the requester could reasonably expect success at the end of the day, because the burden is not on the requester to show that the information is public—rather, the government agency bears the burden of proving that requested records are *non*-public. *See* R.I. Gen. Laws § 38-2-10 ("In all actions brought under this chapter, the burden shall be on the public body to demonstrate that the record in dispute can be properly withheld from public inspection under the terms of this chapter."). When a requester seeks

information that she believes to be public, as the Parents did here, Affidavit ¶ 13, the requester should reasonably expect success in getting that information. If the agency later determines that the request is not public, or otherwise exempt, then the agency bears the burden of proving that.

Here, the Parents proffered unrebutted testimony that when they submitted their APRA requests, they were seeking *public* information. *Id*. While some of the Parents' requests were more specific than others, their use of the phrase "non-public information," Decision at 24, did not mean that they were seeking private information when they submitted requests that lacked that phrase.[4] *Providence J. Co.*, 774 A.2d at 58 ("that plaintiff phrased its request in a somewhat different form does not affect the substance of the request." (Flanders, J. concurring in part)). Instead, they reasonably expected the district to comply with the law, and to disclose information subject to disclosure, and, where appropriate, withhold information not subject to disclosure.

The plain language of Parents' APRA requests seeks *public* records about *public* information regarding the *public* operations of their *public* school district. Their express disclaimer of any request for information that is "not public information," is only proof of that fact.

[4] Thus, for example, Request 182 sought certain disciplinary records, and then added that if those records "are not public information," other information should be provided instead. Thus, Parents were recognizing that some records might be exempt from disclosure and were making clear that they were *not* requesting such documents. Any "infer[ence]" from this that the Parents were "seeking non-public information" is a *non sequitur*. Decision at 24.

Not only were Parents' requests reasonably calculated to obtain the requested information, but Parents filed their requests *at the direction of the school district itself*. And the Union only brought this case because the Union believed the records *would be* disclosed under the APRA. Given these factors, plus the broad definition of public records, the presumption in favor of disclosure, the burden on the government to prove that withholding records is lawful, the Parents realistically and sensibly believed that the School Committee would do its statutory duty and fulfill Parents' requests. That means their requests cannot—as a matter of law—be "objectively baseless" under R.I. Gen. Laws § 9-33-2(a)(1).

2. Parents' APRA requests are not subjectively baseless.

Nor were Parents' records requests *subjectively* baseless. An action is subjectively baseless only when litigants "attempt to use the governmental process itself for its own direct effects." R.I. Gen. Laws. § -33-2(a)(2). Importantly, the "outcome or result of the governmental process *shall not* constitute use of the governmental process itself for its own direct effects." *Id.* (emphasis added). This phrase means that for the APRA requests to be deemed subjectively baseless, the Union must prove that the Parents submitted their requests, not to receive public information, but to "utilize[] the [public records] process itself … to hinder and delay" the Union. *Sisto*, 68 A.3d at 615 (quoting *Pound Hill Corp. v. Perl*, 668 A.2d 1260, 1264 (R.I. 1996)[5]). The Union has not done so and cannot do so.

[5] This Court suggested that the decision in *Pound Hill* imposing a "hinder or delay" standard is no longer applicable because "*Pound Hill Corp.* predated the enactment of § 9-33-2." Decision at 25 n.11. But *Sisto* was decided in 2013, after the enactment of § 9-33-2, and that case reiterated the hinder and delay standard.

First, the Union was in no way "hindered" or "delayed" by Parents' records requests. The Union is not even a party to the public records process, so it cannot assert any claim that it was "hindered" or "delayed." It has certainly offered no evidence to show that it was.

Second, the records requests were made for the legitimate purpose of *obtaining public information*. Affidavit ¶ 13. Nicole Solas tried to obtain information about her daughter's education informally, without using the APRA process *at all*—by asking her school principal questions pertaining to curriculum, lesson plans, training materials, and the school's education environment. *Id.* ¶ 5, Ex. 1. The principal then *directed* Ms. Solas to submit public records requests under APRA, instead. *Id.* at ¶ 6, Ex. 2. In other words, the public body in this case *told* her to use the public records process to obtain public information.

That means Parents' records requests cannot be characterized as an attempt to "utilize the process itself rather than the intended outcome." They would have preferred not to use the process at all. Only when they were instructed to do so by the school district did they file their APRA request.

Third, the Union has presented no evidence—*none*—that Parents requested public information for any purpose other than to learn about the operations of a public school district and the activities of public officials. And that is because the Parents did not have some ulterior purpose. They were seeking information about how their daughter's school operates—as every parent has a right to do.

The APRA expressly declares a requestor's motives irrelevant. *See* R.I. Gen. Laws § 38-2-3(j) ("No public records shall be withheld based on the purpose for which the records are sought, nor shall a public body require, as a condition of fulfilling a public records request, that a person or entity provide a reason for the request.") But the attached declaration provided unrebutted testimony that their express purpose in submitting these public records requests was to obtain public information. Affidavit ¶¶ 13, 14. The Union has offered *no evidence* that Parents' exercise of their petition and free speech rights were subjectively baseless, or that this testimony is untrustworthy.

That is because Parents submitted their requests in good faith and precisely "to secure the vital role of open discourse on matters of public importance," *Fleming,* 680 A.2d at 62 , as the law permits—and as the school district *expressly demanded*.

The Union has failed to carry its burden of showing that Parents' APRA requests were subjectively baseless.

CONCLUSION

This Court denied Parents' summary judgment for one reason: because there was a dispute of fact as to whether the Parents' APRA requests were a "sham"—i.e., both subjectively and objectively baseless, as set forth in R.I. Gen. Laws § 9-33-2(a)(1), (2). The Union bears the burden of proving up this factual dispute. If it fails to do so, Parents are entitled to summary judgment.

But the Union has failed to even *try* to prove up this single remaining factual dispute. It has conducted no discovery and offered no evidence to this Court to rebut the Parents' evidence that their APRA requests were both objectively and subjectively

reasonable. On the contrary, the Union has instead abandoned its obligation to prove this element and has instead asked this Court to dismiss the case, based on a facile claim that facts existing *before* the case was filed have somehow rendered this case moot. Because that mootness argument is meritless—and because even if the Union did try, it could not prove that the Parents' APRA requests are a "sham"—the Parents are entitled to judgment under the anti-SLAPP statute.

Based on the foregoing, the Union's motion to dismiss should be denied, and Parents' renewed motion for summary judgment should be granted. The Court should enter an order finding that Parents are immune from suit under R.I. Gen. Laws § 9-33-2(a), and it should award Parents costs and reasonable attorney fees pursuant to R.I. Gen. Laws § 9-33-2(d) for having to defend an action that was filed for the sole purpose of "chill[ing] the valid exercise of their First Amendment rights of speech and petition." *Palazzo v. Alves*, 944 A.2d 144, 150–51 (R.I. 2008).

Defendants,
Nicole Solas and Adam Hartman
By her Attorneys

/s/ *Giovanni D. Cicione*

Giovanni D. Cicione, Esq. R.I. Bar No. 6072
86 Ferry Lane
Barrington, Rhode Island 02806
Telephone (401) 996-3536
Electronic Mail: g@cicione.law

/s/ *Jonathan Riches*
Jonathan Riches, Esq.
(*pro hac vice* application pending)
Stephen Silverman, Esq.
(*pro hac vice* application pending)
Scharf-Norton Center for
Constitutional Law at the
GOLDWATER INSTITUTE
500 East Coronado Road
Phoenix, Arizona 85004
Telephone (602) 462-5000
Electronic Mail:
litigation@goldwaterinstitute.org

CERTIFICATE OF SERVICE

I, Kris Schlott, hereby certify that a true copy of the within was sent this 21st day of July, 2022 by electronic mail and first-class mail, postage prepaid to:

Carly Beauvais Iafrate
Law Office of Carly B. Iafrate, PC
38 N. Court St., 3rd Fl.
Providence, RI 02903
ciafrate@verizon.net

Aubrey L. Lombardo
Henneous Carroll Lombardo LLC
1240 Pawtucket Avenue, Suite 308
East Providence, RI 02916
alombardo@hcllawri.com

/s/ *Kris Schlott*
Kris Schlott, Paralegal

Exhibit A

AFFIDAVIT OF NICOLE SOLAS

I, Nicole Solas, declare under penalty of perjury under the laws of the State of Rhode Island as follows:

1. I am over the age of eighteen and have personal knowledge of the matters stated in this affidavit and am competent to testify regarding them.

2. I am a mother who lives within the South Kingstown School District ("District").

3. The South Kingstown School District is governed by the South Kingstown School Committee ("Committee").

4. In March 2021, I enrolled my daughter in Kindergarten at Wakefield Elementary School within the District.

5. After I enrolled my daughter, I asked the Wakefield Elementary School Principal, Coleen Smith, various questions, including questions about curriculum and what would be taught to incoming Kindergarten students at the school. Ex. 1.

6. Rather than answer my questions, Ms. Smith directed me to submit formal public records requests under the Access to Public Records Act ("APRA"). Ex. 2.

7. I submitted the APRA requests in response to this communication because the school directed me to do so.

8. I submitted public records requests under the APRA on several issues, including matters involving school curriculum, lesson plans, school personnel, and school operations, including those of the Committee.

9. For several of my requests, school officials demanded that I pay thousands of dollars to produce responsive records.

10. Because I was unable to pay thousands of dollars to receive information responsive to my public records requests, I broke down each request to be as specific as I could to understand any costs associated with any particular request, and to determine whether I wanted to pay the costs associated with retrieving the records.

11. For several requests that I submitted, I received responses that indicated there were no responsive records, even though my requests were for information that I believed was public information that existed.

12. For several requests that I submitted, I received dozens and sometimes hundreds of pages of completely blacked out and redacted records in response to my public records requests.

13. When I submitted my public records requests, I did so to receive public information.

14. In other words, my public records requests were aimed at procuring favorable government action; namely, the Committee producing responsive records to my public records requests.

15. When I submitted my public records requests, I reasonably expected the Committee to produce records that were responsive to my requests.

16. Indeed, it was the school that directed me to submit public records requests; thus, it was my expectation that the school and the Committee would fulfill those requests.

17. When I submitted my public records requests, I reasonably expected the Committee to comply with the law by producing responsive records if they existed or identifying a lawful basis for withholding responsive information.

18. When I included phrases like "not public information" in some of my public record requests, I did not intend to mean that other requests that did not include such phases were seeking non-public or private information.

19. When I submitted my public records requests, I did not do so to hinder or delay any party, including the Committee.

20. When I submitted my public records requests, I did not do so attempting to use the public records process for its own direct effects apart from receiving public information, which is the outcome or result of the public records process.

21. It is my understanding that under the APRA, no public records may be "withheld based on the purpose for which the records are sought…" R.I. Gen. Laws § 38-2-3(j).

22. Thus, it is my understanding that my "intent" or motivation in submitting APRA requests is irrelevant for purposes of the Committee producing responsive records.

23. Nonetheless, my motivation in submitting my public records requests was to receive public information.

24. On or about June 2, 2021, the Committee placed on its public agenda an item indicating that it was considering legal action against me for submitting requests for public information.

25. The Committee never pursued legal action against me.

26. On or about August 2, 2021, Plaintiffs National Education Association of Rhode Island and National Education Association–South Kingstown ("Plaintiffs") filed a legal action naming me as a defendant that sought to prevent the disclosure of information I requested in public records requests.

27. It is my belief that the Plaintiffs filed this action specifically because I submitted public records requests, and thus the action was directed at my free speech and petition activity under Rhode Island's anti-SLAPP law. R.I. Gen. Laws § 9-33-1, *et seq*.

28. It is my belief that Plaintiffs action has interfered with and otherwise hindered my free speech rights and my rights to petition the government, including my right to summit record requests under the APRA.

I declare that to the best of my knowledge the foregoing is true and correct.

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE:

Nicole Solas

Nicole Solas

DATED: 7/18/2022

Sworn to and subscribed before me this 18 day of July, 2022.

MOLLY D. MAGEAU
Notary Public
State of Rhode Island
3.29.26

Notary Public

My commission expires:

Exhibit 1

Case Number: PC-2021-05116
Filed in Providence/Bristol County Superior Court
Submitted: 7/21/2022 4:46 PM
Envelope: 3718474
Reviewer: Victoria H

Wakefield Elementary School Curriculum, Policies, and Information Request

Inbox

Nicole Solas Apr 25
to csmith

Coleen,

I request the following:

1. All curriculum for all grades at Wakefield Elementary School.

2. Titles and authors of all books in all classrooms and the library that promote antiracism, race relations, any political topics relating to Black Lives Matters and President Trump, gender theory, transgenderism, and all topics of sexuality, sexual orientation, and sexual education.

3. Disclosure of all policies, official and unofficial, written and unwritten, relating to antiracism, critical race theory, gender theory, sexual education, and any political topic.

4. Disclosure of all common practices relating to antiracism, critical race theory, gender theory, sexual education, and any political topic.

5. Disclosure of all professional development trainings, relating to gender theory, transgenderism, antiracism, critical race theory, and political topics. Please provide the exact or approximate dates of these trainings.

6. Disclosure of whether you keep official or unofficial school records relating to children's sexuality, sexual orientation, or sexual education.

7. Disclosure of all past and present lesson plans that incorporate or promote the ideologies of antiracism, gender theory, transgenderism, and critical race theory.

8. On the phone you stated that students build upon a line of thinking about history and I need clarity on what exactly this line of thinking is. You stated that Kindergartners are asked "what could have been done differently" on the first Thanksgiving. What education objective does this lesson achieve? What education source supports this objective?

9. On the phone you stated that it is common practice to refrain from or be mindful of using gendered terminology, including calling the students "boys" and "girls." Please cite the education source supporting this practice.

10. On the phone you stated that children would not be grouped according to who has "pigtails" because pigtails is considered gendered terminology. Please cite the education source supporting your assertion that the word "pigtails" is gendered terminology.

11. Disclosure of all special guests who have promoted or spoken about antiracism, gender theory, antiracism, race relations, race in general, and any political topic. This includes but is not limited to a drag queen reading to children, a transgender person reading a book to children about sexuality or gender or simply speaking to students about those topics, a political activist meeting with a teacher or administrative personnel, and any politically affiliated guest hosted or invited by the school.

12. All education sources supporting lessons and curriculum relating to antiracism, gender theory, transgenderism, race relations, and sexual education.

13. Please define the following terms, which I presume are embedded into the Wakefield Elementary School Curriculum:

Equity
Culturally Responsive Teaching
Affinity Groups
Implicit bias
Inclusion
Oppressor
Colonialism
Diversity (specifically, is a balanced diversity of viewpoint implicit in all curriculum?)

You stated on the phone that you will respond in the first week of May after testing is complete. Please feel free to respond as you acquire information instead of waiting to respond comprehensively. I anticipate providing curriculum information should be easy since it's likely to be fully developed, approved, and accessible to principals. I look forward to your response.

Nicole Solas

Exhibit 2

Coleen Smith Apr 27
to me

Hi Nicole
Thank you for your email. With the scope of your request for information on our district, I recommend that you use the link below to submit our request for this information. It will bring you to the page on our district website with directions and details.
https://www.skschools.net/resources/communications/public_records
Best
Coleen

Show quoted text

Coleen P. Smith
Principal
Wakefield Elementary School
SKIP preschool-grade 4