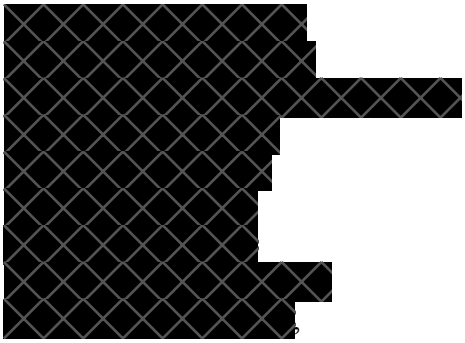
MICHAEL SPILLE, Complainant, v. SOUTH HUNTERDON REGIONAL SCHOOL DISTRICT BOARD MEMBERS:  Respondents.	BEFORE THE NEW JERSEY SCHOOL ETHICS COMMISSION Docket No. C-63-21

COMPLAINANT'S BRIEF IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS COMPLAINT AND IN SUPPORT OF MOTION TO AMEND COMPLAINT

RIKER DANZIG SCHERER HYLAND & PERRETTI LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962
(973) 538-0800
Attorneys for Complainant
Michael Spille

Of Counsel:
Teresa L. Moore, Esq.

On the Brief:
Fiona Cousland, Esq.
Teresa L. Moore, Esq.

TABLE OF CONTENTS

PAGE

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 3

Background 3

The 2021 Referendum and Respondents' Promotional Blitz 3

The Ethics Complaint 5

LEGAL ARGUMENT 7

I. TO DECIDE THE MOTION TO DISMISS, THE COMMISSION MUST APPLY THE STANDARD OF REVIEW SET FORTH IN N.J.A.C. 6A:28-8.3. 7

II. THE COMMISSION SHOULD DENY THE MOTION BECAUSE THE FACTS ALLEGED IN THE COMPLAINT CONSTITUTE ETHICAL VIOLATIONS. 11

A. Claims Referencing the "Board of Education" 11

B. Claims Referencing the Superintendent 12

C. Claims Referencing Certain Individual Respondents 13

D. Allegations against Respondent [redacted] 21

III. COMPLAINANT SEEKS LEAVE PURSUANT TO N.J.A.C. 6A: 28-6.7(c) TO AMEND THE COMPLAINT TO ADD CLAIMS PERTAINING TO THE SCHOOL DISTRICT'S RESPONSE TO AN OPRA REQUEST RELATING TO THE REFERENDUM 22

CONCLUSION 24

TABLE OF AUTHORITIES

Page(s)

Cases

Albanese v. Kazan,
No. C33-16 (Oct. 31, 2017) 19

Burghart v. Board of Ed. of Twp. of Mahwah,
1993 SL.D. (Comm'r Nov. 29, 1993) 8

Citizens to Protect Public Funds v. Parsippany-Troy Hills Bd. of Ed.,
13 N.J. 172 (1953) ..... *passim*

Enterline v. Board of Ed. of Twp. of Hillsborough,
96 N.J.A.R. 2d (EDU) 114 8

Fenton v. Sullivan,
1991 S.L.D. 688 (Comm'r Apr. 23, 1991) 9

I/M/O Annual School Election, Old Bridge Twp.,
94 N.J.A.R. 2d (EDU) 230 9

I/M/O Tenure Hearing of Dr. Richard Horowitz,
93 N.J.A.R. 2d (EDU) 232 14

I/M/O Christopher Treston,
C71-18 (Apr. 27, 2021) 17

I/M/O Quinn
(Comm'r Mar. 23, 2005) 14, 19

I/M/O Use of Abbott Funds by Elizabeth Bd. of Ed,
No. A-2409-07T3, 2009 WL 2496724 (App. Div. Aug. 18, 2009) 9

Lovett v. Asbury,
No. C01-09 (Apr. 28, 2009) 12

Schettino v. Ridgefield Bd. of Ed.,
93 N.J.A.R. 2d (EDU) 224 9

Statutes

N.J.S.A. 18A:12-22(a) 6

N.J.S.A. 18A:12-24.1(e) 19, 21, 25

N.J.S.A. 18A:12-24.1(e) and (f) 25

N.J.S.A. 18A:12-24.1(e), (f) and (g) 24

N.J.S.A. 18A:12-24.1(e) and (g) 19, 20

N.J.S.A. 18A:12-24.1(g) 18, 19

N.J.S.A. 18A:17-15, -20.1, and -20.3 18

Advisory Opinions of School Ethics Commission

Advisory Opinion A15-18 18

Advisory Opinion A16-04 18

Advisory Opinion A24-15 18

Advisory Opinion A36-14 ..... 16, 17

Administrative Rules

N.J.A.C. 6A:28-6.4(a)(5) 20, 21, 22, 24, 25

N.J.A.C. 6A:28-6.4(a)(6) 24

N.J.A.C. 6A:28-6.4(a)(7) 19, 20, 21, 24

N.J.A.C. 6A:28-6.7(c) 27

N.J.A.C. 6A:28-7.3(c) 29

N.J.A.C. 6A:28-8.3 ..... 12, 15

PRELIMINARY STATEMENT

Multiple ethics violations were committed by Respondents, the nine members of the South Hunterdon Regional District Board of Education ("Board"), when they informed the public of a $33 million school facilities referendum on the November 2, 2021 ballot. The Complaint lays out the violations in stark detail. The law is clear that if proven to be true, Respondents' behavior breached the Code of Ethics for School Board Members contained in the School Ethics Act. Such behavior cannot be condoned.

When enacting the School Ethics Act, the New Jersey legislature found that school board members and administrators must perform their duties to ensure the public's trust:

> In our representative form of government, it is essential that the conduct of members of local boards of education and local school administrators hold the respect and confidence of the people. These board members and administrators must avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated….

N.J.S.A. 18A:12-22(a). Ensuring public trust in school officials is the foundation of the School Ethics Act.

In *Citizens to Protect Public Funds v. Parsippany-Troy Hills Bd. of Ed.*, 13 N.J. 172 (1953), the New Jersey Supreme Court set forth the standard of conduct for school board members who publicize a referendum that they sponsored, stating:

> The need for full disclosure of all relevant facts is obvious, and the board of education is well qualified to supply all the facts. But a fair presentation of the facts will necessarily include all consequences, good and bad, of the proposal, not only the anticipated improvement in educational opportunities, but also the increased tax rate and such other less desirable consequences as may be foreseen….
>
> The public funds entrusted to the board belong equally to the proponents and opponents of the proposition, and the use of the funds to finance not only the presentation of facts merely, but also arguments to persuade the voters that only

> one side has merit, gives the dissenters just cause for complaint. The expenditure is then not within the implied power [to publicize facilities improvements] and is not lawful in the absence of express authority from the Legislature.

Id. at 180 and 181.

With respect to the November 2, 2021 facilities referendum, Respondents failed to live up to the legislature's exhortation that they "avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated." Complainant seeks accountability for the very behavior that *Citizens to Protect Public Funds* prohibited: a failure to fairly present *all* the facts about referendum, including "all consequences, good and bad, of the proposal." When the Commission considers their conduct in the light most favorable to Complainant, there can be no doubt that the Complaint states multiple violations of the Code of Ethics for School Board Members, and that their motion to dismiss must be denied.

STATEMENT OF FACTS

Background

The South Hunterdon Regional School District was formed in 2013 by combining a regional high school district and elementary school districts from three municipalities: the Township of West Amwell ("West Amwell"), Stockton and Lambertville. Currently, the regional school district has three school buildings; two are located in West Amwell and one is in Lambertville.[1]

In 2016, the Board explored options to improve the school district's facilities. At that time, the Board provided the public with a comprehensive analysis of ten (10) options that were considered (Complaint, Ex. A), the "ballpark" costs for each option (Ex. A, slides 27-38), a comparison of attributes considered for each option (Ex. A, slides 41-42), and an analysis of the advantages and disadvantages of the options (Ex. A, slides 54, 57, 62).

The 2021 Referendum and Respondents' Promotional Blitz

In April 2021, the Board approved a facilities referendum to finance new construction, building improvements, and a school building closure, at an estimated $33 million price tag ("Referendum"). That same month, the Board conducted a community survey that showed that 60% of respondents were unsure or against the Referendum, and 40% were for the Referendum. (Complaint, Ex. B, p. 4) The Board received hundreds of comments as to why voters did not support the proposal. (Complaint, Ex. B, pp. 5-15)

---

[1] https://www.state.nj.us/education/finance/fp/cafr/search/20/1376.pdf, p. 133. In 2021, the school district sold the Stockton School to the Borough of Stockton. https://www.tapinto.net/towns/flemington-slash-raritan/sections/south-county-news/articles/south-hunterdon-district-sells-stockton-school-to-borough

Thereafter, Respondents embarked on a multimedia crusade to sway the public to approve the Referendum at the November 2, 2021 election. For eight months, from April 2021 to November 2, 2021, they urged voters not just to vote, but to vote "yes." Early on, they created a "Key Communicator" group. (Complaint, Count 2, Ex. C) By June 2021, they had provided the Key Communicator Group with the results of the April 2021 community survey that showed strong opposition to the Referendum. (Complaint, Count 2) They created three videos, scheduled community meetings, created slide presentations and mailings, posted messages on social media, and made appearances at city council meetings, not just to provide information, but to get out a pro-Referendum message. (Complaint, Exhibits D-F and H-K; Figs. 1 through 6) Their August 2021 "Referendum Community Presentation" (Complaint, Count 3, Ex. D) included statements such as "Planning for THEIR Future" (Ex. D, slide 1); "How School Districts Impact a Home's Value" (Ex. D, slide 62); "We can't wait any longer to address these issues [Lambertville Public School repairs and West Amwell School structural and site issues]" (Ex. D, slide 59); and "Our students and staff deserve 21st century learning spaces!" (Ex. D, slide 59). They published a "Referendum FAQ" that included "answers" such as that "high performing schools with 21st century facilities raise property values" and "The only way that South Hunterdon can effectively pay for [addressing substandard buildings and lack of ADA-compliant accessibility] is by referendum." (Complaint, Ex. E) These statements were repeated in an October 9, 2021 school district newsletter. (Complaint, Ex. F, p. 3)

In addition, the Board produced and uploaded videos to You Tube in August, September and October 2021 that unabashedly highlighted the advantages of approving the Referendum.

(Complaint, Counts 5, 6, 7)[2] They allowed lawn signs to be used in the community that proclaimed "Vote Yes" and that displayed the school district's Referendum url as well as two school district crests. (Complaint, Fig. 4) The crests and school district website strongly conveyed the impression that the board of education authorized the signs, particularly since no source is identified on the signs.[3]

The Superintendent scheduled 24 "community information sessions" in a one-month period in September and October 2021, averaging six per week in that period. (Complaint, Count 12, Ex. I)

The Ethics Complaint

On October 27, 2021, Complainant Michael Spille, a resident of West Amwell, filed a 17-count Complaint with this Commission against the nine members of the South Hunterdon Regional School District Board of Education. The Complaint alleged that Respondents shirked their ethical responsibilities to *all* of the voters by providing the public only with reasons to vote in favor of the Referendum, and by omitting information as to any drawbacks such as the extent to which the measure's cost would increase voters' property taxes. The Commission notified Mr. Spille that the language of certain claims was technically defective, and on November 2, 2021, Mr. Spille filed an Amended Complaint with 18 counts ("Complaint").

---

[2] https://www.youtube.com/watch?v=aqOUt-Cxt7E (Aug. 17, 2021, 13 minutes); https://www.youtube.com/watch?v=iVeOaOkACbg (Sept. 21, 2021, 5 minutes; https://www.youtube.com/watch?v=1WKqkX71-lM Oct. 13, 2021, 4 minutes)

[3] After filing the Amended Complaint, Complainant obtained copies of internal school district documents that demonstrate that the Superintendent was distributing the "Vote Yes!" signs.

On November 2, 2021, the voters of the three constituent municipalities of the regional district approved the Referendum by only two (2) votes of 3,544 votes cast.[4] On November 19, 2021 a lawsuit was filed in New Jersey Superior Court seeking a recount of the vote.[5] On December 10, 2021 a judge ordered a recount, which was held on December 14, 2021. The recount did not change the Referendum result.

For the reasons that follow, the motion to dismiss should be denied and the Commission should consider Complainant's ethics charges.

[4] https://news.yahoo.com/south-hunterdons-33-million-school-100233923.html
[5] Complainant herein is one of multiple plaintiffs in the recount lawsuit. (See Nov. 29, 2021 letter amendment to Complaint)

LEGAL ARGUMENT

I. TO DECIDE THE MOTION TO DISMISS, THE COMMISSION MUST APPLY THE STANDARD OF REVIEW SET FORTH IN N.J.A.C. 6A:28-8.3.

The Commission's rules provide the standard for review of a motion to dismiss a Complaint: "In determining whether to grant a motion to dismiss, the Commission shall review the facts in the light most favorable to the complainant and determine whether the allegation[s], if true, could establish a violation of the Act." N.J.A.C. 6A:28-8.3. Therefore, the only inquiry before the Commission on this motion is whether Complainant has stated facts that, if true, constitute violations of the School Ethics Act.

A robust line of administrative and judicial decisions has evaluated board member violations of the School Ethics Act in connection with publicizing referenda and budgets. The Commission must be guided by these decisions, beginning with the seminal case of *Citizens to Protect Public Funds v. Parsippany-Troy Hills Bd. of Ed*., 13 N.J. 172 (1953). In *Citizens to Protect Public Funds* the New Jersey Supreme Court found that a school board's eighteen-page booklet about a facilities referendum crossed the line from providing balanced information to mounting impermissible advocacy. The booklet urged voters to "Vote Yes!" and painted a doomsday scenario with statements that included, "If You Don't Vote Yes: Double Sessions!!! This will automatically Cheat your child of 1/3 of his education (4 hours instead of 6); Yearly school changing and hourlong Bus rides will continue for many children…." 13 N.J. at 175. The Court recognized that the board of education was in the position of "giving voters relevant facts to aid them in reaching an informed judgment when voting upon the proposal." 13 N.J. at 179. At the same time, the Court found that the board of education "was not content to simply

present the facts," which is true here of the South Hunterdon Regional School District Board of Education. The Court observed in language that is apt here,

> The exhortation "Vote Yes!" is repeated on three pages, and the dire consequences of the failure so to do are over-dramatized on the page reproduced above. In that manner the board made use of public funds to advocate one side only of the controversial question without affording the dissenters the opportunity by means of that financed medium to present their side, and thus imperiled the propriety of the entire expenditure. The public funds entrusted to the board belong equally to the proponents and opponents of the proposition, and the use of the funds to finance not the presentation of facts merely but also arguments to persuade the voters that only one side has merit, gives the dissenters just cause for complaint.

13 N.J. at 180-181.

The Commissioner of Education has drawn the line between permissible and impermissible board advocacy in numerous cases. *Burghart v. Board of Ed. of Twp. of Mahwah*, 1993 S.L.D. (Comm'r Nov. 29, 1993) was a challenge to a board of education's activities to promote a $25 million construction referendum. The board had issued four advisories that contained statements addressing real estate values and schools. Considering the statements as a whole, the Commissioner found that they "go beyond a mere factual presentation and create the *impression* that voters should vote for the school budget." Slip op. at 3 (emphasis in original). The Commissioner issued an injunction enjoining the board from using public money to distribute materials that had the appearance of advocating a position on the referendum.

The Commissioner of Education penalized another board of education in *Enterline v. Board of Ed. of Twp. of Hillsborough,* 96 N.J.A.R. 2d (EDU) 114. In *Enterline* the board sent out a newsletter about a bond issue to construct a new high school called "Planning for Our Children's Future." The newsletter referred to "stabilizing property values for all homeowners." It also contained an inaccurate graph of student enrollment. The Commissioner found that the newsletter was "improperly advocative" and required the board of education to review any bond

referendum materials issued within a year of the decision in open session and with the assistance of counsel. *See also I/M/O Quinn* (Comm'r Mar. 23, 2005) (board member censured for distributing flier during re-election campaign that contained incomplete budget information which compromised board's ability to pass its budget); *I/M/O Annual School Election, Old Bridge Twp.,* 94 N.J.A.R. 2d (EDU) 230 (board broadcasted on television a one-sided budget presentation and exhorted public to vote for the budget; Commissioner enjoined future expenditure of public funds in a manner that advocates); *Schettino v. Ridgefield Bd. of Ed*., 93 N.J.A.R. 2d (EDU) 224 (board mailed "fact sheet" flyers to residents praising incumbent board members and criticizing non-incumbents and included board member telephone number; Commissioner ordered board to implement a vetting procedure like that in *Enterline)*; *Fenton v. Sullivan*, 1991 S.L.D. 688 (Comm'r Apr. 23, 1991) (board statement that it was doing a terrific job in contrast to its predecessor board was a "value judgment" that constituted advocacy).

In cases that are not direct challenges to referenda or budgets, the Commissioner of Education has also reinforced the rule that members of boards of education and superintendents must present to the public accurate and balanced information. In *I/M/O Tenure Hearing of Dr. Richard Horowitz*, 93 N.J.A.R. 2d (EDU) 232, the Superintendent withheld the significantly increased cost of a building project from an initial estimate and allowed public information to include the lower estimate. The Commissioner found this to be conduct unbecoming, and removed the Superintendent's tenure. *Cf. I/M/O Use of Abbott Funds by Elizabeth Bd. of Ed*, No. A-2409-07T3, 2009 WL 2496724 (App. Div. Aug. 18, 2009) (board's print and TV communications failed to disclose all relevant facts and sought to persuade the public that only its position had merit; Appellate Division affirmed Commissioner's reduction of school district's budget as a penalty).

When the Complaint's allegations are viewed in the light most favorable to the Complainant and in light of case law precedent, it is apparent that they meet the standard of review of N.J.A.C. 6A:28-8.3, and that the motion to dismiss should be denied.

II. THE COMMISSION SHOULD DENY THE MOTION BECAUSE THE FACTS ALLEGED IN THE COMPLAINT CONSTITUTE ETHICAL VIOLATIONS.

The crux of the Complaint is that the nine board members' communications with the public and their approval of actions of the Superintendent in promoting the Referendum were biased in favor of passage, were devoid of any contrary views, and crossed the line multiple times from urging voters to vote, to urging voters to vote "yes." Their actions contrast starkly with the approach that their predecessor board of education took in 2016. In 2016, the board of education provided the public with information both pro and con about facilities options. (Complaint, Ex. A) Specifically, the 2016 board provided the public with a comprehensive analysis of ten options, the "ballpark" costs and a comparison of attributes of each option, and an analysis of the advantages and disadvantages of the options. Respondents failed to provide similar information to the public in connection with the 2021 Referendum.

Respondents' motion argues that none of the claims in the Complaint should stand. For the following reasons, the Commission should reject those arguments deny the motion.

A. Claims Referencing the "Board of Education"

The Commission should reject Respondents' argument that Counts 1-4, 6-8, 14-15, and 18 of the Complaint plead violations by the board of education as a body politic, and not by individual members of the Board.

Clearly, the Respondents in this proceeding are the nine members of the board of education of the South Hunterdon Regional School District, and the Code of Ethics for School Board Members applies fully to them. Just as clearly, the Board is not named as a party to the Complaint. To the extent that the Complaint alleges that the "board of education" or "BOE" took an action, those references should be read as shorthand for the nine Respondents. The

Complaint could have easily used the term "Respondents" instead of "BOE," and should be understood accordingly.

The Commission's decision in *Lovett v. Asbury,* No. C01-09 (Apr. 28, 2009), on which Respondents rely, is unavailing to support their argument that alleged claims against the Board should be dismissed. In *Lovett* the complaint made "bare allegations" that a charter school's board of trustees violated the School Ethics Act by hiring a non-certificated School Leader and "fail[ed] to comply with school law or regulation." Slip op. at 2. No specific breach of the School Ethics Act was identified in *Lovett*, and the complainant did not respond to a motion to dismiss. By contrast, this Complaint sets forth numerous facts demonstrating breaches of the School Ethics Act, not generalized claims of failure to comply with the Act. And, obviously, Complainant is contesting the motion to dismiss.

The allegations in Counts 1-4, 6-8, 12, 14-15, and 18 of the Complaint are viable against the nine respondents. Therefore, the motion to dismiss should be denied as to Counts 1-4, 6-8, 12, 14-15, and 18.

B. Claims Referencing the Superintendent

The Commission should reject Respondents' argument that allegations in Counts 12 and 14 that involve the Superintendent be dismissed because the Complaint scrupulously alleges that ethical violations based on conduct of the Superintendent were authorized by Respondents.

Count 12 alleges, "…the Superintendent sent out a … list of referendum information meetings….*While it is proper for the BOE to allow informational meetings to be scheduled*, scheduling 24 meetings within a two-month period is extremely excessive….." (emphasis added) Count 14 alleges, "The Superintendent is not only aware of the existence of these [lawn]

signs, but has referred residents to the person creating them if they want one….*In this case, the BOE is implicitly allowing it to look like the Board is asking voters to "Vote YES."* (emphasis added) The Board is the Superintendent's employer; in fact, the only school district employee that a board of education selects and evaluates is the Superintendent. *See, e.g.,* N.J.S.A. 18A:17-15, -20.1, and -20.3. The Superintendent is thus accountable directly to the Board.

No claims in the Complaint focus solely on the actions of the Superintendent. Therefore, the Commission should deny the motion to dismiss Counts 12 and 14 of the Complaint on this additional ground.

C. Claims Referencing Certain Individual Respondents

Respondents take issue with Counts 5, 9-11, 13, 16, and 17 that are based on violations by particular respondents. Their argument that the respondents' conduct could not amount to a violation of the School Ethics Act flies in the face of applicable law, and should be rejected. We address each count below.

Count 5 challenges the contents of a video that Respondents released on August 17, 2021 ("Video #1), as well as Board President [redacted] emotional rhetoric in the video, pursuant to N.J.S.A. 18A:12-24.1(g) which requires board members to provide "accurate information" in all matters. Video #1 was aimed at voters' feelings, not their reasoning powers, by showing student art and trees and playing soft background music. For two of the thirteen minutes of the video, Board President [redacted] provided skewed information by warning viewers that they must act now or interest rates will go up, or the district may lose state aid, or the scope of the project may increase for unspecified reasons, without mentioning any shortcomings of the Referendum. (Video #1 at 10:42 – 12:24) [redacted] clearly intended to

make the statements he made and likewise to omit information relating to the plan's disadvantages.

N.J.S.A. 18A:12-24.1(g) requires board members to "provide accurate information" in all matters. N.J.A.C. 6A:28-6.4(a)(7) that factual evidence be provided that substantiates the inaccuracy of the information provided by the respondent, and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. Count 5 meets the proof standard of N.J.A.C. 6A:28-6.4(a)(7). The motion to dismiss Count 5 should be denied.

Count 9 challenges specific statements made by Board President [redacted] and board member [redacted] at a West Amwell Township Committee meeting on October 6, 2021 as violations of N.J.S.A. 18A:12-24.1(e) and (g). The minutes of that meeting identify both respondents as school board members: "*School Board President* [redacted]…expressed support for the referendum" and Respondent [redacted] "came forward *as a member of the school board*…and stressed the importance of the referendum passing." (Complaint, Ex. G, pp. 4 & 5) (emphasis added) The minutes do not record any statements by either respondent that tempered their enthusiasm for the project, and clearly recorded the pro-Referendum sentiments that both board members expressed. These respondents' one-sided advocacy violated N.J.S.A. 18A:12-24.1(g) requiring that they provide "accurate information." *See also Citizens to Protect Public Funds*, 13 N.J. at 180 ("a fair presentation of the facts will necessarily include all the consequences, good and bad, of the proposal"). In addition, their comments promoting the Referendum to the West Amwell Township Committee as school board members and not as private citizens violated N.J.S.A. 18A:12-24.1(e) which prohibited them from taking "any private action that may compromise the board." *See, e.g., I/M/O Quinn* (board member censured

for taking private action that compromised the board by printing and distributing inaccurate budget fliers).

Count 9 meets the standard of N.J.A.C. 6A:28-6.4(a)(7) that factual evidence be provided that substantiates the inaccuracy of the information provided by the respondent, and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. Count 9 also meets the standard for a violation of N.J.A.C. 6A:28-6.4(a)(5) that evidence be presented that respondents took private action beyond the scope of their duties that, by its nature, had the potential to compromise the board. The motion to dismiss Count 9 should be denied.

Count 10 challenges a lengthy post by Respondent [redacted] on the West Amwell Facebook page during the week of October 11, 2021 in which he answered Referendum questions. (Complaint, Ex. H) He correctly included a disclaimer that he was speaking "as a private individual and not representing the board." However, the post violated N.J.S.A. 18A:12-24.1(e) and (g) because he referenced decisions by the Board, school district and district administration frequently, conveying the message that he actually *was* speaking for the Board. Specifically, he made the following statements:

> Question: What is the total yearly cost of running the new LPS and new WAS?
>
> Respondent [redacted]: *The district expects* that cost to be somewhat lower than the cost of operating the schools currently….
>
> ***
>
> Question: Why is the new WAS School two stories?
>
> Respondent [redacted]: Because *the administration and Board feel* that's the most efficient way to use the space.
>
> ***

> Question: Why do the LPS plans include the city-owned parking lot (which cannot be paved over per DEP rules in flood hazard zone)?
>
> Respondent [redacted]: *The district recognizes* that all the lots adjacent to Lambertville Public School need to be paved…. (emphases added)

Respondent [redacted] posts also misstated the full cost of the facilities project:

> Question: What is the all-in cost of this project, including bond servicing fees, rental of the Jesus School, etc.?
>
> Respondent [redacted]: It will be approximately $26.6 million – the amount the district is seeking to borrow through the referendum on November 2, less the $6.7 million the state has committed to kick in toward the plan. [The State's contribution is actually *in addition to, not less than*, the cost to the school district.]

Count 10 meets the standard of N.J.A.C. 6A:28-6.4(a)(7) that factual evidence be provided that substantiates the inaccuracy of the information provided by the respondent, and evidence that establishes that the inaccuracy was other than reasonable mistake or personal opinion or was not attributable to developing circumstances. Count 10 further meets the standard for a violation of N.J.A.C. 6A:28-6.4(a)(5) that evidence be presented that Respondent [redacted] took private action beyond the scope of his duties that, by its nature, had the potential to compromise the board. Therefore, the motion to dismiss Count 10 should be denied.

Count 11 challenges Respondent [redacted] post in favor of the Referendum on October 8, 2021 to the Lambertville and West Amwell Facebook pages (Complaint, Fig. 1, p. 12) as a violation of N.J.S.A. 18A:12-24.1(e).[6] Respondent [redacted] failed to identify himself as a member of the South Hunterdon Regional School District board of education, and failed to include a disclaimer that he was not speaking on behalf of the Board. Omitting these disclaimers from his posts violated the Commission's Advisory Opinion A36-14 (Oct. 29, 2014), which

[6] The Complaint mistakenly says "11/8/21" but the correct date is October 8, 2021.

unambiguously requires that when school board members communicate their views in any medium, they must identify themselves as board members, and speak as private citizens and not on behalf of the board of education. Merely stating that he was a "tax-paying resident of West Amwell township" [sic] did not inform readers of the critical fact that Respondent [redacted] was also a member of the local board of education.

Respondents argue that the bright line identification and disclosure rule stated in A36-14 was insufficient to put school board members on notice of their ethical obligations when speaking as an individual on a matter of public concern. They contend that the rule was "clarified" in *I/M/O Christopher Treston*, C71-18 (Apr. 27, 2021) to provide identification and disclaimer language that board members should use. Respondents argue that *Treston* was issued "long after the post in question was made" (Rb at 12), which is incorrect. *Treston* was issued six months before Respondent [redacted] posted the message in question. It's unclear how Respondents see Advisory Opinion A36-14 and *Treston* as helping them, when they were issued long *before* Respondent [redacted] post, and he was obligated to comply with the decisions.

In his October 8, 2021 post, [redacted] not only omitted material information about his Board membership, but he went out of his way to try to persuade people not to listen to "negativity" on social media, and accused "so-called social media experts" as relying on "false statements" and "bad information." (Complaint, Fig. 1) These inflammatory statements compromised the Board by disrespecting the public.

Count 11 meets the requirement of N.J.A.C. 6A:28-6.4(a)(5) to produce evidence that Respondent [redacted] took private action beyond the scope of his duties that, by its nature, had the potential to compromise the Board. The motion to dismiss Count 11 should be denied.

Count 13 challenges the involvement of Respondents [redacted], [redacted], [redacted], and [redacted] in "Save LPS," an organization focused on "saving" the elementary Lambertville Public School from closure. The organization's stated mission is "to preserve our school as a Lambertville cornerstone, maintaining educational equity and a strong community culture." https://savelps.com "Save LPS" wanted to preserve a "walkable school" in Lambertville. (Complaint, Fig. 3) "Save LPS" advocated fiercely for passage of the Referendum. https://savelps.com ("Vote Yes Nov. 2nd: School Facilities Referendum") The Complaint demonstrates through a photo on the "Save LPS" website that Respondents [redacted], [redacted] and [redacted] are members of the organization. (Complaint, Fig. 2) The Complaint also demonstrates that the Lambertville City Council chose Respondent [redacted] to serve on the "Save LPS Committee." (Complaint, Ex. J, p. 42) These four respondents are members of a political advocacy organization whose explicit goal was to convince voters to approve the Referendum.[7]

Complainant acknowledges that school board members are permitted to be members of PTAs (A15-18), parent special education groups (A24-15), educational foundations (A16-04), and other community organizations.[8] The Commission has approved such memberships with the explicit caveat, however, that the board members not vote on matters that pertain to those organizations. *See, e.g.*, Advisory Opinion A24-15,

---

[7] A former member Lambertville board member, [redacted], was a Save LPS member (Complaint, Fig. 2) [redacted] resigned from the board of education on May 27, 2021 after the vote to approve the facilities referendum in April 2021. See https://go.boarddocs.com/nj/shrsd/Board.nsf/files/C74Q2F672E7D/$file/Minutes%20June%2028%2C%202021.pdf.

[8] *See, e.g.*, https://www.nj.gov/education/legal/ethics/advisory/cat4/A15-18.pdf; https://www.nj.gov/education/legal/ethics/advisory/cat4/A24-15.pdf; https://www.nj.gov/education/legal/ethics/advisory/cat4/a16-04public.pdf.

https://www.nj.gov/education/legal/ethics/advisory/cat4/A24-15.pdf at 2. Respondents [redacted], [redacted], [redacted], [redacted] and [redacted], as members of "Save LPS," voted to approve issuance of the Referendum.

Respondents' membership in "Save LPS" is very different from membership in a PTA, local educational foundation, or parents special education group. Unlike organizations with a general mission to support public education, "Save LPS" is a political group with an explicit agenda for the school district. Respondents are free to have a point of view on facilities improvements in the school district; what ethics rules do not permit them to do is to promote that point of view to the exclusion of any contrary view when educating the public on the issue, which is what they did with respect to the Referendum. *Albanese v. Kazan*, No. C33-16 (Oct. 31, 2017), on which Respondents rely, does not alter this rule. *Albanese* involved a complaint against a single board member who voted in support of an issue – full day kindergarten – that the voters had rejected. The Commissioner acknowledged a board member's right to "champion a cause" she with her votes, but did not address the issue presented in this case: the proper actions of board members when providing information to the public about an issue that is the subject of a referendum on which the public will vote.

Complainant alleges that membership of Respondents [redacted], [redacted], [redacted] and [redacted] in "Save LPS" violated N.J.S.A. 18A:12-24.1(e), (f) and (g) since these Lambertville board members took private action as part of "Save LPS" to manipulate board action, surrendered their independent judgment to a special interest group, and failed to provide accurate information. Count 13 meets the standards of N.J.A.C. 6A:28-6.4(a)(5), (6) and (7) for alleging violations of N.J.S.A. 18A:12-24.1(e), (f) and (g). Therefore, the motion to dismiss Count 13 should be denied.

Count 16 challenges Respondent [redacted] October 12, 2021 posting on the West Amwell Facebook site in which she advocated for the Referendum and disclaimed she was speaking for the Board, but provided her board of education email address where she could be reached. (See Certification of Michael Spille, Ex. A) Complainant alleges that Respondent [redacted] violated N.J.S.A. 18A:12-24.1(e) by providing her board of education email address, thereby conveying the impression that she would continue to take action to advocate for the Referendum despite her disclaimer. In compliance with N.J.A.C. 6A:28-6.4(a)(5), the Complaint provides evidence that Respondent [redacted] use of her Board email address had the potential to compromise the Board. Therefore, the motion to dismiss Count 16 should be denied.

Count 17 alleges that the five Lambertville board members (Respondents [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]) violated N.J.S.A. 18A:12-24.1(e) and (f) due to their alignment with the political interests of the City of Lambertville. Respondents seek dismissal of these claims as allegedly based on speculation. Rather than speculation, the allegations in Count 17 are based on the City of Lambertville's proposed contract language in a shared services agreement with the Board, as follows: "the City will consider renewal of this Agreement *only after a majority of the Lambertville representatives on the Board have approved it*." (emphasis added) (Complaint, Ex. K) This language is direct evidence of the City of Lambertville's intention that it cared only that the Lambertville school board members approve the agreement, and not the majority of the full regional school board. While it is not clear whether the five Lambertville board members were involved in the development of the City of Lambertville's position on the shared services agreement, a fair inference can be drawn that the City of Lambertville and the five Lambertville board of education members were working in

concert. Complainant should be permitted to present this evidence at hearing. The motion to dismiss Count 17 should, therefore, be denied.

D. Allegations against Respondent [redacted]

Respondents argue that the Complaint against board member [redacted] should be dismissed "because there are no allegations against her." To the contrary, because Respondent [redacted] is a member of the Board, all of the claims that are directed to the Board's improper advocacy for the Referendum are directed to her as well as to the other respondents. Thus, the motion to dismiss claims against Respondent [redacted] must be denied.

III. COMPLAINANT SEEKS LEAVE PURSUANT TO N.J.A.C. 6A: 28-6.7(c) TO AMEND THE COMPLAINT TO ADD CLAIMS PERTAINING TO THE SCHOOL DISTRICT'S RESPONSE TO AN OPRA REQUEST RELATING TO THE REFERENDUM.

After Respondents filed this motion, Complainant received a copy of a response from the South Hunterdon Regional School District Board of Education to an OPRA request for "all correspondence including emails sent by Superintendent Anthony [redacted], the Board of Education, or any member of the Board of Education, to any employee of the district including teachers, aides and staff between January 1, 2021 and November 14, 2021 that includes any of the following keywords in the subject or content of the email: facility, facilities, referendum, vote, election." (Certification of Michael Spille, Ex. B, Nov. 29, 2021 email) The voluminous records produced in response to the OPRA request contain a trove of written admissions by Respondents that support many of the allegations of this Complaint. A sampling of Respondents' admissions is included in the spreadsheet attached as Exhibit C to the Spille Certification. Their admissions include, for example,

- In January 2021 Board members admit they are aware they must be neutral in a referendum;
- Respondent [redacted] suggests that the Board link property values to the Referendum outcome;
- Superintendent [redacted] sent a letter to South Hunterdon High School seniors of voting age to urge them to vote for the referendum to "support[] these important projects";
- Statements that Lambertville Public School cannot be renovated;
- Purpose of survey is not to get citizen input but to use it as a roadmap to getting "yes" votes;
- Respondent [redacted] statement that Lambertville majority members will not allow any option that includes no school in Lambertville;
- Key communicators were formed to get "yes" votes with supervision from the Superintendent and the individual board members;

- From March 2021 through October 2021, Board members and Superintendent removed numerous items from presentations, videos, talking points, etc., that painted the Referendum in a negative light or that may be controversial.

(Certification of Michael Spille, ¶4)

These emails and documents are directly relevant to the claims of ethics violations in the Complaint. Therefore, Complainant respectfully requests that the Commission permit Complainant to file an Amended Complaint adding allegations relating to the documents produced by the school district in response to the OPRA request.

CONCLUSION

Respondents' motion to dismiss lacks any merit whatsoever, for the reasons stated in this brief. The motion should be denied, and the Complaint should be considered in full by the Commission.

Furthermore, the Commission should permit Complainant to amend the Complaint, pursuant to N.J.A.C. 6A:28-7.3(c), to add allegations stemming from communications contained in documents produced by the school district in response to an OPRA request and received by Complainant after the motion to dismiss the Complaint was filed.

Respectfully submitted,

RIKER DANZIG SCHERER HYLAND
& PERRETTI LLP
Attorneys for Complainant
Michael Spille



Dated: December 21, 2021