

**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**

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**DEFENDANT PARENTS’ REPLY IN SUPPORT OF  
RENEWED MOTION FOR SUMMARY JUDGMENT**

**INTRODUCTION**

After the Court’s June 9, 2022 decision on Defendants Nicole Solas and Adam Hartman (“Parents”)’s first motion for summary judgment on their anti-SLAPP motion, only one fact issue remained: whether Parents’ APRA requests constituted a “sham.” Proving that would require Plaintiffs National Education Association of Rhode Island (“NEARI”) and National Education Association – South Kingstown (“NEASK”) (collectively, “Union”) to prove that Parents’ APRA requests were *both* objectively unreasonable *and* subjectively unreasonable. June 9, 2022 Decision (“Decision”) at 19.<sup>1</sup>

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<sup>1</sup> The Court held that there were no questions of fact as to the other two elements of an anti-SLAPP motion: that the APRA requests constituted the exercise of the right to

Parents then filed this motion on July 21, 2022, affirmatively demonstrating that Plaintiffs cannot show a factual dispute on the question of whether the APRA requests constituted a “sham.” Although Plaintiffs bear the burden of proof on this subject, Parents put forth an affidavit from Nicole Solas establishing that the APRA requests were not subjectively unreasonable. Ex. A to Renewed Mot. (“Solas Aff.”). Plaintiffs have introduced no evidence contradicting this. Instead, they rehash arguments the Court has already rejected. And they fail to offer any evidence to show that there is any question of fact precluding summary judgment. Accordingly, Parents respectfully request that the Court enter summary judgment in favor of Parents on their anti-SLAPP motion.

**I. Plaintiffs fail to present evidence demonstrating a question of fact on the issue of whether Parents’ APRA requests constitute a “sham.”**

But for the possibility that Plaintiffs might later present evidence to meet their burden to prove that Parents’ APRA requests constituted a “sham,” the Court would have already entered summary judgment for the Parents on their anti-SLAPP motion. Decision at 26–27. Summary judgment on an anti-SLAPP motion is appropriate when a plaintiff is “‘unable to offer any facts that would suggest that [the defendant’s protected activity] was motivated by anything other than outcome of the process.’” Decision at 26 (quoting *Karousos v. Pardee*, 992 A.2d 263, 272 (R.I. 2010)).

Despite being given the opportunity to do so, Plaintiffs have not even attempted to challenge Solas’ affidavit that establishes:

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petition or free speech and the APRA requests concerned a matter of public concern. Decision at 20 and 22.

- Solas enrolled her daughter in Kindergarten at Wakefield Elementary School within the District. Solas Aff. ¶ 4.
- After enrolling her daughter, Solas asked the Wakefield Elementary School principal questions about curriculum and what would be taught to incoming Kindergarten students. Solas Aff. ¶ 5.
- The principal directed Solas to submit public records requests with her questions, which she did. Solas Aff. ¶¶ 6–8.
- In response, Solas was told it would cost thousands of dollars for the school to search for and produce the requested records, so Solas broke down each request as narrowly as possible so she could ascertain how much the school district would charge for each discrete request. Solas Aff. ¶¶ 9–10.
- Solas submitted the requests to receive public information. Solas Aff. ¶ 13.
- Solas’s purpose in submitting the requests were to procure favorable government action. Solas Aff. ¶ 14.
- Solas reasonably expected that the school would produce responsive records. Solas Aff. ¶ 15.
- While Solas used phrases like “not public information,” with respect to some requests, she did not intend to imply that requests that did not include such phrases were seeking non-public or private information. Solas Aff. ¶ 18.
- Solas did not submit her requests to hinder or delay any party. Solas Aff. ¶ 19.
- Solas’ purpose in submitting public records requests was to receive public information, the outcome or result of the APRA process, and not for other purposes. Solas Aff. ¶ 20.

Because this testimony is not rebutted by any evidence, summary judgment is appropriate.

Plaintiffs provide no evidence that Parents intended anything other than obtaining records pursuant to their APRA requests. They have been given plenty of opportunity to do so. The whole purpose of the anti-SLAPP statute is to “resolve[] quickly with minimum cost to citizens who have participated in matters of public concern” cases, like

this one, that infringe on protected rights. R.I. Gen. Laws § 9-33-1. But if a plaintiff believes that discovery is needed, the statute contemplates a carefully wrought process for obtaining it “on motion and after a hearing and for good cause shown.” *Id.* at § 9-33-2(b). Here, Plaintiffs never even attempted to file a motion to obtain discovery, and instead, filed a motion to dismiss.

Thus, Plaintiffs here are very much like the plaintiff in *Alves v. Hometown Newspapers, Inc.*, who “never filed a motion seeking permission to conduct special discovery,” and “did not even attempt to show that he had good cause to pursue an inquiry into [Defendant’s] alleged malice.” 857 A.2d 743, 756 (R.I. 2004). In that case, the Rhode Island Supreme Court upheld the trial court’s entry of summary judgment on the defendant’s anti-SLAPP claim specifically citing plaintiff’s failure to even seek discovery. Plaintiffs’ last-minute attempt to create fact issue here should fail for the same reason: Plaintiffs had an opportunity to develop facts under the anti-SLAPP statute, but consciously elected not to do so and filed a motion to dismiss instead. They should not now be permitted to avoid summary judgment, which the Rhode Island Supreme Court has said is the proper vehicle to resolve anti-SLAPP motions in this state. *Hometown Props., Inc. v. Fleming*, 680 A.2d 56, 63 (R.I. 1996).

Additionally, although *Plaintiffs* have the burden of proof on this issue, Parents have nonetheless put forward evidence regarding subjective reasonableness. To avoid summary judgment, Plaintiffs must “put forth competent evidence as required under the summary judgment standard.” Decision at 26 (citing *Karousos*, 992 A.2d at 272). They have not even tried to.

Plaintiffs attack the Parents' motives in seeking information with respect to curriculum and other issues, but this misses the mark because the statute says public records can never be "withheld based on the purpose for which the records are sought." R.I. Gen. Laws § 38-2-3(j). Thus, motive or purpose in requesting records under the APRA is entirely irrelevant. Moreover, Plaintiffs' insinuations turn on the fact that Parents oppose certain government policies. But there is no requirement that a party only seek records related to government activity they approve of. Indeed, this goes against the core purpose of freedom of information laws, which is "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." Decision at 5 (quoting *R.I. Fed'n of Teachers, AFT, AFL-CIO v. Sundlun*, 595 A.2d 799, 800 (R.I. 1991) and citing R.I. Gen. Laws § 38-2-1.

Summary judgment is also consistent with the purposes of the Anti-SLAPP statute, which is 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.*, 680 A.2d at 62. That is why the Rhode Island Supreme Court has held that a motion for summary judgment is the proper vehicle for resolving an anti-SLAPP claim. *Id.* at 63. And just like motive or purpose cannot be considered as a basis for withholding records under the APRA, under the anti-SLAPP statute, a party's "ultimate motive or

purpose” are *not* to be considered in determining whether protected activity constitutes a “sham.” R.I. Gen. Laws § 9-33-2(a).

Plaintiffs have simply failed to present any evidence demonstrating an actual factual dispute. While Plaintiffs provide ample *speculation* regarding Ms. Solas’s state of mind, they have not provided any evidence to challenge Ms. Solas’ affidavit testimony that her purpose in submitting the APRA requests was to obtain documents from the School Committee. Nor do Plaintiffs provide any evidence, or even seek to develop evidence under the mechanism provided for under the anti-SLAPP statute, to challenge Ms. Solas’ affidavit testimony that her purpose was to obtain records, not to hinder or delay the School Committee.

Instead of rebutting Ms. Solas’ affidavit testimony, Plaintiffs advanced six arguments as to why there is a question of fact as to whether the APRA requests were subjectively baseless. All fail.

First, even though Plaintiffs do not challenge Ms. Solas’ affidavit testimony that she enrolled her child in Kindergarten at a school in the school committee’s district, Plaintiffs argue that Parents have not established “that they are actually parents of a child who actually attended any school in the South Kingstown School system.” Pls.’ Mem. of Law in Supp. of Obj. to Renewed Mot. for Summ. J. (“Resp.”) at 28. This is an irrelevant red herring. Public education is a matter of public concern whether a person has a child enrolled in a particular school or not. In this case, Parents decided to disenroll their daughter *after* they experienced, among other things, a significant lack of transparency by the School Committee.

The Plaintiffs also imply that Parents sought public information because they are opposed to critical race theory and other items in the school curriculum. As noted earlier, this is irrelevant. But even if, as Plaintiffs assert, Parents sought records because of their opposition to critical race theory, this only *refutes* Plaintiffs’ assertion that the APRA requests were subjectively baseless: seeking records related to a matter of significant public controversy in which Parents have a stake is an objectively and subjectively reasonable thing to do. In any event, the issue is whether the requests were intended to seek records, regardless of the motivation for obtaining the records, *see* R.I. Gen. Laws §§ 38-2-3(j), 9-33-2(a).

Second, Plaintiffs make an *ad hominem* attack on Parents’ attorneys, arguing that because the Goldwater Institute represents Ms. Solas, Ms. Solas’ purpose in obtaining the records was the (somehow illicit) purpose of opposing the teaching of critical race theory in schools. Resp. at 28–29. Again, this is an irrelevant red herring. Whether Parents or their counsel approve or disapprove of critical race theory is irrelevant to determining subjective intent under Rhode Island’s anti-SLAPP statute.<sup>2</sup>

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<sup>2</sup> Although it is immaterial for purposes of this litigation, one of the Goldwater Institute’s main priorities is to ensure government transparency and that government agencies fully comply with public records and open meeting laws. Likewise, the fact that Ms. Solas hired the Institute *after* Plaintiffs filed this unprecedented lawsuit against the Parents is irrelevant to Parents’ state of mind months earlier. In any event, “counsel are not involved except in their professional capacities, and irrelevant personal or *ad hominem* attacks on them merely distract from the merits of the litigation.” *Revson v. Cinque & Cinque, P.C.*, 221 F.3d 71, 82 (2d Cir. 2000) (emphasis in original). The Rhode Island Supreme Court has repeatedly condemned such tactics. *State v. Barkmeyer*, 949 A.2d 984, 1007 (R.I. 2008); *State v. Horton*, 871 A.2d 959, 965 (R.I. 2005).

Third, Plaintiffs argue that the number of requests creates a fact issue as to whether Parents' requests were subjectively baseless. Resp. at 29. But Plaintiffs do not contravene Ms. Solas' testimony that the reason for the large number of requests was that the School Committee initially told Parents it would cost thousands of dollars to respond to their requests, and that Parents broke down their requests as narrowly as possible so they could ascertain what the costs would be for each specific request. See Parents' (Initial) Mot. for Summ. J., Ex. 1.

Fourth, Plaintiffs argue that the fact that Parents did not pay thousands of dollars to obtain records from each one of their requests shows that the requests were subjectively baseless. Resp. at 30. This is incorrect. The number of requests was dictated by the School Committee's initial position that it would cost thousands of dollars to process Parents' APRA requests. *Id.* The fact that Parents sought to understand the costs involved in each specific request does not prove subjective baselessness. It is entirely consistent with Ms. Solas' un rebutted affidavit testimony.

Fifth, Plaintiffs repeat the assertion that the fact that Parents submitted APRA requests after they opted to find a better educational option for their child is evidence of subjective baselessness. As stated above, a party's motivation in seeking the records is not relevant. R.I. Gen. Laws § 38-2-3(j). There is no law that only parents of children enrolled in a particular school can seek records related to what is taught in that school. Indeed, Ms. Solas also sought public information about the former Superintendent of the School District, Linda Savastano. The responses to those APRA requests revealed, in part, instances of inappropriate activity by Ms. Savastano, who ultimately resigned her

position as Superintendent. *See* Parents’ Resp. to Union’s Mot. for TRO at 5, Ex. 7. This is precisely the sort of citizen engagement that is necessary “to secure the vital role of open discourse on matters of public importance.” *Fleming*, 680 A.2d at 62. The fact that Parents submitted APRA requests on issues of public importance actually disproves subjective baselessness, because the requests were submitted to obtain information of interest and concern to the requesters, and not for some other purpose.

Finally, Plaintiffs assert that because other people have also subsequently made APRA requests to the School Committee, this somehow shows Parents’ requests were subjectively unreasonable. Resp. at 6. Whether and why other people submitted APRA requests does not show subjective baselessness on the Parents’ part. If anything, it proves that Plaintiffs singled out Parents with this lawsuit—because the Plaintiffs *only* sued *these* Parents, even though other requesters submitted requests for similar information that would presumably also involve teacher privacy and other matters the Union claims it is concerned with. Indeed, this shows that Defendants brought *this* lawsuit against *these* Parents specifically “to chill the valid exercise of [their] constitutional rights.” R.I. Gen. Laws § 9-33-1. That is precisely what the anti-SLAPP statute is designed to prevent.

Plaintiffs have had ample opportunity to refute Ms. Solas’ affidavit testimony. *See* R.I. Gen. Laws § 9-33-2(b); *Alves*, 857 A.2d at 756. Her affidavit establishes that her requests were not subjectively unreasonable. Plaintiffs neither sought nor point to any evidence refuting her affidavit testimony. While the Court’s June 9, 2022, Order noted that the Court could not grant summary judgment for Parents on the record before the Court, Ms. Solas’ affidavit testimony is a substantial change to the record. Plaintiffs’

decision to file a motion to dismiss, rather than to seek discovery as provided for under the anti-SLAPP statute, *id.*, and their decision to leave her affidavit testimony unchallenged shows that Parents are entitled to summary judgment.

## **II. Parents’ anti-SLAPP motion is not moot.**

If a party, after filing a strategic lawsuit against public participation against someone who was exercising her constitutional rights to petition or of free speech, could simply file a notice of dismissal after that party hires counsel and answers the lawsuit, the entire purpose of the anti-SLAPP statute would be defeated. That is why the non-moving party in an anti-SLAPP motion is barred from seeking to voluntarily moot a case once the anti-SLAPP motion is filed. *Sylmar Air Conditioning v. Pueblo Contracting Servs., Inc.*, 18 Cal. Rptr.3d 882, 885–86 (App. 2004) (“a plaintiff may not avoid liability for attorney fees and costs by voluntarily dismissing a cause of action to which a SLAPP motion is directed.”); *Craig v. Tejas Promotions, LLC*, 550 S.W.3d 287, 293 (Tex. App. 2018) (under anti-SLAPP act parties can “pursue their requests for attorney’s fees incurred in defending those claims prior to their voluntary dismissal, as well as for the sanctions the Act would prescribe.”).

Plaintiffs argue that a “substantive claim is moot, then there is no need to resolve an affirmative defense to a moot claim.” Resp. at 26–27. But Plaintiffs offer no legal support for this position; nor can they. Many anti-SLAPP motions are resolved after a plaintiff’s substantive claims have been resolved adversely. Plaintiffs’ analogy to a statute of limitations defense shows the tortured logic of their argument. If a party files a lawsuit, and the defendant has a statute of limitations defense, the only relief sought by

the statute of limitations defense is dismissal. An anti-SLAPP motion, however, seeks additional relief beyond dismissal: attorney fees and damages. Dismissal does not alter the fact that the plaintiff violated the anti-SLAPP statute by suing the defendant as a means of chilling constitutionally protected conduct.<sup>3</sup> Indeed, the whole point of the anti-SLAPP statute is to prevent such cases. R.I. Gen. Laws § 9-33-1. And when that happens, as it has here, the party who was harmed—Ms. Solas—has a right to fees and damages that were incurred to respond to the strategic lawsuit against public participation.

### III. Conclusion

Parents respectfully request that the Court enter summary judgment on their anti-SLAPP motion.

Defendants,  
Nicole Solas and Adam Hartman  
By her Attorneys

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<sup>3</sup> Plaintiffs claim they “withdrew its motion” on August 23, 2021. To be clear, Plaintiffs only withdrew their request for injunctive relief after Parents had fully briefed the matter, and did not seek dismissal of the lawsuit. Resp. at 12. Similarly, Plaintiffs repeat their false claim that they only sued Parents because the Uniform Declaratory Judgment Act required it. Plaintiffs “offer” to dismiss the Parents was illusory, because it would have required them to acquiesce to Plaintiffs’ improper lawsuit and to allow Plaintiffs to continue their challenge to Parents’ APRA requests. Plaintiffs could, at any time, have filed a notice of dismissal with prejudice, and had they filed it last year, it would have mitigated their exposure under the anti-SLAPP statute. To date, they have not done so.

/s/ Jonathan Riches

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### **CERTIFICATE OF SERVICE**

I, Kris Schlott, hereby certify that a true copy of the within was sent this 11th day of October, 2022 by electronic mail and first-class mail, postage prepaid to:

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