

**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,**

**C.A. No. PC21-05116**

*Defendants.*

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**PARENTS’ 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”) lack standing to bring this action and Parents are immune from suit under Rhode Island’s anti-SLAPP statute, R.I. Gen. Laws § 9-33-1, *et seq* (“anti-SLAPP statute”). There are no genuine issues of material fact as to Plaintiffs’ liability for violating the anti-SLAPP statute and Parents are entitled to dismissal of Plaintiffs’ lawsuit and judgment as a matter of law.

## INTRODUCTION

This lawsuit is an unprecedented attempt to enjoin the statutory public records process and stop citizens from seeking public information in good faith about the operations of their government. This extraordinary case is brought by a party without standing, disregards the entire statutory scheme under the Access to Public Records Act (“APRA”), R.I. Gen. Laws § 38-2-1, *et seq.*, and is an affront to Parents’ rights to open and transparent government under the APRA, the anti-SLAPP statute, and the United States and Rhode Island Constitutions.

Judgment should be entered in favor of Parents on the grounds that Plaintiffs lack standing and that Parents are immune from suit under R.I. Gen. Laws § 9-33-2. In addition, the Court should award Parents costs and reasonable attorney fees for having to defend this action. This matter should be left open only for limited discovery to ascertain whether damages should be awarded under § 9-33-2(d) against Plaintiffs for bringing a frivolous action for the purpose of harassing Parents and inhibiting their statutory and constitutional rights, as set out in Defendants’ concurrently filed Motion for Limited Discovery.

## STATEMENT OF FACTS

This lawsuit was brought because Nicole Solas wanted to know what her public school would be teaching her daughter in kindergarten.

Nicole did what any responsible parent would do in that situation, and asked the principal of Defendant South Kingstown School Committee (“School Committee”) what her daughter would be taught in the upcoming school year. Compl. ¶ 13. Rather than

answer the questions of a concerned parent, school officials directed Nicole to submit formal public records requests under APRA, instead. *Id.* at ¶ 14. So she did—whereupon school officials and attorneys told her she would have to pay thousands of dollars for them to comply with her records requests. May 14, 2021 Letter to Solas attached as Exhibit 1. Unable to pay that price, Nicole resubmitted narrower requests. *See, e.g.*, Responses to May 14, 16, 18, 2021 APRA Requests attached as Exhibit 2.

Nicole then paid for some of records to get answers to questions the School Committee had up until that point refused to provide. But instead of receiving answers to her questions, let alone comprehensive record responses, what she got instead was page after page of heavily (often completely) redacted documents. Examples of the thousands of pages of redacted documents are attached as Exhibit 3.

Unsatisfied with such inadequate responses to basic questions about her daughter's education, Nicole and her husband, Adam Hartman, submitted additional records requests. Because of the onerous fees the School Committee had assessed regarding her previous requests, they chose to submit narrow, individual requests rather than submitting several large requests. This allowed them to estimate the potential fees and determine what was provided, what was withheld, and how much it would cost to receive answers to their questions.

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. Not surprisingly, the School Committee’s actions met with widespread community outreach and disapproval.

At the same time the School Committee was planning to sue Nicole, Plaintiffs also started discussions about her. On August 2, 2021, Plaintiffs filed this lawsuit against Nicole and her husband, 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 Plaintiffs contend are not subject to public disclosure. Compl. ¶¶ 65–66.

Plaintiffs filed this action naming Parents as Defendants even though the School Committee has been processing the Parents’ APRA requests, and aggressively applying APRA exemptions to those requests, *see* Exhibits 1–3, including with the assistance of capable outside counsel, Exhibit 5.

Plaintiffs’ suit is unquestionably an explicit attempt to prevent Parents from exercising their statutory and constitutional rights to petition their government for disclosure of public information. Plaintiffs lack standing, and this case is an abuse of APRA and lacks any legal merit. It constitutes a Strategic Lawsuit Against Public Participation (“SLAPP”) and for that reason, Parents are entitled to judgment. The Court should also award Parents attorney fees and costs.

### **ARGUMENT**

A party is entitled to summary judgment when “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is

entitled to judgment as a matter of law.” R.I. R.Civ. P. 56(c). A motion for summary judgment is the proper vehicle for resolving an anti-SLAPP claim. *Hometown Props., Inc. v. Fleming*, 680 A.2d 56, 63 (R.I. 1996).

**I. Plaintiffs lack standing to bring this case.**

In a string of cases reaffirmed for nearly three decades, the Rhode Island Supreme Court has made it clear that Plaintiffs have no standing to initiate a preemptive case against a public records requester seeking public information under APRA. Consequently, the Complaint fails to allege any viable cause of action, and should be immediately dismissed.

In 1991, the Rhode Island Supreme Court addressed the exact situation presented in this case. In *Rhode Island Federation of Teachers v. Sundlun*, 595 A.2d 799 (R.I. 1991), a teachers’ union sought to enjoin production of records related to its members’ pension benefits. *Id.* at 799. The union asserted that the pension benefit information would violate its members’ privacy rights. *Id.* at 800. The trial court denied the union’s request for injunctive relief “on the ground that APRA simply did not provide an injunctive remedy to persons or entities seeking to block disclosure of records”—exactly the situation in this case, *id.*, and the Supreme Court affirmed, unequivocally and unanimously agreeing that APRA “only provides a remedy for those persons or entities that are denied access to public records.” *Id.* In every other APRA case decided after that, the Supreme Court has held that APRA does not permit third parties to sue as Plaintiffs are doing in this case. “[W]hen a statute is free from ambiguity and expresses a clear and definite meaning, the court must accord to the words of the statute such clear and obvious

import without adding to or detracting from the plain everyday meaning of the words contained in the statute.” *Id.* at 802.

The Court confronted the issue again in 1997 and 2004. In both cases, the Court reiterated that APRA does not provide a party, such as the union, with standing to challenge somebody else’s public records request.

In 1997, depositors with insolvent state-chartered banks sought injunctive relief to prevent the governor from disclosing, pursuant to APRA, the names and other information related to depositors who lost money when the Rhode Island Share and Deposit Indemnity Corporation became insolvent. *Pontbriand v. Sundlun*, 699 A.2d 856, 860 (R.I. 1997). The Court rejected the depositors’ argument that under APRA they can challenge the governor’s release of information: “[W]he have held that [APRA] affords no right to prevent the release of private information. ... *APRA does not contemplate ‘reverse-FOIA’ suits.*” *Id.* at 867 (emphasis added).

The Court addressed the issue again in 2004, reiterating that “APRA provides a remedy only to those people who are denied access to public records; *it does not provide a remedy to prevent public agencies from disclosing records.*” *In re New England Gas Co.*, 842 A.2d 545, 547 (R.I. 2004) (emphasis added). In that case, the Court rejected the plaintiff’s argument that it could bar disclosure of information related to expenses incurred during a labor dispute, based on the holdings from *Pontbriand* and *Rhode Island Federation of Teachers*.

The reasons for this clear line of precedent are plain. If Plaintiffs’ remote, speculative, and unsubstantiated claims of harm were sufficient to state a cause of action



























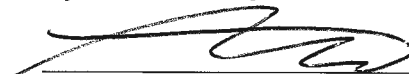
*Blind*, 487 U.S. 781, 795 (1988) (“[T]he First Amendment does not permit the State to sacrifice speech for efficiency”). The fundamental rights protected by the First Amendment and Article I Section 21 of the Rhode Island Constitution trump state interests even if they may create some incidental injury, as the Plaintiffs allege here. Thus even if taken as true, the allegations made in Plaintiffs’ Complaint are simply insufficient to maintain an action that implicates the Parents’ constitutional rights.

### CONCLUSION

Based on the foregoing, judgment should be entered in favor of Parents and against Defendants, finding that Plaintiffs lack standing, that Parents are immune from suit under R.I. Gen. Laws § 9-33-2(a), and awarding Parents costs and reasonable attorney fees for having to defend this action pursuant to R.I. Gen. Laws § 9-33-2(d).

Respectfully submitted this 19th day of August 2021 by:

Defendants,  
Nicole Solas and Adam Hartman  
By their Attorneys



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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



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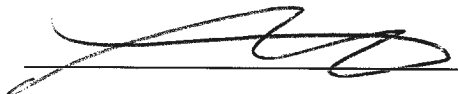
Jonathan Riches, Esq.  
(*pro hac vice* application pending)  
Stephen Silverman, Esq.  
(*pro hac vice* application pending)  
Scharf-Norton Center for  
Constitutional Law at the  
GOLDWATER INSTITUTE  
500 East Coronado Road  
Phoenix, Arizona 85004  
Telephone (602) 462-5000  
Electronic Mail:  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

### CERTIFICATE OF SERVICE

I, Giovanni D. Cicione, hereby certify that a true copy of the within was sent this 19 day of August, 2021 via electronic mail and first-class mail, postage prepaid to:

Carly Beauvais Iafrate  
Law Office of Carly B. Iafrate, PC  
38 N. Court St., 3<sup>rd</sup> 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

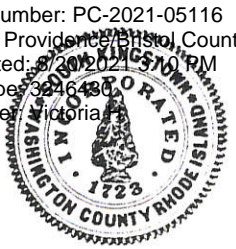












**SOUTH KINGSTOWN SCHOOL DEPARTMENT**  
307 CURTIS CORNER ROAD, WAKEFIELD, RI 02879-2106

**Linda Savastano**  
SUPERINTENDENT OF SCHOOLS

(401) 360-1307  
FAX (401) 360-1330  
TTY 1 800 745-5555  
email: lsavastano@sksd-ri.net

May 21, 2021

*via email*

Ms. Nicole Solas

Re: APRA Request of May 14, 2021

Dear Ms. Solas,

This letter is sent in response to your APRA request of May 14, 2021 in which you sought:

*List of all text books, literature, handouts, and other reading material assigned to English students in grades 7 through 12 for the academic years 2019/2020 and 2020/2021..*

Response:

The School Department is not in possession of responsive documents.

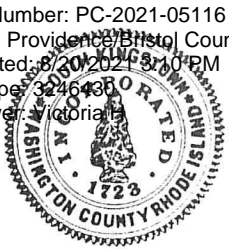
In accordance with R.I. Gen. Laws § 38-2-8, you may file an appeal with the Department of the Attorney General, 150 South Main Street, Providence, Rhode Island, 02903, or the Rhode Island Superior Court of the county where the record(s) are maintained. You may also access additional information concerning the Access to Public Records Act through the Attorney General's website at [www.riag.ri.gov](http://www.riag.ri.gov).

Sincerely,

Linda Savastano  
Superintendent







**SOUTH KINGSTOWN SCHOOL DEPARTMENT**  
307 CURTIS CORNER ROAD, WAKEFIELD, RI 02879-2106

**Linda Savastano**  
SUPERINTENDENT OF SCHOOLS

(401) 360-1307  
FAX (401) 360-1330  
TTY 1 800 745-5555  
email: lsavastano@sksd-ri.net

May 27, 2021

*via email*

Ms. Nicole Solas

Re: APRA Request of May 18, 2021

Dear Ms. Solas,

This letter is sent in response to your APRA request of May 18, 2021 in which you sought:

*Athletic policies of South Kingstown School District before and after any changes proposed or made in the name of "equity" or "culturally responsiveness" or "accessibility" or "antiracism."*

Response:

The district is not in possession of responsive documents.

In accordance with R.I. Gen. Laws § 38-2-8, you may file an appeal with the Department of the Attorney General, 150 South Main Street, Providence, Rhode Island, 02903, or the Rhode Island Superior Court of the county where the record(s) are maintained. You may also access additional information concerning the Access to Public Records Act through the Attorney General's website at [www.riag.ri.gov](http://www.riag.ri.gov).

Sincerely,

Linda Savastano  
Superintendent















































