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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**

PARENTS' REPLY TO PLAINTIFF'S OBJECTION TO PARENTS' MOTION FOR SUMMARY JUDGMENT

Defendants Nicole Solas and Adam Hartman ("Parents") hereby reply to Plaintiff National Education Association Rhode Island's ("Union") Objection to Parents' Motion for Summary Judgment.

I. The Union does not have standing to disrupt the statutory public records process.

The Union expressly and unambiguously based its lawsuit on the Access to Public Records Act ("APRA"). The Union now implicitly admits that APRA precludes a third party from objecting to public records requests, an admission compelled by clear Rhode Island Supreme Court precedent. Pls.' Mem. Of Law in Support of Obj. to Requestors' Mot. for Summ. J. ("Obj.") at 19–20. *See also, e.g., R.I. Fed'n of Teachers v. Sundlun*, 595 A.2d 799, 800 (R.I. 1991). But rather than acknowledge that it filed a lawsuit with no legal basis, the Union's Objection instead attempts to re-write history (and the law).

The Union now contends that it never based the lawsuit on APRA but instead asserts that the Uniform Declaratory Judgment Act ("UDJA") independently confers jurisdiction on Plaintiffs' challenge to the Parents' public records requests. But that claim is just as contrary to Rhode Island law as its original argument.

On August 2, 2021, Plaintiffs filed this lawsuit seeking "declaratory judgment and other relief concerning the appropriate treatment of various records requests pursuant to the Access to Public Records Act ('APRA')." Compl. ¶ 1. The Complaint seeks to "prohibit the disclosure of non-public records." *Id.* It also asks this Court to conduct "a balancing test that properly assesses the public interest in the records at issue measured against the teachers' individual privacy rights" as to any records that "call for personally identifiable and other personnel-related information about public school teachers." *Id.*

The Union's Motion for Temporary Restraining Order and Preliminary Injunction ("TRO Mot.") sought to restrain the School Committee Defendants "from responding to public records requests referenced in the Verified Complaint, unless and until a determination can be made that such documents are required to be released pursuant to [APRA]." TRO Mot. at 1.

The Union's request for injunctive relief and its demand that the Court "conduct a balancing test" prior to disclosure is expressly prohibited by Rhode Island Supreme Court precedent that unambiguously provides that under APRA, the School Committee has unfettered discretion to produce any of its records in response to an APRA request. *In re New England Gas Co.*, 842 A.2d 545, 552 (R.I. 2004) (noting "few matters have been more squarely placed within the discretionary authority of a governmental agency or commission than determining whether its records should be deemed protected from public disclosure").

It is clear from the Union's Complaint and Motion for Temporary Restraining Order and Preliminary Injunction that this case is predicated on APRA, and it is equally clear that this lawsuit should have never been brought in the first place. The Union implicitly concedes this, offering no justification that its Complaint is warranted by existing law and making no argument that existing law should be extended, modified, or reversed.

Faced with these insurmountable problems, the Union now says this case is not based on APRA, but instead on the UDJA. But just as APRA clearly precludes the Unions' lawsuit, it is also clear that the UDJA does not provide a stand-alone cause of action. It only provides a remedy for cases in which there is already "a justiciable controversy between plaintiff and defendant." *Langton v. Demers*, 423 A.2d 1149, 1150 (R.I. 1980) (quoting the Rhode Island Declaratory Judgment Act). In other words, the party seeking a declaratory judgment must "advance allegations claiming an entitlement to actual and articulable relief." *McKenna v. Williams*, 874 A.2d 217, 227 (R.I. 2005). As explained below, this means a party cannot seek a declaratory judgment without already having a stand-alone cause of action. None exists here. And because the relief requested in this case is squarely prohibited by Supreme Court precedent, and the Union makes no effort to identify any other legal basis for its claim, the Union cannot rest on the UDJA to save it from the consequences of filing a lawsuit that lacks any legal or factual basis.

A. The UDJA is procedural and remedial only.

Any lawsuit seeking a declaratory judgment must plead facts that "indicate[] the existence of an actual justiciable controversy." *Goodyear Loan Co. v. Little*, 269 A.2d 542, 543 (R.I. 1970). That means the plaintiff must present facts that "yield to some conceivable legal hypothesis which will entitle the plaintiff to some relief against the defendant." *Id.* An

underlying cause of action is an absolute prerequisite for a declaratory judgment action. "The existence of such a controversy is, of course, a necessary precedent to the successful prosecution of a declaratory judgment action." *Id. See also, e.g., Reynolds v. Reynolds,* 86 S.W.3d 272, 275 (Tex. App. 2002) ("the Uniform Declaratory Judgments Act does not *confer* jurisdiction on a trial court, but rather makes declaratory judgment available as a remedy for a cause of action *already within the court's jurisdiction.*" (emphasis in original)).

The facts in *Goodyear Loan Company* make it clear that "controversy" means cause of action. In *Goodyear*, an incompetent adult purchased an automobile from an auto dealership, financed by the Goodyear Loan Company. When Goodyear found out the purchaser was incompetent, it demanded repayment of the loan from the dealership. Goodyear also requested the dealership to accept return of the vehicle. 269 A.2d at 543. Just as in this case, Goodyear based its cause of action against the dealership only on the UDJA. *Id.* The trial court dismissed, and the Rhode Island Supreme Court affirmed,[1] noting that "nothing in [Goodyear's] brief or oral argument suggests any legal theory which … indicates the existence of an actual justiciable controversy between it and [the dealership]." *Id.*

In other words, Goodyear did not allege any underlying cause of action, and it could not rely on the UDJA alone to give the court jurisdiction. A similar situation is presented here. The Union has not identified any legal basis for its claim that it can object *at all* to the Parents' public records requests or interject itself into the statutory public records process. APRA, in fact, forbids any such argument. It denies third parties any right to interfere with a public records request and gives the School Committee Defendants absolute discretion to disclose records or

[1] The appeal concerned only the claim against the dealership. Goodyear also sued the incompetent adult's guardian, who did not file a motion to dismiss. *Id.*

claim an exemption. And without an APRA cause of action (or any other), the Union cannot maintain this suit under the UDJA.

B. Every case cited by the Union has an underlying legal basis.

The Union asserts that Rhode Island courts allow cases to proceed where the only alleged legal basis for the claim is the UDJA, but the cases it cites prove the opposite. Each of them was based on an underlying cause of action independent of the UDJA.[2]

The Union's "standing" argument likewise fails. Every case the Union cited to support its position that it has standing also has an underlying legal cause of action.[3] The issue in this case is that the Union has no legal right to object to the Parents' APRA requests and no right to

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[2] *Estate of Hopkins v. Hopkins*, 251 A.3d 888, 891–92 (R.I. 2021) (case predicated on substantive legal requirement that "delivery" is a necessary requirement for a deed to be valid); *Downey v. Carcieri*, 996 A.2d 1144 (R.I. 2010) (case predicated on Government Oversight and Fiscal Accountability Review Act); *Taylor v. Marshall*, 376 A.2d 712 (R.I. 1977) (case predicated on G.L. 1956 (1970 Reenactment) § 45-23-1). Curiously, the Union asserts, Obj. at 20, that *Chrysler Corp v. Brown*, 441 U.S. 281 (1979), supports its case, but the cause of action for the plaintiff in that case arose out of the Administrative Procedures Act.

[3] *Flast v. Cohen*, 392 U.S. 83 (1968) (case predicated on the Establishment Clause of the First Amendment); *Baker v. Carr*, 369 U.S. 186 (case based on 42 U.S.C. §§ 1983 and 1988); *McKenna v. Williams*, 874 A.2d 217 (R.I. 2005) (case predicated on Rhode Island Const. art. 3, § 6); *Watson v. Fox*, 44 A.3d 130 (R.I. 2021) (case predicated on Rhode Island Const. art. 5, 6 and 9*); R.I. Ophthalmological Soc'y v. Cannon*, 317 A.2d 124 (R.I. 1974) (case predicated on G.L. 1956, § 5-35-1); *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150 (1970) (case predicated on Administrative Procedures Act); *Pontbriand v. Sundlun*, 699 A.2d 856 (R.I. 1997) (claims based on statutory right of privacy, § 9-1-28.1); *Blackstone Valley Chamber of Com. v. Pub. Utils. Comm'n*, 452 A.2d 931 (R.I. 1982) (chamber lacked standing to pursue claim under RI Gen L. § 39-5-1); *Sierra Club v. Morton*, 405 U.S. 727, 730 (1972) (plaintiffs brought claims based on "federal laws and regulations governing the preservation of national parks, forests, and game refuges," specifically 16 U.S..C. §§ 1, 41, 43, 45c, and 49); *Bowen v. Mollis*, 945 A.2d 314 (R.I. 2008) (case based on R.I. Const. art. 14 § 2); *Massachusetts v. Mellon*, 262 U.S. 447 (1923) (dismissing claim because plaintiff could not provide a legal basis for its challenge to the 1921 "Maternity Act"); *United Food and Com. Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544 (1996) (case based on Worker Adjustment and Retraining Notification Act); *NAACP v. Alabama, ex rel. Patterson*, 357 U.S. 449 (1958) (case based on Due Process Clause of the Fourteenth Amendment); *Key v. Brown Univ.*, 163 A.3d 1162 (R.I. 2017) (case based on zoning laws); *N & M Prop., LLC v. Town of W. Warwick*, 964 A.2d 1141 (R.I. 2009) (case dismissed for lack of standing because plaintiff could not identify legal theory on which claims were based).

second-guess the School Committee's decisions on whether to apply potential APRA exceptions to the requested documents. The Union categorically lacks standing because it has no cause of action it can assert. The Union does not have any right to object to the APRA requests or the School Committee's responses, so it cannot demonstrate any "injury" as a matter of law. The entirety of the Union's "injury in fact" argument is a red herring.

II. Parents are immune under the anti-SLAPP statute.

A. The Union adds elements to anti-SLAPP immunity that do not exist under the statute.

The Union's Objection interjects requirements into the anti-SLAPP law that are not there. In so doing, the Union, "misstates the order of proof." *Alves v. Hometown Newspapers, Inc.*, 857 A.2d 743, 756 (R.I. 2004). Immunity applies under the anti-SLAPP statute if three elements are established: (1) there is "any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental proceeding" or "made in connection with an issue of public concern;" (2) that deals with "a matter of public concern;" and (3) that 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).

Despite this plain statutory framework, the Union attempts to add elements to Parents' anti-SLAPP defense by arguing that Parents must prove "that the Union was motivated by an intention to harass or to chill a valid exercise of constitutional rights." Obj. at 37. These requirements do not apply in determining whether immunity applies, but instead are only examined *after* immunity is established, and only in determining whether the Court "may award

punitive damages." R.I. Gen. Laws § 9-33-2(d).[4] In other words, an assessment of whether the Union filed this case in order to harass Parents or inhibit the exercise of their rights occurs *only after* immunity is established, not as requirements to establish immunity.[5]

The Union next tries to avoid application of the anti-SLAPP statute by asserting that "the Union only named the Requesters as parties because it was required under the UDJA." Obj. at 8. But this assertion is impossible to square with the Union's actions in this case. By the Union's own admission, "following Solas' requests, the School Department began receiving more requests from other individuals and entities." Obj. at 6. This included requests from parties *other than Parents* that requested similar information that Parents requested, including emails to and from then-Superintendent Linda Savastano, district staff, and School Committee members. Obj., Ex. F. If it is true that the Union named Parents as defendants only because it hoped the case might "result in the Requesters not obtaining records that they may have believed they were entitled to under APRA," Obj. at 33, then why didn't the Union name any other requesters? In other words, if the *only* reason the Union named the Parents as defendants is because they "have or claim any interest which would be affected by the declaration" under the UDJA, Resp. at 31,

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[4] An award of compensatory damages is mandatory under the statute if the Union's case is frivolous, if it was brought to harass Parents, or if it inhibits Parents' right to petition the school board for information on what would be taught to their daughter.

[5] Although the Union's intent in filing this case is immaterial until the damages phase, its attempt to show that it did not file this lawsuit as a harassment tactic is unpersuasive. It argues that the lawsuit was not intended to harass Parents because "it would not have been so narrowly tailored at only those requests involving individual teachers" if it had been. Obj. at 37. In other words, if the lawsuit had been filed in order to harass Parents, the Complaint would have sought to disturb the public records process for a larger category of records. But the inquiry under the anti-SLAPP statute is not what *records* the lawsuit was directed at, but what *parties and activities* the lawsuit was directed at. The Union admits this case was directed at *these* Parents because they *submitted public records requests*. Because those requests were written statements submitted to a government entity in connection with a matter of public concern, they fall within the protections of the anti-SLAPP statute. Thus this is a SLAPP case, regardless of which categories of records the Union sought to conceal from public view.

then the Union should also have named other requesters with a similar interest. But it did not. It *only* named Parents as defendants. This alone shows that the Union's contention that it *had to* name Parents as defendants under the UDJA is pretextual.

The Union also contends that the anti-SLAPP statute does not apply because "Requesters have no financial stake in the outcome," Obj. at 35, and "no claim for liability." *Id.* at 36. Again, the Union is superimposing requirements onto the anti-SLAPP statute that do not exist. That statute grants immunity against "*any* civil claim … directed at petition or free speech" activities. R.I. Gen. Laws § 9-33-2(a). Contrary to the Union's suggestion, there is no requirement that the claim be for monetary, injunctive relief, or any other claim for relief before immunity applies.

This immunity from "any civil claim" comports with the express purpose of the anti-SLAPP statute: to minimize costs to citizens forced to defend actions that violate their rights. As declared in the law's "findings" section, SLAPP "litigation is disfavored and should be resolved quickly with minimum cost to citizens who have participated in matters of public concern." *Id.* § 9-33-1. Whether Parents and other defendants subject to SLAPP cases are sued for money or any other form of relief, they must still bear costs in defending the action. The anti-SLAPP statute is intended to minimize such costs *regardless* of the claims for relief, by quickly disposing of cases - like this one - that interfere with the exercise of the right to participate in matters of public concern.[6]

The Union also claims that Parents are "nominal parties" in this case, and therefore somehow ineligible for immunity under the anti-SLAPP statute. Obj. at 35. Again, the anti-

[6] In any event, Parents *do* have a financial stake in the outcome of this litigation, insofar as attorney fees and litigation costs are mandatory for prevailing parties under the anti-SLAPP statute. R.I. Gen. Laws. § 9-33-2(d).

SLAPP law makes no such distinctions. Also, Parents were never identified as nominal parties, and obviously they are not. The entire purpose of the APRA is to "facilitate public access to public records." R.I. Gen. Laws § 38-2-1. It is intended to "open up various state government documents to inspection by private citizens and news-gathering entities in order to enhance the free flow of information." *Hydron Labs., Inc. v. Dep't of Atty. Gen.*, 492 A.2d 135, 137 (R.I. 1985). In that regard, as the records requestors, Parents are the statutory focus of the APRA law. They are the reason it was enacted - hardly nominal.

In any event, the Union again contradicts itself here. On the one hand, it argues that it *had* to name Parents because they "have or claim any interest which would be affected by the declaration." Obj. at 31. On the other hand, it cites the definition of a "nominal party" as one "who will not be affected by any judgment." *Id.* at 35. The Union can't have it both ways. The anti-SLAPP statute was intended to (and does) protect against "any civil claim" directed against a party that exercised his or her rights to participate in public matters, just as Parents did here.

Finally, the Union argues that there is a "dispute as to a material fact - whether the records at issue were public records and subject to disclosure, whether the so-called basis for the request was ever about their child's education that underlies the availability of the anti-SLAPP defense in the first place." Obj. at 40. But the Union, again, is putting the cart before the horse. Lack of standing and immunity under anti-SLAPP are threshold questions (and pure questions of law) that can and should be decided on summary judgment. *See Alves,* 857 A.2d at 756 (Rejecting plaintiffs' argument that the court should reach the merits of a defamation claim when the defendant filed an anti-SLAPP motion because "the plaintiff's argument misstates the order of proof under the anti-SLAPP statute.").

What's more, the "basis for the request" is irrelevant both to the questions presented in this motion, and to the plain language of the APRA: "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." R.I. Gen. Laws § 38-2-3.

There are no issues of disputed material facts before the Court on this motion. The array of reasons the Union offers as to why the anti-SLAPP statute does not apply in this case are unsupported by the plain language of the statute, its intent, and the many cases interpreting it. They should all be rejected.

B. Parents have immunity under the *actual* anti-SLAPP factors.

Parents establish each of the three elements for immunity under the anti-SLAPP statute. The records requests they submitted were [1] written statements to a public body, [2] made in connection with issues of public concern, and [3] the requests were not a "sham." R.I. Gen. Laws § 9-33-2(a), (e); *Sisto,* 68 A.3d at 615.

Public records requests are obviously written statements. They were also made to a public body in connection with public issues under consideration by that body; namely, the education of South Kingstown youth and the transparent operations of public education in the district. The Union does not appear to dispute this element.

The union argues, however, that the requests are not "on matters of public concern" because some of the records are purportedly exempt from disclosure under the APRA. Resp. 40. First, the Parents' records requests indisputably seek information about the operation of South Kingstown public schools and the education of students. The Rhode Island Constitution makes plain that public education in this state is a matter of public concern: "The diffusion of

knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools … and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education …" R.I. Const. art. XII, § 1. Second, the issue is not whether the records Parents requested may be exempt from disclosure - they likely are not exempt - but rather, whether the records requests were "made in connection with an issue of public concern." R.I. Gen. Laws § 9-33-2(e). Here, the requests seek information from a public body about the activities of public officials, including the school superintendent and public-school teachers on issues from curriculum to discipline to teacher training. The operations and functions of public school districts and the way children are educated in public schools are obviously issues of public concern.

The Union next claims that the anti-SLAPP statute should not apply because the case is "directed at the School Department process in response to APRA requests, not the APRA requests themselves." Obj. at 41. This is semantics. The anti-SLAPP statute "bar[s] … *any* civil claim … directed at petition or free speech" activities. R.I. Gen. Laws § 9-33-2(a). By the Union's own admission, Obj. at 8–9, this case was filed because Parents submitted records requests to which the Union objected. In other words, Parents "exercise[ed] [their] right of petition [and] of free speech" by submitting "written … statement[s] … in connection with an issue of public concern." R.I. Gen. Laws § 9-33-2(a), (e). This case is directed at those requests. Because the Union's lawsuit is directed at Parents due to their making those records requests, and seeks to stop those requests, this case falls within the anti-SLAPP statute's protections.[7]

[7] The Union's contention that it offered to dismiss the Parents from the lawsuit is disingenuous, because the consequence would be surrendering their rights to petition the school board for public records. The Union did not offer to withdraw or dismiss their baseless lawsuit. Instead,

The only remaining question, then, is whether Parents' records requests constitute a "sham." The right to petition and free speech under the anti-SLAPP statute *only* constitute a "sham" if the activity is *both* objectively baseless and subjectively baseless. R.I. Gen. Laws § 9-33-2(a). The records requests here come nowhere near meeting those high standards.

The Union contends - in a single sentence - that the record requests were "objectively baseless" because "the Requestors could not realistically expect that the School Department would produce records in response to the specific requests outlined in the Union's complaint." Obj. at 43. The Union's entire case betrays this argument. On the one hand, the Union claims that it filed this case (and TRO) because it "learned that the Response … would ultimately result in the production of about 90,000 pages of documents," and therefore, "the School Department was not in a position to be able to satisfy the Union's concerns as to what would be produced." *Id.* at 7. In other words, the Union filed this lawsuit solely because it *did* expect that the School Department would produce records in response to the Parents' request. And it continues to pursue this case because it evidently remains concerned that Parents will receive the records they requested. *Id.* at 8–10.

In short, the Union predicated this case upon, and continues the case because, *it does* believe that the Parents "realistically expect success in procuring" the public information they seek. R.I. Gen. Laws. § 9-33-2(a)(1). That is, the Union's entire case *concedes* that the records requests are not objectively baseless. This, of course, is true, since the APRA makes all records maintained by public agencies, including those requested here, presumptively available for public disclosure. *Id.* § 38-2-3.

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the Union's position is clear: if a parent seeks information under APRA for information about what is being taught to their students, the parent will be sued unless they agree to abandon their requests.

Nor can the records requests be characterized as "subjectively baseless." The Union asserts - again without argument - that the requests are subjectively baseless because "the motivation of the Requestors was to use the process to inundate the School Department or to harass teachers they believed support Critical Race Theory." Obj. at 43. This is unsubstantiated nonsense. First, a requestor's motives are expressly irrelevant under the APRA. R.I. Gen. Laws Ann. § 38-2-3. Second, the Union has presented no evidence - none - that Parents requested public information for any other purpose other than to learn about the operations of a public school district and the activities of public officials.

And, indeed, that is precisely what occurred here. As a result of public information released in part under APRA that revealed public misconduct, *the School Committee Superintendent resigned.* TRO Mot. Ex. 6–7. What's more, the Parents in this case were specifically *directed* by the School Committee to submit public records requests when the superintendent refused to answer basic questions about what children would learn in kindergarten. Compl. ¶¶ 13–14. The Union has offered no evidence that Parents' exercise of their petition and free speech rights were subjectively baseless, and all the information available points to the opposite conclusion: Parents submitted their requests precisely for the law's purpose: "to secure the vital role of open discourse on matters of public importance." *Hometown Props., Inc. v. Fleming,* 680 A.2d 56, 62 (R.I. 1996).

III. Parents are entitled to attorney fees and costs if they prevail on summary judgment.

A. Attorney fees and costs are mandatory if the Court grants summary judgment in favor of Parents.

Attorney fees and costs are **mandatory** under the anti-SLAPP statute if immunity is granted or if the party that raised the anti-SLAPP defense prevails at trial. R.I. Gen. Laws § 9-

33-2(d). The Union raises several arguments to avoid its statutory obligation to pay attorney fees for bringing a strategic lawsuit against public participation, none of which are availing.

The Union first contends that "even if the anti-SLAPP defense had potential relevance to this case, the issue is moot because if the basis for summary judgment motion is lack of standing, the Requestors simply cannot be prevailing parties for purposes of costs and attorneys' fees." Obj. at 46. This is incorrect as both a factual and legal matter.

Parents assert two bases for summary judgment: *both* that the Union lacks standing *and* that they have immunity under the anti-SLAPP statute.

The issue of lack of standing should be raised as a predicate issue in a declaratory judgment action, and summary judgment is a proper vehicle for raising lack of standing. *DePetrillo v. Belo Holdings, Inc,* 45 A.3d 485, 491 (R.I. 2012) ("as a necessary predicate to pursuing a declaratory judgment, a plaintiff must have standing."). Additionally, a party that has summary judgment granted in its favor is a prevailing party. *Kells v. Town of Lincoln*, 874 A.2d 204, 214 (R.I. 2005) (awarding attorney fees to party in whose favor summary judgment was granted because he was the "prevailing party.").

Parents also assert that they have immunity under the anti-SLAPP statute, and that statute anticipates the Court reaching and deciding the question of immunity in the same proceeding in which it is raised. An anti-SLAPP defense "may be asserted by an appropriate motion." R.I. Gen. Laws § 9-33-2(c). The Supreme Court has squarely held that "the 'appropriate motion'… would be a motion for summary judgment." *Hometown Props.*, 680 A.2d at 63. Since *Hometown Properties* was decided, Rhode Island courts have almost uniformly decided anti-SLAPP motions on summary judgment. *See Sisto,*68 A.3d at 616–17 (affirming partial grant of summary judgment for claims barred by anti-SLAPP statute and vacating other portions of the

lower court's decision); *Karousos v. Pardee*, 992 A.2d 263, 270 (R.I. 2010). Thus, the anti-SLAPP immunity was properly raised in this summary judgment motion.

Rhode Island courts have also consistently held that anti-SLAPP immunity must be addressed in the same proceeding in which it is raised. In *Palazzo v. Alves*, 944 A.2d 144, 151 (R.I. 2008) (emphasis added), the Supreme Court said, "[i]t is utterly apparent that the statute envisions a *unitary* proceeding—one in which all contentions of the parties would in the end be 'wrapped up.'" In other words, anti-SLAPP immunity should be reviewed and decided *on the merits* in the action in which it is raised. The Parents' summary judgment motion not only asserts that the Union lacks standing, but it also raises the immunity protections of the anti-SLAPP statute. Thus, the Court should address and resolve both questions in "a unitary proceeding," that is, by resolving the summary judgment motion.

The anti-SLAPP statute is likewise clear about how the Court should handle attorney fees: if immunity is established under the anti-SLAPP statute <u>or</u> the party that raised the anti-SLAPP defense *otherwise* prevails at trial, the Court "shall award" attorney fees and costs. R.I. Gen. Laws § 9-33-2(d) ("If the court grants the motion asserting the immunity established by this section, or if the party [who raised the anti-SLAPP motion] is, in fact, the eventual prevailing party at trial, the court *shall award* the prevailing party costs and reasonable attorney's fees." (emphasis added)).

In this case, the Court should grant anti-SLAPP immunity to parents, and award them costs and reasonable attorney fees for having to defend this action. If Parents also prevail in the trial court because the Union lacks standing, the Court should likewise award them costs and fees as the prevailing party. R.I. Gen. Laws § 9-33-2(d) (mandating attorney fees to "prevailing party at trial"); *Shire Corp. v. R.I. Dep't of Transp.*, C.A. No. PB 09-5686, 2012 R.I. Super. LEXIS 32

at *56–57 (R.I. Super. Ct. Mar. 2, 2012) (granting partial summary judgment for two counts barred by the anti-SLAPP statute and awarding fees and costs); *Palazzo,* 944 A.2d at 151 (attorney fees and costs shall be awarded "*in the same civil action* in which a party has successfully invoked the conditional immunity granted by the anti-SLAPP statute." (emphasis added)). Thus, if summary judgment is entered in favor of Parents on either basis, the Court "shall award…costs and reasonable attorney's fees" to Parents. R.I. Gen. Laws § 9-33-2(d).

B. The Court should also award damages to Parents.

The only remaining question is whether damages should also be awarded. Under the anti-SLAPP statute, "[t]he [C]ourt shall award compensatory damages and may award punitive damages upon a showing by the prevailing party" that Plaintiff's claims "were [1] frivolous or [2] were brought with an intent to harass the party or [3] otherwise inhibit the party's exercise of its right to petition or free speech…."

Because Plaintiffs lack standing, their claims are frivolous within the meaning of the anti-SLAPP statute. This question can be resolved on the current record as a matter of law. Additionally, because the case was brought to disrupt the statutory public records process and Parents' rights to receive public information, the case was also brought to inhibit the exercise of Parents' free speech and petition rights. Compensatory and punitive damages can also be awarded on that question on the existing record.

Additionally, simultaneous with filing their motion for summary judgment, Parents also filed a motion for limited discovery to seek information about whether this case was brought "with an intent to harass" Parents. Because only Parents were named as defendants when the Union has conceded that multiple other parties submitted similar requests but were not named as defendants, it certainly appears that harassment was a motivating factor in bringing this case.

See Hometown Props., Inc. v. Fleming, C.A. No. WC92-689, 1998 WL 388362 at *4 (R.I. Super. Ct. July 3, 1998) ("a prima facie case for punitive damages is … made when [the defendant's] evidence indicates that [the plaintiff's] lawsuit against her was frivolous, or was brought with an intent to harass said party, or otherwise inhibit said party's exercise of her right to petition or free speech.")

But additional evidence can be developed on this question. Under the anti-SLAPP statute, "the [C]ourt, on motion and after a hearing for good cause shown, may order that specified discovery be conducted." R.I. Gen. Laws § 9-33-2(b). Here, because only Parents were named as defendants when other requestors also submitted similar requests but were not named as defendants, good cause exists to grant Parents' motion for limited discovery on the question of whether this case was brought with "an intent to harass." *Id.* at § 9-33-2(d).

In sum, this Court can find on the existing record that the Union's case is frivolous and otherwise inhibits Parents' rights under the anti-SLAPP statute. That alone is sufficient basis to award compensatory and punitive damages under the anti-SLAPP statute. Alternatively, after granting Parents' anti-SLAPP claim, the Court may allow discovery on the limited issue of whether punitive damages should be awarded against the Union for bringing an action that was intended to harass Parents for exercising their constitutionally protected rights.

CONCLUSION

Based on the foregoing, the Court should grant summary judgment in favor of Parents because the Union lacks standing and Parents have established immunity under the anti-SLAPP statute. The Court should also award costs and reasonable attorney fees as well as compensatory and punitive damages against the Union for filing a frivolous case that has inhibited Parents' exercise of protected rights.

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CERTIFICATE OF SERVICE

I, Jonathan Riches, hereby certify that a true copy of the within was sent this 9th day of November, 2021 through the electronic filing system to:

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