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ALAN R. LEVY and LISA S. VANDEVER-LEVY,

*Appellants/Plaintiffs/Counter-Defendants,*

vs.

TOM O'REILLY, JOANNA PAPADAKIS, BILL TOMKIEWICZ, RAHWAY COMMUNITY VOICE, JOHN DOES 1-10 (FICTITIOUS NAMES REPRESENTING UNKNOWN INDIVIDUALS) AND/OR XYZ CORP. 1-10 (FICTITIOUS NAMES REPRESENTING UNKNOWN CORPORATIONS, PARTNERSHIPS, AND/OR LIMITED LIABILITY COMPANIES OR OTHER TYPES OF LEGAL ENTITIES),

*Respondents/Defendants/Counter-Plaintiffs.*

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

Appellate Docket No.: A-000760-25

On an Appeal from the Superior Court of New Jersey Chancery Division: Union County

Sat Below:
The Hon. Robert J. Mega, P.J.Ch.

Trial Court Docket No.:
UNN-C-0088-24

# REPLY BRIEF OF APPELLANTS/PLAINTIFFS/ COUNTER-DEFENDANTS IN SUPPORT OF APPEAL

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## INTRODUCTION

The civil immunity provided by the Litigation Privilege and Noerr-Pennington doctrine bars Respondents' Counterclaim for Malicious Abuse of Process. Parties and their counsel have ***Absolute Immunity*** from tort liability for motions filed in ongoing litigation. Loigman v. Twp. Comm. of Twp. of Middletown, 185 N.J. 566 (2009). This alone requires reversal of the Lower Court decision. However, if this Court decides to engage with additional reasons to reverse: the Noerr-Pennington doctrine also bars the claim; a Motion does not meet the definition of "process;" even if it did, there was nothing improper about Appellants' Motion; and, the Counterclaim is an improper circumvention of R. 1:4-8.

This Court should remand this matter to the trial court with instructions dismissing the Counterclaim for Malicious Abuse of Process with prejudice as per the Uniform Public Expression Protection Act ("UPEPA").

## LEGAL ARGUMENT

### I. THE STANDARD OF REVIEW IS DE NOVO

Respondents claim that the standard of review is abuse of discretion (Rb5).[1] It is hard to figure out why they argue this. *Every* UPEPA decision says the standard of review is *de novo*. See Wunsch v. Cte Republicans for Englewood Cliffs, 2026 N.J. Super. Unpub. LEXIS 3, *11 (App. Div. 2026) ("We review questions of

[1] Rb = Respondents' Brief. Ab = Appellants' Opening Brief.

statutory interpretation *de novo*.") quoting In re H.D., 241 N.J. 412, 418 (2020), see also, Satz v. Starr, 482 N.J. Super. 55, 62 (App. Div. 2025); Milton v. CNBC, Inc., 2025 N.J. Super. Unpub. LEXIS 2588, at *16 (App. Div. 2025). New Jersey and every other state reviews Anti-SLAPP/UPEPA denials *de novo*.[2]

## II. THE COUNTERCLAIM VIOLATES UPEPA ON ITS FACE

The UPEPA was enacted to protect citizens from retaliatory SLAPP-suits designed to punish them for their exercising their right to speak and petition on "matters of public concern." Id. at § 2A:53A-50(b)(3). Respondents don't even try

[2] Every other UPEPA state: Davenport Extreme Pools v. Mulflur, 698 S.W.3d 140, 150 (Ky. Ct. App. 2024) (Kentucky reviews denial of a UPEPA motion de novo); Cook v. Trimble, 22 N.W.3d 196, 204 (Minn. Ct. App. 2025) (Minnesota, same); Carter v. Jones, 2025 Wash. App. LEXIS 2669, at *51 (Ct. App. 2025) (Washington, same); Hernandez v. Zook, 2026 Pa. Super. LEXIS 3, at *5 (Super. Ct. Jan. 6, 2026) (Pennsylvania, same). The standards of other jurisdictions are relevant because New Jersey enacted its UPEPA with explicit instructions, "In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it." N.J.S.A. 2A:53A-60; Satz, 482 N.J. Super. at 62-63.

UPEPA is not unique in this regard, every other state with an Anti-SLAPP law, not derived from UPEPA, also reviews denials *de novo*. See, e.g., Coomer v. Salem Media, 565 P.3d 1133, 1140 (Colo. App. 2025) (Colorado Anti-SLAPP law, de novo review); Bristol Asphalt, Co. v. Rochester Bituminous Products, 493 Mass. 539 (2024) (Masschusetts, same); USA Lending Group, Inc. v. Winstead PC, 669 S.W.3d 195, 200 (Tex. 2023) (Texas, same); Coker v. Sassone, 135 Nev. 8, 10 (2019) (Nevada, same); Park v. Board of Trustees of Cal. State Univ., 2 Cal. 5th 1057, 1067 (2017) (California, same); Gaudette v. Mainely Media, LLC, 160 A.3d 539, 542 (Me. 2017) (Maine, same); Polak v. Ramirez-Diaz, 336 A.3d 383, 386 (Vt. 2025) (Vermont, same).

to hide the fact that this Counterclaim is "based on" the Appellants' free speech which explicitly targets Appellants' ***criticism of public officials***:

> 6. Plaintiffs are admitted critics of the City of Rahway, its Mayor, and the law firm of Rainone Coughlin Minchello.
> 7. Plaintiffs routinely post comments on social media sites criticizing the City, its Mayor, and this law firm.

(Pa150-52). Respondents admit their intentions: to silence ***criticism***.

> Appellants have engaged in extrajudicial intimidation - emails and social media posts - designed to embarrass counsel and pressure the Respondents into capitulation by attacking their choice of legal representation, even filing a Motion to Disqualify counsel for alleged unethical behavior. The Appellants' Motion to Disqualify Respondents' counsel is the chief example of these acts coupled with the repeated critical and aggressive social media posts or emails intended to badger Respondents' counsel in an extrajudicial fashion.[3]

(Rb1).

Respondents disparage Appellants' right to engage in petitioning activity with the accusation that "Appellants aim to launder their impermissible litigation tactics through veiled constitutional rhetoric..." (Rb2). This says more about them than Appellants. There is no "veiling." Appellants clearly invoke the Constitution. Other than a disdain for Constitutional rights, what do Respondents invoke? No legal support for their arguments, and no explanation of what is "improper" about a

[3] Even if we ignore that "critical and aggressive social media posts" of public officials is protected speech, this begs a simple question: Are the Respondents now arguing that Appellants' "extrajudicial" statements meet the definition of "Process?" That would be both absurd and improperly raised for the first time on appeal.

motion to disqualify, especially under the facts of this case. They don't even cite one "aggressive social media post" they find so intimidating. They sling mud and *ad hominem*, while providing nothing to back it up.

## III. LITIGATION PRIVILEGE BESTOWS ABSOLUTE IMMUNITY FROM TORT LIABILITY FOR MOTION PRACTICE

### a) THE LITIGATION PRIVILEGE IS BROAD

"The litigation privilege is the backbone to an effective and smoothly operating judicial system." Loigman, at 584; see also, Hawkins v. Harris, 141 N.J. 207, 216 (1995); Baglini v. Lauletta, 338 N.J. Super. 282, 287 (App. Div. 2001).

> "[T]he litigation privilege is meant to be broadly applicable. When the New Jersey courts say ***'broadly,'*** they mean it."

Peterson v. HVM LLC, 2016 U.S. Dist. LEXIS 27964, *17 (D.N.J. 2016) citing Hawkins, supra. (emphasis in original).

Respondents repeatedly rely on Baglini, claiming it supports their Malicious Abuse of Process Counterclaim. (Rb passim.) However, one must ask if they actually *read* the case. Baglini held the exact opposite of their position. **"*[W]e reject plaintiffs' argument that the litigation privilege is not applicable to malicious abuse of process causes of action.*"** Id. at 297. (emphasis added). It is difficult to fathom why Respondents think that Baglini helps them.

Respondents seek to set aside centuries of precedent without citation. They fail to cite one case where a Disqualification Motion (or *any* motion in pending

litigation) was the basis for a Malicious Abuse of Process tort claim and not protected by Litigation Privilege – ***not one case***. Appellants provide numerous cases that hold the opposite. See e.g., Loigman, supra; Hawkins, 141 N.J at 216; Whitaker v. Mason, 2025 U.S. Dist. LEXIS 136809, *15-17 (D.N.J. 2025). Respondents provide no support for their desire to set aside centuries of unchallenged precedent.

Respondents try to rebuff the Litigation Privilege arguing that "the privilege is not a shield for acts of coercion[4] or harassment[5] through the courts." (Rb20). Funny enough, it actually is. Loigman holds that the Litigation Privilege is a judicially enforced "trade off" that "may protect the few unethical and negligent attorneys from a merited civil judgment and damages award," but is nonetheless necessary to "ensure that the many honest and competent lawyers can perform their professional duties while furthering the administration of justice." Id., at 587. "That trade-off is the necessary price that must be paid for the proper functioning of our judicial system, a system that requires attorneys to vigorously and fearlessly represent their clients' interests." Id. It is a trade-off courts make because it is mitigated "by the sanctions faced by wayward attorneys through our disciplinary system." Id. An unethically "coercive" or "harassing" motion is not free from *consequences* – the disciplinary system and the court's power to impose sanctions

[4] ***Every*** litigation filing seeks to coerce a party to do or cease doing something.
[5] ***Every*** civil party *believes* they are harassed by an adversary's litigation filings.

provide consequences. The only consequence that is given up in this tradeoff is the consequence of a *private tort action* based on the mere filing of a motion.

**b) LITIGATION PRIVILEGE APPLIES TO MOTIONS**

Respondents misrepresent the law when they argue that "the litigation privilege only applies to communications made by attorneys in the course of judicial or quasi-judicial proceedings," and does not apply to the "conduct" of filing the Disqualification Motion. (Rb20).[6] Respondents would have this Court hold that while Appellants are immune from civil liability for statements they write in a Motion, immunity does not apply to *filing* that Motion. Is it Schrödinger's immunity? It applies to what is written in all motions filed in a proceeding, except it no longer applies once the Motion is filed? This illogical theory was rejected by Loigman which makes it clear that a Motion (even if filed in bad faith) qualifies as a "communication" protected by Litigation Privilege:

> ***Next, we decide whether an attorney's sequestration motion falls within the protective sphere of the litigation privilege.***
> …

[6] Not only do Respondents fail to cite any case that holds motions do not qualify as a "communication," the Courts hold that Litigation Privilege applies to litigation "conduct" and court filings such as Motions. See e.g., Loigman, supra; Whitaker, supra, at *15-17; Trainor v. McGibney, 2026 U.S. Dist. LEXIS 17605, *15 (D.N.J. 2026) ("The privilege covers statements made during court hearings, in court filings, and in settlement negotiations."); Peterson v. HVM, LLC, 2016 U.S. Dist. LEXIS 27964, *17-18 (D.N.J. 2016) ("The privilege extends to a broad range of *litigation-related activities*, as well as to a broad range of causes of action.") (emphasis added).

> ***Unquestionably, Savage's sequestration motion at an administrative hearing was a "communication" within a proceeding covered by the privilege.*** Moreover, as an attorney representing the Township, Savage was a "participant authorized by law" to make a sequestration motion. Sequestration of witnesses serves the salutary purpose of ensuring that a witness who is testifying not influence a witness who is about to testify. Seeking truthful, accurate, and non-tainted testimony certainly is the objective of every litigated case. ***Thus, Savage's motion was a "communication" entitled to the protection of the privilege.***

Id. at 585-86 (emphasis added). In that case, the attorney for a municipality made false statements in a Motion to Sequester an activist from a public hearing, and the Court held no matter how brazenly that attorney lied in the motion, the attorney and municipality were immune from civil suit. In applying the privilege, courts do not consider the justness of the attorney's motives nor the sincerity of their actions. See Hawkins 141 N.J. at 213-15. See also, A.V. v. Ashrafi, 2015 N.J. Super. Unpub. LEXIS 1444, *33-34 (Ch. Div. 2015) (a "motion to dismiss is clearly a 'communication' made in a judicial proceeding."); Grange Consulting Group v. Bergstein, 2014 U.S. Dist. LEXIS 147605, at *7 (D.N.J. Oct. 16, 2014) ("The litigation privilege bars any action based on a motion for sanctions. Here, Weingarten's filing a motion for sanctions is protected by the litigation privilege and, therefore, plaintiffs' claims arising from the same is barred as a matter of law.")

### c) THERE IS NO "WAIVER" OF LITIGATION PRIVILEGE

Respondents argue that Appellants waived litigation privilege by attaching statements as exhibits to litigation filings. (Rb21). Respondents seem to hope that

this Court will not understand the difference between *attorney-client privilege* and *litigation privilege*. Attorney-client privilege protects the ***confidentiality*** of a communication; which, of course, can be waived if a party discloses it in a public filing. Appellants do not dispute that this is how attorney-client privilege works. This case is about ***litigation privilege***, which provides litigants and counsel absolute civil immunity from claims of Malicious Abuse of Process. See Loigman, 185 N.J. at 579, 587-88; Hawkins, 141 N.J. at 216. The Litigation Privilege isn't waived by disclosure of information. Respondents' argument doesn't make any sense.

## IV. THE NOERR-PENNINGTON DOCTRINE PRECLUDES THE MALICIOUS ABUSE OF PROCESS COUNTERCLAIM

It is fundamental that "the right to petition under the First Amendment includes a right to access … courts." Cal. Motor Transp. v. Trucking Unlimited, 404 U.S. 508, 513 (1972). Like the litigation privilege, the Noerr-Pennington Doctrine provides immunity from civil liability for claims arising from petitioning the Courts. See Main St. at Woolwich, LLC v. Ammons Supermarket, Inc., 451 N.J. Super. 135, 143-144 (App. Div. 2017) (the Noerr-Pennington doctrine gives immunity from "common-law torts such as malicious prosecution and abuse of process.").

Meanwhile, Respondents claim the Noerr-Pennington doctrine does not apply because "Appellants' claims are not based on any protected activity or right." (Rb22-24). Appellants' claims are clearly based on speech and petitioning. Those were the

subject of Respondents' motion to dismiss, which failed. (Pa-39-44). And Appellants' motion itself was petitioning activity. So no matter what Respondents' argument is supposed to mean (as it doesn't really make any sense), it fails.

Meanwhile, the counterclaim (which is subject to this appeal) is brought against Appellants exercising a clear protected right – the right to petition the courts by filing a motion during pending litigation. If filing a motion to disqualify is not a right, then where would they suggest we draw the line? Is a motion to dismiss a right? A motion for summary judgment? A discovery motion? It is unclear even what the Respondents are talking about here. Respondents seem to be arguing that filing a Complaint is petitioning activity, but a Motion during litigation is not?

The Disqualification Motion was filed in pursuit of Appellants' protected rights, and was itself a protected right. Respondents cite no case law to oppose this. Thus, Respondents' Counterclaim is precluded by the Noerr-Pennington Doctrine.

## V. A MOTION IS NOT "PROCESS"

Appellants provide over 100 years of New Jersey case law holding that Motions are not "process." (Ab24-26).[7] Meanwhile, Respondents fail to cite any authority that a Motion meets the definition of "process" and is subject to a Malicious Abuse of Process claim. Respondents' only response is that Appellants

[7] Once again, Respondents' reliance on Baglini is misplaced, since it holds a Motion in a pending civil action does not meet the definition of "process." See Id. at 294.

are relying on "some technical loophole definition of what they would prefer the word 'process' to mean to fit their ends." (Rb12-13).[8] Meanwhile, there is not a single case supporting the argument that a Motion is "process." This isn't a "loophole," and if it is, the loop encircles the entire history of New Jersey law.

## VI. EVEN IF, *ARGUENDO*, A MOTION IS DEFINED AS PROCESS, APPELLANTS' MOTION TO DISQUALIFY WAS NOT IMPROPER OR MALICIOUS ABUSE OF PROCESS[9]

Respondents' misstate the law of Malicious Abuse of Process saying, "The Appellants are incorrect because the Baglini court is explicit that ulterior motives are not only relevant but an essential element of establishing an abuse of process claim." (Rb13, 16-17). First, the term "ulterior motive" does not exist anywhere in the Baglini decision. Rather, Baglini holds:

> The tort of malicious abuse of process is the requirement that the defendant perform "further acts" after issuance of process "which represent the perversion or abuse of the legitimate purposes of that process."

Id. at 294. Secondly, "In applying the privilege, the court considers neither the justness of the attorney's motives nor the sincerity of their communications." Ashrafi, supra, at *33 citing Hawkins, 141 N.J. at 213-15). "***An ulterior motive is***

[8] Referring to a legal definition, confirmed by 100 years of well-settled case law, as "some technical loophole definition" is hard to understand.

[9] Respondents falsely allege "Appellants also attempt to relitigate matters that they have previously lost." (Rb2). Appellants agree the denial of their Disqualification Motion is not part of this Appeal. However, if Respondents argue that the Motion was improper, Appellants certainly can argue why the Motion was meritorious.

***not in and of itself sufficient***; it must be used outside the scope of the process to be considered improper. Regular and legitimate use of process with bad intentions is likewise not malicious abuse of process." Emolo v. McDaniel, 2009 N.J. Super. Unpub. LEXIS 2043, *11 (App. Div. 2009) (quoting Gambocz v. Apel, 102 N.J. Super. 123, 130 (App. Div. 1968) and Earl v. Winne, 34 N.J. Super. 605, 614 (Law Div. 1955) (emphasis added).

The notion that a Motion to Disqualify Counsel is a "perversion" or "not contemplated by law," is meritless since Disqualification Motions are common (even if uncommonly granted). See State in the Int. of S.G., 175 N.J. 132, 140 (2003); Dewey v. R.J. Reynolds Tobacco Co., 109 N.J. 201, 218 (1988); Reardon v. Marlayne, Inc., 83 N.J. 460, 471 (1980); Dental Health Assocs. S. Jersey, P.A. v. RRI Gibbsboro, LLC, 471 N.J. Super. 184, 192 (App. Div. 2022); Escobar v. Mazie, 460 N.J. Super. 520, 526 (App. Div. 2019).[10]

Indeed, the New Jersey Courts have made it clear that a Malicious Abuse of Process claim cannot arise from a Motion, even if it is denied.

[10] If this Court adopts Respondents' argument, wouldn't ***every*** unsuccessful Disqualification Motion lead to a Malicious Abuse of Process claim? For that matter, why not every unsuccessful motion of any kind? Ruling in Respondents' favor would set a standard that any unsuccessful motion creates an abuse of process counterclaim. Who needs tort reform legislation? It would be foolhardy to be a plaintiff in New Jersey unless one intended to litigate the entire case without filing a single motion, because losing a motion will make you a civil defendant.

> Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required; and there is no liability where the defendant has done ***nothing more than carry out the process to its authorized conclusion***, even though with bad intentions.

Gambocz, 102 N.J. Super. at 128 (quoting Prosser, Law of Torts, § 115, pp. 876-77 (3d ed. 1964) (emphasis added)). That's precisely what any Motion is – a proper mechanism that carries out litigation proceedings "to its authorized conclusion."

Respondents ignore well-settled law that holds even if Appellants had bad intentions, it does not matter when filing a Motion, even an unsuccessful one. Emolo, supra, at *11; citing, Earl, 34 N.J. Super. at 614; Penwag Property Co. v. Landau, 148 N.J. Super. 493, 498 (App. Div. 1977) ("Regular and legitimate use of process, though with a bad intention, is not malicious abuse of process."). Even if Appellants filed the motion for the most evil and perfidious motives, it still does not qualify as malicious abuse of process.

But even if bad intentions could support a claim, Respondents' reliance on Baglini is more misapplied because the allegations in that case are nearly identical to what Respondents are alleging here. Paragraph 10 of the Counterclaim states:

> 10. Plaintiffs' attempt to disqualify this law firm from its continued representation of Defendants based upon Plaintiffs' admitted animosity towards the City and this law firm is an abuse of the legal process to intimidate, harass, and coerce Defendants to obtain a collateral advantage, specifically to obtain a settlement of the Plaintiffs' claim against Defendants.

(Pa 150-152). In Baglini a Malicious Abuse of Process claim was brought because of: 1) an allegedly improper objection regarding an adversary's counsel's representation due to a conflict of interest and 2) improper attempts to settle a case. Id. at 295-97. Baglini rejected the Malicious Abuse of Process claim not just because of the Litigation Privilege, but also because the motivations are not improper. Id. ("It is the strong public policy of this State to encourage settlement of litigation.")

Simply put, Appellants' Disqualification Motion was filed for a legitimate purpose and frankly should have been granted. (Ab 26-31). But, the trial court had it within its discretion to deny it, and interlocutory review of that order is not available. If the Court would like to open that subject up to supplemental briefing, Appellants would welcome that being reviewed, as well, as they stand by their position. However, with the case before us now, even if, hypothetically, it was filed for only unethical motives, it still does not qualify as malicious abuse of process.

## VII. R. 1:4-8 PROVIDES THE EXCLUSIVE CONSEQUENCE IF AN IMPROPER MOTION IS FILED IN BAD FAITH

Respondents say R. 1:4-8 is "irrelevant" (Rb24). If this Court agrees, then any party who feels aggrieved by a Motion can dispense with 1:4-8's obligations and just assert Malicious Abuse of Process against any unsuccessful Movant as a form of revenge. Why bother serving a "safe harbor" letter? Why ask a judge for sanctions when you can ask a jury? Even scarier; attorneys would be subject to discovery on

their litigation strategies why they filed a pleading or motion, during litigation. What Respondents seek would lead to madness in the realm of civil litigation.[11]

## VIII. RESPONDENTS MAKE IMPROPER FACTUAL ALLEGATIONS AGAINST COUNSEL UNSUPPORTED BY THE RECORD

Respondents' brief raises a new claim; that Appellants engaged in ***multiple*** "impermissible litigation tactics." (Rb2). Respondents' brief makes three additional false allegations of Appellants' "repeated" litigation offenses.

> Since then, Appellants have *repeatedly sought to abuse the judicial process* against parties and individuals not joined to this lawsuit. (Rb10).
>
> What is disputed is the length at which the Appellants are provided legal berth to engage in *their repeated erroneous conduct and abuse of process.* (Rb23).
>
> Second, *the Appellants' repeated series of meritless court actions* demonstrate their conduct is likely not protected by Noerr-Pennington because those acts are sham litigation or something akin to it. (Rb24).

Respondents never cite to anything to support this mudslinging. It should be stricken. See Spinks v. Twp. of Clinton, 402 N.J. Super. 465 (App. Div. 2008). If Respondents have evidence that supports their allegations, it was their obligation to submit a supplemental appendix, which they have not done. See R. 2:6-3; Venner v. Allstate, 306 N.J. Super 106 (App. Div. 1997).

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[11] If this Court allows Respondents' Counterclaim to go forward, then the Appellants would be allowed to amend their complaint to include a Malicious Abuse of Process claim for Respondents' unsuccessful Motion to Dismiss (Pa39-44) and/or assert a Malicious Use of Process claim against Respondents for initiating their Counterclaim. After all, this new form of tort liability must cut in both directions.

## CONCLUSION

The Order/Decision of the Hon. Robert J. Mega, P.J.Ch. dated 10/29/25 must be reversed and remanded with instructions to dismiss the Respondents' Counterclaim with Prejudice pursuant to N.J.S.A. §§ 2A:53A-51 & 55 and to award the mandatory attorneys' fees and costs as provided for by UPEPA.

Dated: March 2, 2026.

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