22-CV-0721 (Lead)
22-CV-0736, 22-CV-0741, 22-CV-0752 (Consolidated)

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 22-CV-0721 Lead	RUBY NICDAO, Appellant, v. TWO RIVERS PUBLIC CHARTER SCHOOL, INCORPORATED, et al., Appellees.
No. 22-CV-0736 Consolidated	LARRY CIRIGNANO, Appellant, v. TWO RIVERS PUBLIC CHARTER SCHOOL, INCORPORATED, et al., Appellees.
No. 22-CV-0741 Consolidated	JONATHAN DARNEL, Appellant, v. TWO RIVERS PUBLIC CHARTER SCHOOL, INCORPORATED, et al., Appellees.
No. 22-CV-0752 Cross-Appeal Consolidated	TWO RIVERS PUBLIC CHARTER SCHOOL, INCORPORATED, Cross-Appellant, v. RUBY NICDAO, et al., Cross-Appellees.

Appeals from the Superior Court of the District of Columbia
Civil Action No. 2015 CA 009512 B

JOINT REPLY BRIEF OF APPELLANTS, CROSS-APPELLEES

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INTRODUCTION

Essentially ignoring the arguments for reversal in Movants' Brief, based on the Superior Court's legally and factually erroneous denial of prevailing party attorney's fees under a novel formulation of "special circumstances," Two Rivers pins its hopes on two immunity statutes—one old, and one new. But the old statute, D.C. Code § 38-1802.04(c)(17), provides no immunity because it does not apply to Two Rivers' intentional and unauthorized SLAPP suit against Movants. Two Rivers raised the statute below, but the Superior Court did not accept the argument that the statute provides Two Rivers immunity.[1] And the new statute, B24-0076, the Corrections Oversight Improvement Omnibus Amendment Act of 2022 (the "Corrections Act"), though applicable to charter schools on its face, cannot provide immunity to Two Rivers in *this* case because applying it retroactively, after Movants obtained final judgment against Two Rivers, would violate District of Columbia law and Movants' due process rights. Thus, Two Rivers has no immunity from liability for Movants' prevailing party attorney's fees, and Two Rivers has otherwise failed to overcome Movants' arguments for reversal of the Superior Court's "special circumstances"

[1] Instead of deciding whether the statute provides Two Rivers immunity, the Superior Court decided—immunity or no immunity—the immunity idea of the statute contributed to the "special circumstances" excusing Two Rivers from fee liability in *this* case. (App. 503.)

denial of Movants' fee motion. This Court should reverse the denial and hold that Movants are entitled to prevailing party attorney's fees.

RELEVANT CASE FACTS

Two Rivers commenced this action on December 9, 2015. (App. 31.) The Superior Court denied Movants' respective Anti-SLAPP special motions to dismiss on April 29, 2016. (App. 129–143.) This Court reversed the Superior Court's denial of Movants' special motions to dismiss on June 9, 2022, and remanded the case for dismissal under the Anti-SLAPP Act. *Nicdao v. Two Rivers Public Charter Sch., Inc.*, 275 A.3d 1287 (D.C. 2022). On July 5, 2022, the Superior Court entered an order dismissing the case, with prejudice, pursuant to this Court's mandate and the Anti-SLAPP Act, D.C. Code § 16-5502(d).

On July 19 and 20, 2022, Movants filed motions for attorney's fees and nontaxable expenses as prevailing movants under the Anti-SLAPP Act, D.C. Code § 16-5504. (App. 152–315.) After the motions were fully briefed, the Superior Court ordered supplemental briefing to address the applicability of the Anti-SLAPP Emergency Amendment Act of 2021 (the "Emergency Act"), which was a temporary emergency act exempting from operation of the Anti-SLAPP Act any claim brought by the District of Columbia. (App. 378–491.)

In an Order dated September 12, 2022, the Superior Court denied Movants' motions as to attorney's fees but granted Movants recovery of taxable costs and nontaxable expenses. (App. 492.) The court concluded:

> (A) [Movants] are presumptively entitled to attorney fees, (B) the [Emergency Act] exemption from the Anti-SLAPP Act for claims brought by the District of Columbia does not apply to claims by a public charter school, but (C) special circumstances in this case make an award of attorney fees unjust.

(App. 495.) Movants each appealed the Superior Court's order. (App. 506–526.)

In November 2022, after Movants filed their appeals, the D.C. Council revived a dormant bill from March 2021, B24-0076, originally titled the Special Education Attorneys for Emerging Adult Defendants Amendment Act of 2021, with a new title, the Corrections Oversight Improvement Omnibus Amendment Act of 2022 (the "Corrections Act"). (App. 532.) The 2022 Corrections Act purported to make permanent the temporary provision of the 2021 Emergency Act barring application of the Anti-SLAPP Act to claims brought by the District of Columbia. (App. 545–46; App. 771.) Unlike the Emergency Act, however, the Corrections Act expressly included public charter schools, like Two Rivers, in the exemption. (*Id.*) The Corrections Act also purported to apply retroactively to March 31, 2011. (App. 771.)

The legislative history of the Corrections Act explains the intent to shield the District government from operation of the Anti-SLAPP Act to prevent, for example, "'large oil companies'" from using "'anti-SLAPP laws to stop state enforcement

cases'" by the Attorney General. (App. 546 n.80 (quoting 2021 Emergency Act legislative history).)[2] But the legislative history of the Corrections Act, which includes legislative testimony, provides no rationale for giving public charter schools the same exemption as the District government. (App. 532–767.) The over 200 pages of legislative history mention the inclusion of public charter schools in the exemption only once, and without explanation. (App. 546.)

The District Council passed the Corrections Act on December 20, 2022, and it was enacted without the Mayor's signature on January 12, 2023. (App. 530.) The Corrections Act took effect on April 21, 2023. (Two Rivers Public Charter School Inc.'s Rule 28(k) Supplemental Authority Letter filed May 1, 2023.)

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[2] In concluding that the Emergency Act did not exempt Two Rivers from application of the Anti-SLAPP Act by its plain language (applying only to claims brought by "the District"), the Superior Court also found persuasive the Emergency Act's legislative history:

> Moreover, the legislative history indicates that the Council was focused on "lawsuits by the Attorney General," *see Public Media Labs* [*v. District of Columbia*], 276 A.3d [1,] at 6 [(D.C. 2022)], (quoting the legislative history), but the Attorney General does not represent public charter schools in general or Two Rivers in particular. Two Rivers chose to bring this case without any authorization, encouragement, or involvement by the Attorney General or by any D.C. government agency. The intent of the exemption is to ensure that the Anti-SLAPP Act is "not used to inhibit government enforcement actions," *Public Media Labs*, 276 A.3d at 10, and Two Rivers' case does not qualify as a government enforcement action.

(App. 498.)

ARGUMENT

I. Two Rivers has waived opposition to Movants' arguments for reversal by failing to respond to them.

In its brief, Two Rivers does not even attempt to engage Movant's arguments for reversal based on the Superior Court's legally and factually erroneous denial of prevailing party attorney's fees under a novel formulation of "special circumstances." (Movants' Br. 7–20.) "[A]n appellee's wholesale failure to respond to a conspicuous, nonfrivolous argument in the appellant's brief ordinarily constitutes forfeiture." *W. Va. Coal Workers' Pneumoconiosis Fund v. Bell*, 781 F. App'x 214, 226 (4th Cir. 2019); *accord Thompson v. Barr*, 959 F.3d 476, 490, n.11 (1st Cir. 2020) (deeming failure to respond to nonfrivolous argument a waiver); *Beaver E., Inc. v. Mead Corp*., 412 F.3d 429, 437 n.11 (3d Cir. 2005) ("The appellee waives, as a practical matter anyway, any objections not obvious to the court to specific points urged by the appellant." (cleaned up)); *Cincinnati Ins. Co. v. E. Atl. Ins. Co*., 260 F.3d 742, 747 (7th Cir. 2001) (failure to respond to dispositive, nonfrivolous argument "operates as a waiver").

Thus, Two Rivers has waived any opposition to Movants' arguments that the Superior Court abused its discretion in denying Movants' fee motions, that the Superior Court erroneously applied the "special circumstances" standard, that the purported good faith of Two Rivers in filing the lawsuit is not a special circumstance, that the statutory public charter school immunity under D.C. Code

§ 38-1802.04(c)(l7) is not a special circumstance, that Two Rivers' unsubstantiated financial circumstances[3] are not a special circumstance, that the Superior Court based its special circumstances conclusions on clearly erroneous factual findings, and so forth.

To be sure, Two Rivers summarily rehearses the Superior Court's special circumstances findings. (Two Rivers Br. 11–13.) But Two Rivers utterly fails to engage with Movant's points and authorities demonstrating that the Superior Court's special circumstances rationale is both factually and legally erroneous. (Movants' Br. 10 ("Under the 'special circumstances' standard adopted by this Court in [*Doe v.*] *Burke*, [133 A.3d 569, 575 (D.C. 2016),] 'the [trial] court's discretion to deny a fee award to a prevailing plaintiff is narrow.'" *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 68 (1980)); Movants' Br. 7–20.) Instead, like the Superior Court, Two Rivers seems intent on showing it would be somehow unfair to Two Rivers for Movants to recover their prevailing party attorney's fees under the Anti-SLAPP Act. But Two Rivers misunderstands the law: "[T]he question of fairness centers not on the [the losing respondent], but on the [prevailing movant]." *Boos v.*

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[3] The Superior Court correctly observed that "'when a court chooses to consider the unsuccessful party's financial hardship, it should require substantial documentation of a true inability to pay,' and 'unsubstantiated assertions of financial hardship are an insufficient basis on which to deny costs.'" (App. 514 (quoting *Toufanian v. Lorenz*, No. 2020 CA 35 B, 2022 D.C. Super. LEXIS 13, at *8–9 (D.C. Super. Ct. Mar. 23, 2022)). Two Rivers has submitted no evidence concerning its alleged financial straits.

Barry, 704 F. Supp. 5, 8 (D.D.C. 1989). What is fair here is that Movants receive the prevailing party attorney's fees to which they are statutorily entitled.[4]

Finally, the Court should reject Two Rivers' gross mischaracterizations of the evidence and Movants' positions. In its rehearsal of the Superior Court's erroneous special circumstances findings, Two Rivers repeatedly and falsely asserts that Movants "admit" or "concede" supposed facts relied on by the Superior Court. (Two Rivers Br. 12.) Movants did not admit or concede any of these "facts." Rather, Movants showed in its brief that all of the Superior Court's factual findings were clearly erroneous because based on speculation and self-serving assertions not supported by record evidence. (Movants' Br. 18–20.)

II. No statute provides Two Rivers immunity from Movants' prevailing party attorney's fees.

A. The limited immunity of the charter school statute does not cover Two Rivers' attorney's fee liability for its intentional, unauthorized SLAPP suit against Movants.

As shown in Movant's brief, Two Rivers is not immune from liability for Movants' prevailing party attorney's fees, as a matter of law, under D.C. Code

[4] The Superior Court's critique of Movants' fee petitions is prefaced by a discussion of "unclean hands." (App. 500.) Especially in the context of Two Rivers' defense of its lawsuit on fairness grounds and the Superior Court's slanting of the facts in that same vein, the assessment of Movants' fee petitions as "grossly excessive" suggests the lower court may have subconsciously prejudged the merits of the petitions, and presumed Movants were acting improperly by pursuing their right to recover fees.

§ 38-1802.04(c)(17)(A). (Movants' Br. 16–17; *see also* Nicdao Reply Br., App. 356–360; Cirignano Reply Br., App. 373.) Two Rivers fails to overcome this argument against statutory immunity in its brief. (Two Rivers Br. 10–11.) Moreover, Two Rivers cannot claim any sovereign immunity otherwise reserved by D.C. Code § 38-1802.04(c)(17)(B) because (a) its lawsuit did not seek to perform a public service, and (b) it effectively waived its immunity by intentionally commencing a meritless action, without standing, in the first place. Two Rivers' lawsuit was a SLAPP, which by definition is "a means to muzzle speech on issues of public interest . . . that result[s] in a chilling effect on the exercise of constitutionally protected rights." *Fridman v. Orbis Business Intelligence Ltd*., 229 A.3d 494, 502 (D.C. 2020) (quoting legislative history). Thus, the lawsuit served no public interest.

"The government enjoys immunity . . . only when it sues to vindicate public rights." *District of Columbia v. Owens-Corning Fiberglas Corp*., 572 A.2d 394, 406–07 (D.C. Ct. App. 1989) (emphasis added). "When, however, government itself has been the wrongdoer, entirely different considerations apply. Courts are naturally reluctant to construe governmental functions broadly when to do so means that the government escapes liability for its misdeeds and its victims remain uncompensated." *Id*. at 409. The very causes of action belie any claim to serving the public interest: Two Rivers sued on grounds of *private* nuisance and intentional infliction of emotional distress, not on broad public-service grounds. As a SLAPP,

this lawsuit was *against* public policy, the antithesis of vindication of public rights. It was Movants, not Two Rivers, who vindicated the public interest. As such, Two Rivers is not entitled to immunity.

Further, Two Rivers has waived any right to sovereign immunity here. Sovereign immunity is waived (or forfeited), if a purportedly immune entity voluntarily invokes the Court's jurisdiction and seeks affirmative relief. *See e.g.*, *Clark v. Barnard*, 108 U.S. 436, 447–48 (1983) (sovereign immunity waived when state voluntarily intervened in lawsuit); *College Savings Bank v. Florida Prepaid Postsecondary Educ. Expense Bd*, 527 U.S. 666, 675–76 (1999) ("Generally, we will find a waiver either if the State voluntarily invokes our jurisdiction, or else if the State makes a 'clear declaration' that it intends to submit itself to our jurisdiction." (citations omitted)).

In particular, with respect to a claim for attorney's fees incurred in defense against an action initiated by a sovereign, the sovereign's immunity is no bar to recovery of attorney's fees. *See Elem Indian Colony of Pomo Indians of the Sulphur Bank Ranchera v. Ceiba Legal, LLP*, 230 F. Supp. 3d 1146, 1150 (N.D. Cal. 2017) (Indian tribe suing faction held liable for attorney's fees: "Plaintiff chose to assert claims under the Lanham Act. In doing so, it committed to the practical consequences of those claims, including 'the risk that its position would not be accepted, and that the Tribe itself would be bound by an order it deemed adverse.'");

see also C & L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla., 532 U.S. 411, 418–420 (2001) (tribe contracting to arbitrate waived immunity to judicial enforcement of arbitral awards). Sovereign immunity may also be voluntarily waived by submitting to the jurisdiction of the court. *See College Savings Bank*, 527 U.S. at 675–76. Having voluntarily initiated this action, Two Rivers cannot now be granted immunity from the consequences of its actions.

B. The retroactive statutory immunity of the Corrections Act does not cover Two Rivers' post-judgment attorney's fee liability for its intentional, unauthorized SLAPP suit against Movants.

Two Rivers' main argument on appeal is that the new, purportedly retroactive immunity of the Corrections Act[5] saves it from Movants' fee claim. (Two Rivers Br. 9–10.) Two Rivers glibly asserts that the Corrections Act *requires* this Court to (a) affirm the Superior Court's order denying attorneys' fees and (b) vacate the order as to the grant of costs." (Two Rivers Br. 10 (emphasis added).) Two Rivers is wrong for several reasons.

1. The Corrections Act cannot be applied retroactively to defeat Movants' vested rights to prevailing party attorney's fees.

It is well settled that "[r]etroactivity is not favored in the law." *Bowen v. Georgetown Univ. Hosp*., 488 U.S. 204, 208 (1988); *see also, e.g.*, *Greene v. United States*, 376 U.S. 149, 160 (1964) ("The first rule of construction is that legislation

[5] Two Rivers refers to the Corrections Act as the "Improvement Act." (Two Rivers Br. 9.)

must be considered as addressed to the future, not to the past[,] and a retrospective operation will not be given to a statute which interferes with antecedent rights unless such be the unequivocal and inflexible import of the terms, and the manifest intention of the legislature." (cleaned up)).

Here, antecedent rights to prevailing party attorney's fees have vested in Movants, foreclosing retroactive application of the Corrections Act to defeat them. There is a critical difference "between causes of action that have reached final, unreviewable judgment—and in *that* sense have vested—and all others, pending and future, which may be modified by rationally grounded retroactive legislation." *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163, 176 (D.C. 2008). In applying retroactive legislation, "a court must refrain from applying an intervening change to pending petitions where to do so would violate a right which had matured or become unconditional." *Holzsager v. D.C. Alcoholic Beverage Control Bd*., 979 A.2d 52, 57–58 (D.C. 2009) (cleaned up). The Court of Appeals laid out four binding ways in which a case would attain this standard: "(1) by the existence of a savings clause in the intervening legislation, (2) by judgment, (3) by statutory right, and (4) by ownership of property." *Id.* at 58 (cleaned up).

Here, Movants' rights to prevailing party attorney's fees matured and became unconditional upon entry of the Superior Court's final order of dismissal pursuant to this Court's mandate and the Anti-SLAPP Act, or no later than Movants' respective

motions for prevailing party attorney's fees. *See*, *e.g.*, *Pony v. Cnty. of Los Angeles*, 433 F.3d 1138, 1142 (9th Cir. 2006) ("Once the prevailing party exercises her right to receive fees, the attorney's right to collect them vests, and he may then pursue them on his own."); *accord Route Triple Seven Ltd. P'ship v. Total Hockey, Inc*., 127 F. Supp. 3d 607, 616 (E.D. Va. 2015) ("the defendant's right to attorney's fees pursuant to the Lease provision did not vest until defendant became a 'substantially prevailing party'"). The Superior Court below so held. (App. 495 ("The Court concludes that (A) defendants are presumptively entitled to attorney fees . . . .").) Thus, the Corrections Act cannot be applied retroactively to defeat Movants' vested statutory rights to prevailing party attorney's fees.

2. Retroactive application of the Corrections Act would violate Movants' due process rights.

The Due Process Clause of the Fifth Amendment forbids Congress from enacting legislation expressly made retroactive when the "retroactive application [of the statute] is so harsh and oppressive as to transgress the constitutional limitation." *United States v. Carlton*, 512 U.S. 26, 30 (1994). Retroactive application of the Corrections Act would violate Movants' due process rights.

Courts generally consider three factors when assessing whether retroactive legislation comports with due process. *See United States v. Ubaldo-Figueroa*, 347 F.3d 718, 728 (9th Cir. 2003), *opinion amended and superseded on denial of reh'g*, 364 F.3d 1042 (9th Cir. 2004). First, it asks whether the legislation was enacted to

remedy a defect in previous law. Here, there was no defect in the Anti-SLAPP Act involving charter schools like Two Rivers. The Emergency Act sought to temporarily exempt claims brought by the District government, such as enforcement suits by its Attorney General. (*See* Facts, *supra*, p. 2.) But, as the Superior Court recognized, charter schools have never been part of the District government. (App. 495, 497–99.) Thus, any defect in the Anti-SLAPP Act relating to District government enforcement actions was permanently cured by the Corrections Act, which relied on the same rationale for exempting claims by the District government. (Facts, *supra*, pp. 3–4.) But the addition of charter schools—which are not and never have been the District government—to the exemption of the Corrections Act, without any additional rationale, did not cure any identifiable defect in the Anti-SLAPP Act. Thus, retroactive application of the Corrections Act against Movants would violate due process.

Second, courts consider whether a specific rationale was supplied to justify the retroactive application. *Ubaldo-Figueroa*, 347 F.3d 718 at 728. Put differently, due process requires such retroactive legislation to be "rationally grounded." *Beretta*, 940 A.2d at 176. Here, as explained above, no rationale was offered for inclusion of charter schools in the Corrections Act exemption at all, let alone for retroactive application of such an exemption.

Third, courts consider the severity of the consequences of retroactive application, "including the effect of the legislation on a party's interest in fair notice and repose." *Ubaldo-Figueroa*, 347 F.3d at 728. One factor in considering the consequences of retroactive application is whether the temporal reach of the retroactive application is relatively brief. *See*, *e.g.*, *Carlton*, 512 U.S. at 38 (1994) (O'Connor, J., concurring) (collecting cases) ("In every case in which we have upheld a retroactive federal tax statute against due process challenge, however, the law applied retroactively for only a relatively short period prior to enactment."). In this case, the District ostensibly seeks to apply Anti-SLAPP Act immunity back to *March 2011—a period of over 12 years.* By contrast, the cases cited by Justice O'Connor in *Carlton* involved periods of less than one year. *See, e.g.*, *United States v. Hemme*, 476 U.S. 558, 562 (1986) (1 month); *United States v. Darusmont*, 449 U.S. 292, 294–95 (1981) (10 months); *United States v. Hudson*, 299 U.S. 498, 501 (1937) (1 month). Similarly, the amendment at issue in *Carlton* also applied retroactively for less than one year. *Carlton*, 512 U.S. at 29.

Application of the Corrections Act retroactively to Movants' attorney's fee claims would violate all three factors. Furthermore, while due process rights may be violated by the retroactive application of new legislation even when rights have not vested, they are much more likely to violate due process where, as here, the rights involved have vested. *See GPX Int'l Tire Corp. v. United States*, 780 F.3d 1136, 1141

(Fed. Cir. 2015) (discussing difference); *Cassirer v. Thyssen-Bornemisza Collection Found*., No. CV 05-3459-GAF (CTX), 2012 WL 12875771, at *1 (C.D. Cal. May 24, 2012) ("the Court agrees that retroactive legislation violates due process when it deprives a party of vested property rights"), *aff'd in part, rev'd in part*, 737 F.3d 613 (9th Cir. 2013); *Jefferson Disposal Co. v. Jefferson Par., La*., 603 F. Supp. 1125, 1136 (E.D. La. 1985) ("a legislature may not divest an individual of a vested property right protected by the due process clause of the Federal Constitution"). Retroactive application of the Corrections Act against Movants' vested attorney's fee rights would violate their due process rights and should therefore be rejected.

III. The Superior Court's footnote opining that Movants' fees were "grossly excessive" is erroneous and without foundation in fact or law.

Two Rivers only cites Movants' brief once (Two Rivers Br. 13–14), addressing the Superior Court's footnote 4 concerning the *amount* of Movants' fee requests—an issue which is not before this Court. (Movants' Br. 20.) Two Rivers takes issue with Movants' pointing out that the Superior Court failed to support its generalized and conclusory criticism of Movants' fee amount with specific facts or law. Two Rivers even goes so far as to call the Superior Court's footnote a "meticulous review" of Movants' fee applications. (Two Rivers Br. 13.) If the Superior Court's summary treatment of Movants' detailed fee submissions qualifies as meticulous, then all meaning has been removed from that term.

Two Rivers also defends the Superior Court's citation to case law, reciting all four cases cited by the Superior Court. (Two Rivers Br. 13.) But the cases cited by the Superior Court all deal with the discrete issue of the propriety of employing the *Laffey* Matrix to determine the appropriate hourly rate of the attorneys involved—i.e., whether the cases constituted "complex federal litigation" such that the *Laffey* Matrix applied. *See Reed v. D.C.*, 843 F.3d 517, 526 (D.C. Cir. 2016) (discussing whether IDEA cases qualify as complex federal litigation); *Salazar ex rel. Salazar v. D.C.*, 809 F.3d 58, 63–64 (D.C. Cir. 2015) (class action on behalf of Medicaid claimants, noting that there is a "submarket" in the context of IDEA claims but not for these class actions; applying Laffey Matrix upheld); *Thomas v. Moreland*, 2022 U.S. Dist. LEXIS 107187, at *11–12 (D.D.C. 2022) (defamation case; Laffey Matrix applied).

The applicability of the Laffey Matrix is but one component of the analysis, and the Superior Court did not ultimately state whether it was appropriate in this case or not. Its "meticulous" review apparently failed to reach a conclusion as to whether this case "involving two common-law tort claims" qualified as complex federal litigation warranting application of the Laffey Matrix. (App. 500.) Even couching the question in those terms, however, strongly implies a prejudging of the question unfavorably towards Movants. Nor is the phrasing of the question accurate: this case involved far more than "common-law tort claims." It involved application of the

D.C. Anti-SLAPP Act to those "common-law tort claims" in the context of the exercise of fundamental First Amendment rights in a quintessential public forum, not to mention analyses of not one but two last-minute legislative amendments attempted to be applied retroactively, and in two separate appeals. This case plainly implicates complex federal issues, much like federal civil rights cases which routinely warrant application of the Laffey Matrix, as even the cases cited by the Superior Court acknowledge. *See, e.g.*, *Reed*, 843 F.3d at 526 ("We have applied the *Laffey* Matrix to requests for attorneys' fees brought pursuant to 42 U.S.C. § 1988.")

CONCLUSION

For the foregoing reasons, the Superior Court abused its discretion in denying Movants' fee motions. This Court should reverse and remand to the Superior Court for a determination of the fee amounts to be awarded to each Movant based on all the record evidence and applicable authorities.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was filed this May 1, 2023, through the Court's EFS system, which will effect electronic service on the following parties or counsel of record:

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Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

s/Roger K. Gannam
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22-CV-0736
Case Number(s)

May 1, 2023
Date