ALAN R. LEVY and LISA S. VANDEVER-LEVY, Plaintiffs/Appellants, v. 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 UNKOWN CORPORATIONS, PARTNERSHIPS, AND/OR LIMITED LIABILITY COMPANIES OR OTHER TYPES OF LEGAL ENTITES), Defendants/Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-000760-25 CIVIL ACTION Appeal of the Judgment and Order of the Hon. Robert J. Mega, P.J.Ch., entered on October 29, 2025. SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY DOCKET NO.: UNN-C-088-24 Sat Below: Hon. Robert J. Mega, P.J.Ch.

DEFENDANTS-RESPONDENTS, TOM O'REILLY, JOANNA PAPADAKIS, BILL TOMKIEWICZ'S, MEMORANDUM OF LAW IN OPPOSITION TO THE AMERICAN CIVIL LIBERTIES UNION'S MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF

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PRELIMINARY STATEMENT

The proposed motion for leave to file amicus curiae by the Movant, American Civil Liberties Union ("Movant" or "ACLU"), attempts to transform a procedural dispute regarding the abusive litigation tactics of the Appellants, Alan R. Levy and Lisa S. Vandever-Levy ("Appellants"), into a sweeping constitutional controversy. The Motion must fail for two fundamental reasons. First, the Movant's amicus brief invokes broad swaths of constitutional language that have no application to the narrow procedural question presented on the Appellants' appeal. The only issue on appeal is whether the lower court erred in denying the Appellants' Order to Show Cause permitting the Respondents' counterclaim to proceed based upon the conduct of the Appellants. Second, the Movant's amicus brief rests on the incorrect premise that the Respondents' counterclaim for the malicious abuse of process targets the Appellants' political speech. It does not. The Respondents' counterclaim arises from the Appellants' conduct for misuse of the judicial process.

Nothing under the principles of free speech immunizes litigants who misuse or abuse court procedures. As to be discussed below, New Jersey courts and beyond have made clear that litigation activity which is undertaken for a collateral or ulterior purpose constitutes the malicious abuse of process. The Appellants' continued efforts to cloak themselves in virtue only sullies the very principles the Appellants and the Movants proffer to support.

Therefore, the Movant adds little to the court's analysis. Instead, the Movant attempts to reframe the case in ideological terms while disregarding the record and governing New Jersey law. The Movant, like the Appellant, seek to re-litigate matters not on appeal before the tribunal rather than contend with the narrow procedural determination at issue. For the reasons set forth below, the Court should deny the Movant permission to intervene as an amicus curia and decline to consider their written or oral assertions which have nothing to do with this appeal. Otherwise, the Respondents deny all positions taken by the Movant in their proposed filing and rely upon their opposition to the Appellants appeal.

PROCEDURAL HISTORY

The Respondents rely upon the Summary of Proceedings provided in the October 29, 2025, Order by the Honorable Robert J. Mega, P.J.Ch.. (Pa 2).

LEGAL ARGUMENT

POINT I

THE MOVANT'S REQUEST TO APPEAR AMICUS CURIAE SHOULD BE DENIED BY THE COURT BECAUSE THE REQUEST ORGINATES IN BAD FAITH, VIOLATES PRINCIPLES OF FUNDAMENTAL FAIRNESS, AND UNDULY PREJUDICES THE RESPONDENTS.

The Movant's request to appear as amicus curiae should be denied by the Court because it fails to comport with the New Jersey Court Rules, emanates from

bad faith, and runs counter to the applicable principles of fundamental fairness in New Jersey or United States law. The New Jersey Court Rules require that an "application for leave to appear as amicus curiae in any court shall be made by motion in the cause stating with specificity the identity of the applicant, the issue intended to be addressed, the nature of public interest therein and the nature of the applicant's special interest, involvement, or expertise in respect thereof." Rule 1:13-9(a). If a brief is filed by a movant seeking to appear as amicus curiae, then the accompanying brief or filing "shall comply with all applicable rules." R. 1:13-9(b). For a movant to be timely, they must file "on or before the day when the last brief is due from any party." R. 1:13-9(c). Meaning, a court may only grant a motion to appear amicus curiae if the movant "is timely, the applicant's position will assist in the resolution of an issue of public importance, **and no party to the litigation will be unduly prejudiced thereby**." R. 1:13-9(a) (emphasis added).

Moreover, "a litigant in civil proceedings is entitled to a fair hearing, imbued with the protections of due process." D.N. v. K.M., 429 N.J. Super. 592, 602 (App. Div. 2013); see also A.B. v. Y.Z., 184 N.J. 599, 604 (2005). In the same vein, the United States Supreme Court has determined that all judicial proceedings include "the requirement of fundamental fairness." Id. (quoting Lassiter v. Dep't of Soc. Servs., 452 U.S. 18, 24 (1981)). As the court opined, "the requirement of fundamental fairness . . . can be as opaque as its importance is lofty." Lassiter, supra,

452 U.S. at 24 (internal quotations omitted). "Applying the Due Process Clause is therefore an uncertain enterprise which must discover what fundamental fairness consists of in a particular situation . . . by assessing the several interests that are at stake" in an equitable manner. See Id. at 24-25.

A. The Movant's request should be denied because it violates principles of fundamental fairness and therefore does not comply with R. 1:13-9(b).

The Appellants' and Movant violated the principles of fundamental fairness and took advantage of the Respondents courtesies to extend time beyond what the court had previously provided. As the court ordered on November 21, 2025, the Appellants Reply Brief for their appeal was due on or by February 18, 2026. On February 4, 2026, the Appellants requested consent for "a one-time 10-day extension" to file their Reply Brief. (See **Exhibit A**). The Respondents extended the proper courtesies and consented for the purposes of the Appellants' filing their Reply Brief. (See **Exhibit A**). However, Appellants bought time for the Movant to prepare its own filing. By receiving consent from the Respondents to file their Reply Brief, the Appellants improperly moved the goalposts for a proposed amicus curiae deadline under R. 1:13-9(c).

These tactics are at best a mistruth and at worst an outright deception. The Respondents have a right under the principles of due process to receive fundamental fairness during judicial proceedings. Rather than fairness, the Respondents have

been met with bad faith and harassment by the Appellants at every turn of this litigation. The strategy evidently executed by the Appellants likely misrepresents their reasons for seeking consent from the Respondents and is yet another example of the way the Appellants conduct themselves.

Therefore, the court should deny the Movant's request under R. 1:13-9(b).

B. The Movant's request should be denied because it unduly prejudices the Respondents in contravention of R. 1:13-9(a).

Additionally, the court should reject the Movant's request under R. 1:13-9(a) which permits a court to deny an amicus curiae filing if it is determined that the motion would unduly prejudice a party, regardless of whether the request was timely or relevant for consideration. The Respondents are unduly prejudiced by the granting of the Movant's request because now they must also bear the burden of litigating on yet another front which otherwise would have been untimely. As a matter of public policy, the court should not entertain or reward disingenuous approaches to litigation that have their foundation in bad faith or unfairness by a litigant. Permitting the Movant's request to proceed not only tacitly approves these methods but encourages like-conduct now or in the future. Therefore, the Movant has not met all applicable procedural standards under R. 1:13-9(a) because the Respondents are unduly prejudiced by the court granting such a request.

C. The Movant's request should be denied because it does not concern an issue of public importance as required by R. 1:13-9(a).

Additionally, the court should also reject the Movant's filing because this matter does not concern an issue of public importance as required by R. 1:13-9(a). This matter is not some sweeping review of solemn free speech principles as asserted by the Appellants and the Movant. As articulated throughout this response, the only matter on appeal is a limited procedural question regarding the lower court's denial of Appellants' Order to Show Cause. The crux of the Movant's submission is flawed in that it relies upon a myth that this case concerns punishment for political speech. The Respondents counterclaim arises from the Appellants' conduct during the litigation process itself. There is no government entity involved in the litigation, the Respondents are being sued in their individual capacity, there is no constitutional question implicated, and no otherwise stated public topic which may warrant hearing from an amicus curiae.

The Appellants argue yet again that their Motion to Disqualify should be re-visited by the court. The Respondents, again, reiterate this is not a question on appeal. The Appellants' motion was denied and based on speculative accusations of political conflicts with the Respondents and the City of Rahway, who is not a party to this case. (Pa131-136). The motion did not merely assert a legal argument – it was accompanied by the furthering acts of Appellants' extrajudicial attacks on

counsel and ulterior motives exemplified by repeated attempts to coerce or pressure the Respondents into capitulation for exercising their right to choose their own legal counsel.

For some reason, the Movant has bought into this same untruth and have formatted their entire filing surrounding this position. Claiming that other titles allegedly worn by the Respondents implicate political or government conflict does not create an issue of public concern. The Appellants were removed by the Respondents, private parties, from a private Facebook group, on a private platform, for violating community standards applied to every member of the group.

The Appellants' **conduct** during litigation is the only matter at issue. The Respondents' counterclaim is predicated only upon the Appellants' strategic use of litigation procedures and not their proffered political viewpoints. The Movant's attempt to recast this claim as an attack on public discourse is therefore incorrect. Therefore, the Respondents respectfully request the court deny the Movant's request to join as an amicus curiae under R. 1:13-9 et seq.

POINT II

THE UPEPA DOES NOT IMMUNIZE ABUSIVE LITIGATION CONDUCT BY THE APPELLANTS.

The Movant repeatedly asserts that the Respondent's counterclaim for the malicious abuse of process should automatically fall within the protections of the

Uniform Public Expression Protection Act ("UPEPA"). This assertion misstates the statute. The Respondents rely on their filed opposition to answer much of the Movant's remaining arguments. However, in an effort to respond to the same, the Respondents briefly reiterate for the court as follows.

A. There is no protected activity, so the UPEPA does not immunize the Appellants.

As a first step, the UPEPA is constructed to "protect the exercise of the right of freedom of speech." N.J.S.A. 2A:53A-59. Those protections only apply if the matter at issue is "based on" a protected activity. See Satz v. Starr, 482 N.J. Super. 55, 63 (App. Div. 2025) (applying N.J.S.A. 2A:53A-55(a)(1) and N.J.S.A. 2A:53A-50(b)(3)). The UPEPA defines a protected activity as an "exercise of the right of freedom of speech or of the press, the right to assembly or petition, or the right of association, guaranteed by the United States Constitution or the New Jersey Constitution, on a matter of public concern." N.J.S.A. 2A:53A-50(b)(3). Without determining whether there is a protected activity, the UPEPA cannot apply as a matter of law.

i. There is no government action or engagement under the color of law so there is no protected activity under the UPEPA.

Free speech jurisprudence prohibits governmental infringement on free speech rights; it does not apply to private conduct. See State v. Schmid, 84 N.J. 535, 559, (1980). To determine if a right has been infringed, the moving party must

demonstrate that there is some 'state action' under 'the color of law' for their claim to proceed. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 929 (1982); agree Krynicky v. Univ. of Pittsburgh, 742 F.2d 94 (3d Cir. 1984). In the anti-SLAPP context, it is on the moving party to establish the "underlying . . . cause of action must itself have been an act in furtherance of the right of petition or free speech." Park v. Bd. of Trs. of Cal. State Univ., 217 Cal. Rptr. 3d 130, 134 (2017). "[T]he focus is on determining what the [movant]'s activity is that gives rise to his or her asserted liability – and whether that activity constitutes protected speech or petitioning." See Id.

Here, the Movant argues that the private Facebook group Rahway Community Voice ("RCV") is "essentially a public forum" with no supporting evidence. See Movant Brief pg 1. This issue is not subject to this appeal; however, the Movant argues the point anyway. To the extent necessary to refute this issue, the Respondents defer to the lower court's prior decision where it clearly ordered that RCV was not a town square or public forum. (Pa156-167). The lower court ruled that "RCV is a private group run by private citizens" and the Appellants' allegations that the Respondents "all serve as public officials in the City of Rahway, [so] a different standard should apply" fails. (Id.) The Appellants' assertions to this effect are "misplaced and not compelling" because "absent a showing that [Respondents] are acting in their official capacities as city officials in the administration of RCV,

their public positions are inconsequential." (Id.) This posture was re-affirmed by the trial court in its October 29, 2025 Order. (Pa14.)

The Movant also incorrectly asserts the trial court did not consider whether RCV constitutes a "limited public forum." See M. Br. pgs 8-9. The trial court correctly addressed and denied these arguments in its October 17, 2024 Order denying the Appellants' Order to Show Cause. (Pa156-167). The Movant refuses to engage with this determination. Instead, the Movant overly relies upon a novel interpretation of State v. Schmid. A political handbill from 1980 is dissimilar to a private social media post in a private Facebook group run by private citizens in 2026.

The Movant fails to support this unprecedented assertion of law with any case law or authority. There is no court cited by the Movant which has determined under New Jersey or United States law that a private Facebook group run by private individuals constitutes a public forum. Yet, the Movant has taken this position in contravention of this reality.

Furthermore, the Movant asserts with no basis that the Respondents are "punishing" the Appellants for their claimed political speech. See M. Br. pgs 14-16. The Movant misses the mark here as well because the Respondents' counterclaim is not in reaction to the Appellants' claimed political speech but again merely their improper conduct during the litigation process. Conduct, not speech.

Furthermore, it does not matter even if the Movant believes that is the case. Under the precedent of Lugar and Krynicky, there must be some government action under the color of law taken against the Appellants. For the arguments as presented by the Movant or the Appellants to be successful, there must be a determination that there is some government retaliation under the color of law. Once more, it bears repeating that the Respondents are private individuals engaged in private conduct. Accordingly, there is no government action. There is no color of law. Meaning, there is no protected activity to invoke the UPEPA and the lower court correctly decided this matter under a similar analysis.

B. The Respondents have demonstrated a prima facie case for their counterclaim of the Malicious Abuse of Process and the UPEPA appropriately mandates dismissal of the Appellants Order to Show Cause.

As a second step, if the responding party establishes "a *prima facie* case as to each essential element of any cause of action in the complaint" then the moving party's Order to Show Cause must be dismissed, with prejudice, under the UPEPA. N.J.S.A. 2A:53A-55(a)(3)(a). Courts have distinguished between matters of protected speech under the UPEPA and a misuse of the litigation process for personal aims. See Satz, v. 482 N.J. Super. at 62-64.

In New Jersey, the tort of malicious abuse of process exists not for commencing an improper action, but for misusing or misapplying process after it is

issued. See Baglini v. Lauletta, 338 N.J. Super. 282, 293 (App. Div. 2001) certif denied, 169 N.J. 607 (2001). The Appellate Division has held that "process is not abused unless after its issuance the defendant **reveals an ulterior purpose** he had in securing it by committing further acts whereby he demonstrably uses the process as a means to coerce or oppress." Hoffman v. Asseenontv.Com, Inc., 404 N.J. Super. 415, 431 (App. Div. 2009) (quoting Ruberton v. Gabage, 280 N.J. Super. 125, 130 (App.Div. 1995) (internal quotations omitted)). For there to be "abuse" of process, a party must "use" process in some fashion, and that use must be "coercive" or "illegitimate" to create harm. See Id. This may be demonstrated by evidence of some "furthering" or additional acts. See Baglini, 338 N.J. Super. at 294.

The Movant incorrectly claims in their filing that the Respondents have not established a *prima facie* case of malicious abuse of process under step two of the UPEPA analysis. See M. Br. pgs 11-17. The lower court correctly determined that the Respondents had established a *prima facie* case against the Appellants for their impermissible conduct constituting a malicious abuse of process. (Pa13.) The lower court also correctly held in its July 11, 2025 Order that the Appellants themselves have made their extrajudicial comments an issue and therefore they could be referred to by the Respondents during the litigation. (Pa137-142). This is yet another issue the Movant, and the Appellants, seek to improperly re-litigate for purposes of this appeal.

The Movant echoes these impermissible arguments, and their position should be disregarded by the court. Primarily, the Movant rests on an unpublished case from nearly a decade ago before the UPEPA was even passed in the State of New Jersey. In Mandelbaum v. Arseneault, No. A-1042-15T4, 2017 WL 4287837, at *5 (App. Div. Sept. 28, 2017), the Movant asserts the Appellate Division determined that the publicization of a divorce in a national publication does not constitute a malicious abuse of process. See M. Br. pg 17. First, this case is an unpublished decision which carries no weight as a matter of law under R. 1:36-3. Second, the matter is factually distinguishable as it is a divorce proceeding with threats of criminal elements implicated in the decision which is dissimilar to the matter at bar and engages with none of those elements.

Finally, the Appellants are not merely publicizing their claims against the Respondents as argued by the Movant. The record demonstrates that the Appellants go far beyond this issue by their direct harassment of the Respondents and Respondents' choice of counsel. The record cited in this matter shows these further acts by the Appellants reveal their ulterior motives of coercion of the Respondents and a platform to impermissibly attack parties not involved in this lawsuit in a collateral fashion. That is the definition of malicious abuse of process and the Movant's attempt to join this appeal does nothing to alter such a conclusion. Therefore, as argued by the Respondents opposition to the Appellants appeal, and

ordered by the trial court, the Respondents have established the *prima facie* elements of a claim of malicious abuse of process and the UPEPA claim must be dismissed as a matter of law.

CONCLUSION

For the foregoing reasons, Defendants-Respondents respectfully request that the and the court decline to adopt the arguments advanced by the proposed amicus curiae and lower court's decision denying Plaintiffs-Appellants' Order to Show Cause be affirmed as a matter of law.

Respectfully submitted,

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By: _____
Brian P. Trelease, Esq.

Dated: March 12, 2026

EXHIBIT A

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I consent.

Thank you,

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Mr. Trelease,

Do you consent to our request to the clerk for a one-time 10-day extension of the deadline of Appellants' Reply Brief?

Thank you, in advance.

Alan