STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: June 9, 2022)

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

DECISION

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

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

I

Facts and Travel

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

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

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

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

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

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

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

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

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

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

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

II

Standard of Review

'"Summary judgment is appropriate when no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law."' *Swain v. Estate of Tyre ex rel. Reilly*, 57 A.3d 283, 288 (R.I. 2012) (quoting *Beacon*

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

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

III

Analysis

A. Rhode Island Access to Public Records Act

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

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

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

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

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

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

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

B. Standing

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

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

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

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

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

(1) Standing in General

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

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

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

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

(2) Organizational Standing

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

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

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

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

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

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

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

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

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

(a)

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

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

The *Lujan* Court went on to state that:

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

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

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

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

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

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

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

(b)

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

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

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

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

(c)

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

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

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

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

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

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

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

C. Rhode Island Anti-SLAPP Statute

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a)

Exercise of Right to Petition or of Free Speech

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

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

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

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

(b)

Matter of Public Concern

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

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

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

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

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

(c)

Petition or Speech Must Not Constitute a Sham

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

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

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

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

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

(i) Objectively baseless

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

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

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

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

[10] This list is not exhaustive.

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

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

(ii) Subjectively baseless

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

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

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

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

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

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

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

Plaintiffs argue that their Verified Complaint

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

The Parents presented no counter-affidavit.

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

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

IV

Conclusion

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

The parties shall confer on a form of order.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

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