RINGWOOD EDUCATION ASSOCIATION, Respondent, vs. RINGWOOD BOARD OF EDUCATION, Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001159-24T4 ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY PASSAIC COUNTY: LAW DIVISION DOCKET NO.: PAS-L-856-23 Sat Below: Hon. Vicki A. Citrino, J.S.C.

BRIEF ON BEHALF OF APPELLANT RINGWOOD BOARD OF EDUCATION

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PRELIMINARY STATEMENT

This matter arises out of the interpretation of a School Board Policy of Defendant/Appellant Ringwood Board of Education (the "Board") as applied to the Appellate Division's holding in Green Twp. Educ. Ass'n v. Rowe, 328 N.J.Super. 525 (App. Div. 2008). Specifically, the Board's Policy 3233 provides guidelines to govern teaching staff members in their political activities during school hours on school grounds. The Ringwood Education Association (the "Association" or "Respondent") filed the underlying action asserting that Board Policy 3233 is overbroad and unconstitutional in its application toward teaching staff who prominently displayed political board of education campaign lawn signs in their rearview windows during the school day while parked in the school parking lot.

In the underlying action, both the Board and Respondent moved for summary judgment. In her November 13, 2024 Decision, the Honorable Vicki A. Citrino, J.S.C., granted summary judgment in favor of the Respondent and in doing so denied the Board's Motion for Summary Judgment. This appeal concerns Judge Citrino's November 13, 2024 Decision.

The Board's Policy 3233 is not overbroad, as it does not broadly infringe on the First Amendment rights of teachers but instead expressly supports those rights. Rather, Policy 3233, which was developed by school policy consultants Strauss Esmay in the wake of the Green decision, is narrowly tailored so as to limit the

political activity of teachers on schoolgrounds during school hours, a stark contrast to the policy held to be overbroad by the Appellate Division in Green. As set forth herein, the Trial Court's November 13, 2024 Decision granting summary judgment in favor of the Respondents was based on an erroneous application of Green to the underlying case, warranting reversal and summary judgment in favor of the Board.

PROCEDURAL HISTORY

On March 30, 2023, the Association filed a single-count Complaint against the Board seeking a declaratory judgment. See Da1. Specifically, the Association's Complaint sought a declaration from the Trial Court that the Board's application of Policy 3233 was overly broad and in violation of the First Amendment to the Constitution. Id. The Board filed its Answer on May 9, 2023, and discovery was exchanged and depositions were conducted. See also Da9, Da69, Da79, Da99, Da177-217. On September 13, 2024, the Board filed a Motion for Summary Judgment seeking the dismissal of the Association's Complaint. See Da17. On October 1, 2024, the Association filed a Cross-Motion for Summary Judgment against the Board. See Da24.

Oral argument on the motions was heard by the Honorable Judge Vicki A. Citrino, J.S.C. on November 13, 2024. See Da309. On November 13, 2024, Judge Citrino issued an Order denying the Board's Motion for Summary Judgment and

granting the Association's Cross-Motion for Summary Judgment. See Da17, Da24. On December 23, 2024, the Board submitted its Notice of Appeal. See Da30.

STATEMENT OF FACTS

Pursuant to N.J.S.A. 18A:11-1(c), the Board has the power to "[m]ake…rules…for its own government…and management of the public schools and public-school property of the district and for the employment, regulation of conduct and discharge of its employees...." See Da46. The Association is the certified majority representative of all "regularly employed teachers, librarians, nurses, school counselors, child study team members, related service providers" employed by the Board, as recognized by the Collective Negotiations Agreement between the Board and the Association, and pursuant to N.J.S.A. 34:13A-5.3. See Da46.

On December 6, 2021, the Board adopted District Policy and Regulation 3233 ("Policy 3233"), using the model policy template recommended by its policy manual consultant, Strauss Esmay. See Da47. On June 27, 2022, the Board adopted a revision to Policy 3233 recommended by Strauss Esmay to replace the then "chosen freeholders" with "county commissioners" and to include language regarding two statutes requiring time off from work for teachers who are also employed as members of the State or General Assembly of the State of New Jersey or the Board of County Commissioners. See Da47.

District Policy 3233 states, in relevant part:

> The Board establishes the following guidelines to govern teaching staff members in their political activities.
>
> 1. A teaching staff member shall not engage in political activity on school grounds unless permitted in accordance with Board Policy No. 7510, Use of School Facilities and/or applicable Federal and State laws;
>
> 2. A teaching staff member shall not post political circulars or petitions on school grounds nor distribute such circulars or petitions to students nor solicit campaign funds or campaign workers on school grounds;
>
> 3. A teaching staff member shall not display any material that would tend to promote any candidate for office on an election day on school grounds that are used as a policing place;
>
> 4. A teaching staff member shall not engage in any activity in the presence of students while on school grounds, which is intended and/or designated to promote, further or assert a position(s) on labor relations issues.

See Da47, Da160, Da161. Policy 3233 further provides that "[t]he provisions of this Policy do not apply to the discussion and study of politics and political issues appropriate to the curriculum, the conduct of student elections, or the conduct of employee representative elections. See Da160. Policy 3233 also provides that "[n]othing in this policy shall be interpreted to impose a burden on the constitutionally protected speech or conduct of a teaching staff member or a student." See Da160.

District Regulation 3233 ("Regulation 3233") states, in relevant part:

> A. Prohibited Activities
>
> The following political activities are prohibited on school district premises:
>
> * * *
>
> 7. Any activity in the presence of students while on school property, which activity is intended and/or designed to promote, further or assert a position(s) on labor relation issues.

See Da161.

In October of 2022, the Board received a complaint regarding a practice engaged in by certain teachers of placing in the windshields of their cars campaign lawn signs of local board of education candidates, while parked in the school parking lot during the school day. See Da48, Da104. In response to the Complaint, Superintendent Dr. Nicholas Bernice sent an email to Board staff on October 14, 2022 stating:

> It has come to my attention that some employees have placed campaign signs under the windshield of cars parked on school property during the school day. The practice of prominently displaying local campaign signs in car windows while a vehicle is parked in the school parking lot constitutes political activity in violation of District Policy/Regulation 3233. Accordingly, I am asking that this practice immediately cease.
>
> In addition to constituting a violation of District Policy/Regulation 3233, the prominent placement of such

> signs in a vehicle, while it is parked on school grounds, interferes with the orderly and efficient operation of the school and constitutes activity that is part of a predominately personal, not public nature.
>
> The continued placement of such signs in car windshields or windows is not protected political speech or conduct under the law, and continuing the activity shall have an individual disciplinary response. See Da158.

Relevantly, Policy 3233 states that "A teaching staff member may not engage in political activity on school grounds unless permitted in accordance with Board Policy No.:7510 – Use of School Facilities and/or applicable Federal and State laws[.]" See Da160. Policy 7510 provides: "Permission to use school facilities shall be granted only to persons and organizations that agree to the terms of Policy and Regulation 7510, the requirements as outlined in the use of school facilities application, and in accordance with the terms outlined in the approval granted by the school district." See Da166. Policy 7510 includes, in pertinent part, the following "limitations on use":

> A. During the regular school year, school facilities are available for use only during the hours of 4:00 pm and 10:00 pm. School facilities are not available for use during the school day or for any use that may interfere with the school district's educational or extra-curricular program.
>
> B. The use of school facilities will not be granted for the advantage of any commercial or profit-making organization or partisan political activity, or any purpose that is prohibited by law.

Id.

Dr. Bernice advised school staff via email that, in addition to constituting a violation of Policy 3233, the prominent placement of political signs in vehicles while parked on school grounds interfered with the orderly and efficient operation of school, and constituted activity that was predominantly personal in nature. See Da175. Dr. Bernice also advised that the continued placement of such signs in car windshields or windows was not protected political speech of conduct under the law, and continuing the activity would result in an individual disciplinary response. Id.

Ms. Camporeale testified toward the Respondent's Complaint's allegation of selective enforcement of Policy 3233, citing just one instance during Back to School Night in 2022, when the campaign manager of a board candidate was standing outside the front doors of Ryerson Middle School handing out campaign flyers. See Da186 (38:1-25 to 40:1-25). Official action was not taken by the Association against the conduct because by the time Ms. Camporeale spoke with the Association's Vice President for the building and the mayor, Back to School Night had started and the campaign manager had left the premises. See Da187 (41:2-8).

Ms. Camporeale also testified in her deposition that in the fall of 2022, she recalled seeing the campaign manager and members of his ticket in the parking lot

of Hewitt Elementary School after board meetings, handing out flyers. See Da187 (43:17-44:12). The Board's meetings in the fall of 2022 were all conducted after school hours, with a scheduled start time of 7:00 p.m., well after the conclusion of the school day. There is no evidence that the Board or district administration were ever informed of these instances. Id. at (43:7-9).

From November 2022 through January 6, 2023, Dr. Bernice was on military leave from his position and Dr. Kathryn Fedina served as the Board's Interim Superintendent of Schools during the time period. See Da50, Da105. Chrisopher Romano was employed as a teacher by the Board for the 2021-2022 school year through the 2023-2024 school year. See Da191 (7:1-20). Mr. Romano was assigned to teach seventh grade math for the 2021-2022 and 2022-2023 school year. See Da191 (7:11-18). During his employment with the Board, Mr. Romano had a decal on the rear window of his truck, which displayed language from the Second Amendment to the Constitution. See Da223, Da193 (15:1-16). Specifically, the decal read: "We the People, a, well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Id.

On December 14, 2022, a middle-school parent sent an email to the administrators of the district, including Dr. Fedina, submitting a complaint regarding the decal on Mr. Romano's truck. See Da228. The parent requested that

Mr. Romano be made to remove the decal. Id. On December 15, 2022, Dr. Fedina received another email from the parent with articles supporting the parent's argument that the decal constitutes political speech that the teacher did not have the right to engage in at school. See Da230.

On December 19, 2022, Dr. Fedina responded via email to the parent, informing the parent that pursuant to the First Amendment to the Constitution, the district could not require Mr. Romano to remove the truck decal. See Da234. On December 19, 2022, the parent responded to Dr. Fedina's email, arguing that a teacher could be required to remove such decals and that the failure to require Mr. Romano to remove the decal indicates that the district condones the message communicated by the decal. See Da234.

Based on the unrelenting arguments being made by the parent, Dr. Fedina requested that Ryerson Middle School Principal, Dr. Jennifer Wirt, discuss the parent's complaint with Mr. Romano, and ask him if he would be willing to park his truck in a different location of the school parking lot or to cover the decals in some way temporarily, to allow the district to attempt to deescalate the parent's complaint. See Da106. Dr. Fedina emphasized that Mr. Romano should be advised of his right to keep the decals on his truck, and only asked whether he would willingly temporarily cover the decals or park in another location. Id.

Mr. Romano testified during his deposition that on December 19, 2022, he spoke with Dr. Wirt in her office. Mr. Romano testified that Dr. Wirt and Carolyn Leonard, the Dean of Students, were present at the meeting with him. See Da193 (13:13-18). Dr. Wirt explained that a parent had complained about the decals on Mr. Romano's truck, and the complaint had escalated to the Interim Superintendent. Id. at (15:25-16:6). Mr. Romano then spoke to his union representative after meeting with Dr. Wirt, expressing his frustration at having been advised of the parent's complaint. See Da195 (21:8-22:20).

Mr. Romano testified that on December 22, 2022, he was told to disregard the request to do anything with regard to his truck decals. See Da202 (52:18-21). Mr. Romano did not change the location of where he parked his truck within the school parking lot until the 2023-2024 school year, when he moved his usual parking space to be closer to the exit of his sixth (6^{th}) grade classroom, to which he had been assigned that year. See Da195 (23:1-23).

Dean of Students, Carolyn Leonard, testified that during the December 19, 2022 meeting, Dr. Wirt affirmed Mr. Romano's right to have the decals, and stated that she was not asking him to remove the decals, but asked if he would be willing to consider temporarily drawing less attention to the truck decals by, for example, parking the truck backward, covering the decals, or parking down the street. See Da210 (19:18-20:2). Ms. Leonard further testified that Dr. Wirt told Mr. Romano

that the request was only temporary, until the parent calmed down. Id., at (20:11-15). Ms. Leonard testified that there was never a request made for Mr. Romano to remove the decals from the truck. See Da210 (20:11-15).

On December 2, 2021, Dr. Bernice observed Mr. Romano's class, and gave him an overall score of 2.92 in domains 2 and 3. See Da239. Mr. Romano achieved an overall Summative Rating of 3.27 for his 2021-2022 Summative Evaluation. See Da248. On December 14, 2022, Dr. Wirt observed Mr. Romano while teaching, and gave him an overall score of 3 in domain 1. See Da250. Dr. Wirt commented that his "get to know you" questions were mostly geared toward sports, and that students with other interests were excluded. Id. Dr. Wirt also commented that showing movies or sports in math class is not appropriate and should be discontinued. Id. On December 15, 2022, Dr. Wirt observed Mr. Romano, and gave him a score of 2.86 in domains 2 and 3. See Da252. Overall, Mr. Romano received a 3.11 on his 2022-2023 Summative Evaluation. See Da262. Mr. Romano received an overall Summative Rating of 3.64 for the 2023-2024 school year, following his transfer. See Da273.

Ms. Camporeale testified that she asked Dr. Fedina to produce copies of the emails received by Dr. Fedina evidencing the parent's complaint over Mr. Romano's decals. See Da186 (37:9-16). Ms. Camporeale testified to having stated to Dr. Fedina during the phone call that if Dr. Bernice had not issued the e-mail

regarding the placement of the campaign lawn signs in teachers' car windshields, the Dr. Wirt's conversation with Mr. Romano might not have been that big of a deal but because of the campaign lawn sign communication, Mr. Romano's conversation with Dr. Wirt was an issue. See Da183 (25:13-20). Ms. Camporeale testified that later that day on December 22, 2022, Dr. Fedina told Ms. Camporeale that Mr. Romano should disregard any request made of Mr. Romano, and that she would let Dr. Bernice deal with it upon his return. See Da182 (24:6-24:19).

Mr. Romano testified that in April of 2023, he received a notification that his teaching contract would not be renewed for the 2023-2024 school year. See Da195 (23:22-24:14). Mr. Romano testified that he proceeded with a Donaldson hearing in May of 2023, where he received renewal of his employment contract for the 2023-2024 school year from the Board. Id., at (24:15-24). Mr. Romano attributes his non-renewal notice to his truck decals and interactions he had with Dr. Wirt during the 2022-2023 school year concerning lifestyle disagreements. See Da195, Da196 (27:24-28:1), (28:11-19), (28:23-29:1). Mr. Romano testified that he believes he was assigned to teach sixth grade math during the 2023-2024 school year in retaliation for refusing to remove his truck decals. See Da196 (25:20-26:18). Dr. Bernice told Mr. Romano that he was assigned to sixth grade math for a "fresh start" after the renewal of his employment for the 2023-2024 school year by the Board. See Da196 (26:10-27:3). Mr. Romano's performance improved upon his

assignment to sixth grade math, going from a 3.11 Summative Evaluation Score ("SES") for that 2022-2023 school year, to a 3.64 SES for the 2023-2024 year. See Da262, Da273.

STANDARD OF REVIEW

In reviewing the grant or denial of summary judgment, the standard of review is de novo. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). The Appellate Court first asks if, in viewing the evidence in the light most favorable to the nonmoving party, genuine issues of material fact exist. New Gold Equities Corp. v. Jaffe Spindler Co., 453 N.J. Super. 358, 372 (App. Div. 2018) (citing Rowe v. Mazel Thirty, LLC, 209 N.J. 35, 41 (2012)). If no genuine issues of material fact remain, the court is required to "decide whether the trial court correctly interpreted the law." DepoLink Court Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007)). The trial court's factual findings are binding on appeal when supported by adequate, substantial and credible evidence in the record. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974). The trial court's conclusions of law "and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

LEGAL ARGUMENT

I. The Trial Court Erred in Granting Summary Judgment in Favor of Respondent as Board Policy 3233 is Not Unconstitutionally Overbroad and Does Not Infringe on Teaching Staffs' First Amendment Rights (Da048).

In coming to the conclusion that Board Policy 3233 is unconstitutionally overbroad, the Trial Court determined that the Board's prohibiting of teaching staff members from posting Board of Education candidate lawn signs in their car windshields while parked in the school parking lot during school hours did not "equate to job-related speech." See Da024. The Trial Court further determined that Policy 3233 did not confine prohibitions to the setting of the school facility or classroom, nor did it limit prohibitions to situations where students were present. Id. Thus, the Trial Court concluded that Board Policy 3233 is unconstitutionally overbroad. Id.

The Trial Court entirely relied upon the Appellate Division's decision in Green Township Education Ass'n v. Rowe, 328 N.J. Super. 525 (App. Div. 2000), and misconstrued Green in deciding to grant summary judgment in favor of the Plaintiff/Respondent and to deny the Board's Motion for Summary Judgment.

In Green, the Appellate Division found two of the plaintiff school board's policies regulating political speech to be unconstitutionally overbroad. Green 328 N.J. Super. at 538. Specifically, the Appellate Division determined that the issue

with the policy in Green was that its prohibitions "were not invariably confined to the setting of the school facility or classroom," "[n]or are its restrains and prohibitions limited to situations in which students are present." Id. at 536. For example, the Appellate Division determined that the first clause of the policy in Green prohibits "[a]ll employees' from (a) 'active campaigning,' or (b) 'actively promoting any opinions on voting issues,' (3) on school property." Id. The Appellate Division noted that, read literally, the first clause of the policy in Green barred employees from using lunch breaks or other free time to express their opinions to other willing adults even in the absence of students, or precludes teachers from speaking at board of education meetings conducted at the school. Id.

The Appellate Division also determined that the second clause of the policy in Green, which prohibited teachers working at the school from displaying campaign materials on an election day, was not limited to school property. Id. As read by the Green Court, the second clause of the policy prohibited teachers from passing out political leaflets off of school grounds outside of school hours, and could restrict even the most benign activities, such as posting campaign signs on their own private property. Id.

In full, the policy at issue in Green stated:

> All employees are prohibited from active campaigning on school property on behalf of any candidate for local, state

> or national office or actively promoting any opinions on voting issues.
>
> All employees working in a facility of this district which is used as a polling place are prohibited on an officially declared election day from displaying any materials that would promote the election of any candidate or opinions on voting issues.
>
> All employees are prohibited from engaging in any activity with students during performance of the employees' duties, which activity is intended or designed to promote, further or assert a position on any voting issue, board issue, or collective bargaining issue.

Green, 328 N.J. Super. at 529.

Conversely, Appellant's Board Policy 3233 addresses the overbreadth concern identified in Green by expressly prohibiting "the use of school grounds and school time for partisan political purposes." See Da160. Specifically, Policy 3233 offers the following guidelines to govern teaching staff members in their political activities:

> 1. A teaching staff member shall not engage in political activity on school grounds unless permitted in accordance with Board Policy No. 7510, Use of School Facilities and/or applicable Federal and State laws;
>
> 2. A teaching staff member shall not post political circulars or petitions on school grounds nor distribute such circulars or petitions to students nor solicit campaign funds or campaign workers on school grounds;
>
> 3. A teaching staff member shall not display any material that would tend to promote any candidate for office on an

> election day on school grounds that are used as a polling place;
>
> 4. A teaching staff member shall not engage in any activity in the presence of students while on school grounds, which is intended and/or designated to promote, further or assert a position(s) on labor relations issues.
> See Da160 (emphasis added).

Board Regulation 3233, consistent with Board Policy 3233, provides in pertinent part:

> A. Prohibited Activities:
>
> The following political activities are prohibited on school district premises:
> * * *
> 7. Any activity in the presence of students while on school property, which activity is intended and/or designed to promote, further or assert a position(s) on labor relation issues.
>
> See Da161.

Board Policy 3233 clarifies that "[t]he provisions of this Policy do not apply to the discussion and study of politics and political issues appropriate to the curriculum, the conduct of student elections, or the conduct of employee representative elections" and "[n]othing in this Policy shall be interpreted to impose a burden on the constitutionally protected speech or conduct of a teaching staff member or a student." See Da161.

Unlike the policy held to be overbroad in Green, Policy 3233 does not impose a blanket prohibition on political activity at all times. Rather, Policy 3233 prohibits teachers' use of school grounds and school time for "partisan political purposes" "in the presence of students", and prohibits activity which is "intended to promote, further, or assert a position(s) on labor relation issues." See Da160. Policy 3233 does not prohibit teachers from engaging in political conversations in private away from students, and explicitly supports teachers' First Amendment rights. Id. Moreover, the prohibition against teachers from engaging in political activity is no broader than the restriction imposed on all citizens with regard to the use of the school grounds during school time, controlled by Board Policy and Regulation 7510. See Da160, Da166.

Policy 3233 does not suggest teachers are prohibited from discussing politics between other willing adults in private on school grounds, as the policy in Green prohibited. Similarly, Policy 3233 only limits a teacher's ability to post political circulars on school grounds, not off school grounds, as the policy held to be overbroad in Green did, and prohibits teachers from engaging in political activity in the presence of students that is designed to promote, further, or assert a position(s) on labor relations issues. See Da160.

While generally relating to the same subject matter as the policy in Green, Board Policy 3233 was specifically developed by Strauss Esmay following the

Green decision to comply with the holding in Green and prohibit political activity in the school environment in the presence of students and on school grounds, contrary to the policy held to be overbroad in Green. See Da160. As the Appellate Division noted in Green, a policy tailored to prohibiting teachers from engaging in political activity in the presence of students while on school property could pass constitutional muster. See Green, 328 N.J. Super. at 537 (citing Tinker v. Des Moines Indep. Community School District, 393 U.S. 503 (1969)). Board Policy 3233 is narrowly tailored to not infringe on teachers' First Amendment rights, while also ensuring that the teachers properly execute their job functions during the school day, by focusing on fostering a healthy educational environment for students, rather than prominently posting signs in car windshields on school property during the school day intended and/or clearly designed to promote, further, or assert a position(s) on labor relations issues.

Here, teachers were asked to cease the practice of prominently displaying board of education candidate campaign lawn signs in car windows, which is clearly partisan political activity, on school property during the school day. See Da160. Students must walk by the political campaign signs on their way into the school building, being subjected to partisan political campaigning by their teachers, figures of authority, on the school grounds during school hours.

Moreover, the campaign lawn signs propped in the windshields of teachers' cars are not just innocuous political speech or statements, like a small bumper sticker supporting a candidate may be. Nor are they equivalent to discussing politics privately in the school with other consenting adults, which is expressly not prohibited by Policy 3233 and was prohibited under the policy in Green. Rather, the teachers were actively campaigning for political candidates to the board of education, positions that directly impact a teacher. These teachers had to park their vehicles, and then prop up the signs in their windshields before exiting the car and entering the school, which is active partisan campaigning on school grounds during school hours.

Moreover, the actions taken by the teachers are motivated by private concerns of the teachers, as the candidates being promoted by the teachers' actions are for seats on the board of education that will determine the teachers' salaries and benefits, and employ the superintendent who exercises supervisory and managerial authority over the teachers.

Contrary to the arguments advanced by Respondents below, Policy 3233 does not single out teachers for disparate treatment. Board Policy 4233, 9150 and 7510 all apply similar restrictions to political activity on school grounds to all employees and members of the community. See Da166. Similarly, Respondent's claims of selective enforcement are meritless. The fleeting incidents referenced by

Ms. Camporeale in her deposition testimony occurred well after student dismissal and outside of school time. Moreover, there is no evidence of the Board ever having been notified of the alleged incident(s) and failing to take any action. See Da187 (43:7-9). By contrast, the Board was very much aware of the political activity concerning the lawn signs, because it occurred throughout the entire school day on school property, while students were present, and was brought to the attention of the Board. See Da158.

The Trial Court clearly erred in concluding that Board Policy 3233 is overbroad by not confining its prohibitions to inside the school building or classroom. See Da029. Policy 3233 is narrowly tailored to effectively achieve its goals in teaching students and restricting teacher's political speech on school grounds during the school day as necessary to prevent interference with the performance of the educational mission of their job, teaching children free of partisan pressure. See Green, 328 N.J. Super. at 539. Accordingly, the Trial Court's granting of summary judgment in favor of Respondent must be vacated and reversed, as the Trial Court's application of Green to Board Policy 3233 was misguided and erroneous.

II. Policy 3233 Does Not Infringe on First Amendment Rights of Teachers Nor is it Overbroad (See Da028).

Not only was the trial court's application of Green toward Policy 3233 erroneous, but Policy 3233 is not overbroad or violative of the First Amendment as a matter of law. The overbreadth doctrine is a "strong medicine' only to be used as a last resort." New York v. Ferber, 458 U.S. 747, 769 (1982) (quoting Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973)). Courts may hold a law facially invalid for overbreadth under the First Amendment only in circumstances where the "challenger demonstrates that the statute 'prohibits a substantial amount of protected speech' relative to its 'plainly legitimate sweep.'" United States v. Hansen, 599 U.S. 762, 770 (2023) (quoting United States v. Williams, 553 U.S. 285, 292 (2008)). "[F]acial overbreadth is an exception to our traditional rules of practice." United States v. Williams, 553 U.S. 285, 292 (2008). To that end, facial overbreadth "has not been invoked when a limiting instruction has been or could be placed on the challenged statute." Id. at 613.

While teachers do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate, Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 707 (1969), the government "may impose restraints on the job-related speech of public employees that would be plainly unconstitutional if applied to the public at large." Pickering v. Bd. of Educ., 391 U.S. 563, 573-74 (1968). A classroom is not a free market of ideas, and there is

often no counterpoint to the view expressed by the teacher. Green, 328 N.J.Super. at 539 (App. Div. 2000).

In assessing whether a public employee's speech is protected by the First Amendment and not subject to regulation by a state employer, a court must balance "the interest of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Connick v. Myers, 461 U.S. 138, 142 (1983). First a court must examine whether "the speech at issue was that of a private citizen speaking on a matter of public concern." If the employee was speaking as a citizen on a matter of public concern, the court must "consider whether the employee's interest in First Amendment expression outweighs the public employer's interest in what the employer has determined to be the appropriate operation of the workplace." Garcetti v. Ceballos, 547 U.S. 410, 410 (2006). Related to a public employee's official duties, speech is not entitled to First Amendment protection. Id.

While the Green Court determined that the school board policy at issue in Green was unconstitutional, the Court also determined that the teachers' speech in adorning political buttons targeted toward school board members was properly subject to restrictions by the state as an employer. Green, 328 N.J. Super. at 536. Specifically, the Green Court determined that while the political buttons worn by

the teachers related to a matter of public concern, the teachers also had a personal stake in the political issue. Id. The Green Court upheld the school's ban on the wearing of political buttons by teachers as not violative of the teachers' First Amendment rights. Id. The Court noted that while the wearing of buttons may appear to be innocuous, "the Board could reasonably have concluded that such displays carry a risk of interfering with the performance of [the] job." Green, 328 N.J. Super. at 539. In coming to this conclusion, the Court noted that the prohibition did not bar teachers from wearing buttons in other settings not involving the presence of students, who are a captive audience while at school. Id. As the Green Court noted, there is often no counterpoint to views expressed by the teachers. Id.

In the instant matter, while the campaign lawn signs were not placed directly in the classroom, they were prominently displayed in the parking lot of the school, on school property during the school day, in front of all students making their way into or exiting the building, for the obvious purpose of promoting board candidates designated to further the teachers' interests on labor relations issues.

Moreover, the prominent and active display of campaign lawn signs in car windshields on school property is categorically distinct from the use of a bumper sticker. The teachers cannot drive to school with the campaign lawn signs in the windshields of their car. Instead, upon arriving to the school parking lot, during

campaign season, the teachers must position the sign in the windshield to be seen by any person entering the school to notice, including impressionable students. A school environment is not a place for proselytizing students to advance a teacher's financial interests or to be a teacher's soapbox. See River Dell Educ. Assn. v. River Dell Bd. of Educ., 122 N.J.Super. 350, 357 (Law Div. 1973).

While a board of education election is undoubtedly political, and would typically be a matter of public concern, the board of education engages in negotiations with the Association concerning contractual salaries and other benefits, and hires superintendents who hold supervisory/managerial authority over members of the Association. The Association members' prominent placement of campaign lawn signs on school property are plainly job related, as the teachers were essentially advocating to students during the school day to support their preferred candidates for board membership. The Board reasonably concluded that the campaign lawn sign displays posted in front of the school during school hours carried a risk of interfering with the performance of the teachers' jobs, and interfered with the educational environment.

Accordingly, the Board's decision to prohibit such conduct was not violative of any First Amendment rights of the Respondents, as the political activity was partisan activity on school grounds in front of students, and was predominantly job-related rather than a matter of public concern. Thus, the teachers' promotion of

the candidacies of individuals for board membership, where they would be in a position to take action to benefit the terms and conditions of the teachers' employment, is not protected speech for a public employee under the First Amendment. Accordingly, the Trial Court's granting of summary judgment for the Respondent adjudging Board Policy 3233 unconstitutional, must be reversed, the Board's motion for summary judgment should be granted, and this matter dismissed.

III. The Trial Court Properly Concluded That Respondent's Did Not Assert a First Amendment Retaliation Cause of Action in Their Complaint (See Da029).

In Respondent's Cross-Motion for Summary Judgment, Respondent raised, for the first time, a First Amendment retaliation claim. This claim was not raised in Respondent's Complaint, and the Board was not made aware of this claim during discovery, nor was this claim otherwise pursued in the course of litigation. As the Trial Court correctly determined, Respondent is not entitled to summary judgment on any First Amendment claim concerning Mr. Romano's one grade-level transfer from seventh-grade math teacher to a sixth-grade math teacher. See Da029. The Board is not appealing the Trial Court's determination that Respondent did not properly raise a First Amendment retaliation claim in its complaint and the issue

was not otherwise litigated. See Da030. The Board asserts that the Trial Court properly dismissed this claim and it should not be entertained on appeal.

a. Respondent Cannot Amend Their Complaint on a Cross-Motion for Summary Judgment to Add a Cause of Action to Defeat Summary Judgment.

As a threshold matter, a plaintiff cannot present an entirely new cause of action or expand the scope of his cause of action by raising a new claim in opposition to a motion for summary judgment outside the scope of the complaint. Carlini v. Curtiss-Wright Corporation, 71 N.J. Super. 101, 108 (App. Div. 1961); see Taylor v. Sanders, 536 F. App'x 200, 203 (3d Cir. 2013) ("At the summary judgment stage, the proper procedure for plaintiffs to assert a new claim is to amend the complaint"); Bell v. City of Philadelphia, 275 F. App'x 157, 160 (3d Cir. 2008) ("A plaintiff 'may not amend his complaint through arguments in his brief in opposition to a motion for summary judgment'").

In the underlying matter, Respondent attempted to raise a new cause of action through their Cross-Motion in opposition to the Board's motion. Not only was this clearly an attempt to add another claim to Respondent's Complaint to potentially avoid dismissal on summary judgment, but this new claim had not been litigated by either party. The Board was unaware of this cause of action until the filing of the Cross-Motion, and did not pursue the newly presented claim during

the discovery period because it was never pled. As such, the Trial Court's refusal to consider the claim should be upheld.

b. Respondent Lacks Standing to Assert a First Amendment Retaliation Claim on Behalf of Mr. Romano.

Respondent did not have standing to raise a First Amendment retaliation claim on behalf of Mr. Romano. Rule 4:26-1 mandates that every action "may be prosecuted in the name of a real party in interest." In order to demonstrate standing, a plaintiff needs to demonstrate a "sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and there must be a substantial likelihood that the plaintiff will suffer harm in the event of an unfavorable decision." N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 409 (App. Div. 1997), appeal dismissed as moot, 152 N.J. 361 (1998). An Association has standing as the sole party plaintiff when the complaint is "confined strictly to matters of common interest and does not include any individual grievance which might perhaps be dealt with more appropriately in a proceeding between the individual [member] and the [defendant]." Id. at 416.

Here, Mr. Romano was not a named party in the underlying action. Respondent sought, for the first time, in its Cross-Motion for Summary Judgment, to raise a new claim on behalf of Mr. Romano. However, as it related to a First Amendment retaliation claim, the Respondent would not suffer any harm in the

event of an unfavorable decision. Instead, any First Amendment retaliation claim by Mr. Romano was between Mr. Romano and the Board. Thus, Plaintiff lacked standing to assert a First Amendment retaliation claim on behalf of Mr. Romano, and the attempted conflation of a retaliation cause of action in a declaratory judgment action on the constitutionality of Board Policy 3233, facially and as applied, was properly dismissed by the Trial Court.

c. Plaintiff Cannot Establish a First Amendment Retaliation Claim on Behalf of Mr. Romano as a Matter of Law.

Even if Respondent had standing and had pled a cause of action for First Amendment retaliation, the facts of this case do not demonstrate that Respondent would have been entitled to the relief sought. A cause of action brought under the New Jersey Civil Rights Act ("NJCRA"), N.J.S.A. 10:6-1, et seq. has the same elements as the analogous federal Civil Rights Act, 42 U.S.C. § 1983 (Section 1983), after which the NJCRA was modeled. Rezem Family Assocs. L.P. v. Borough of Millstone, 423 N.J. Super. 103, 115 (App. Div. 2011). To prevail on a First Amendment retaliation, claim under 42 U.S.C. § 1983, a plaintiff must establish "(1) constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising [her] constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action." Thomas v. Indep. Twp., 463 F.3d 285, 296 (3d Cir. 2006). If a plaintiff

satisfies these elements, the government may avoid liability if it can show by a preponderance of the evidence that it would have taken the adverse action "even in the absence of the protected conduct." Miller v. Clinton Cty., 544 F.3d 542, 548 (3d Cir. 2008).

Whether a public employer's conduct rises to the level of an actionable wrong is "a fact intensive inquiry focusing on the status of the [employee], the status of the retaliator, the relationship between the [employee] and the retaliator, and the nature of the retaliatory acts." Brennan v. Norton, 350 F.3d 399, 419 (3d Cir. 2003). "[C]ourts have declined to find that an employer's actions have adversely affected an employee's exercise of his First Amendment rights where the employer's alleged retaliatory acts were criticism, false accusations, or verbal reprimands." McKee v. Hart, 436 F.3d 165, 170 (3d Cir. 2006).

Appellant recognized that Mr. Romano's Second Amendment truck decals are a form of protected speech, and advised the parent complainant of such in a reply email. See Da134. No facts were adduced in discovery demonstrating a retaliatory action "sufficient to deter a person of ordinary firmness from exercising their constitutional rights."

The facts of record demonstrated that Mr. Romano had a decal with language from the Second Amendment to the Constitution on his truck. See Da95-97. The Interim Superintendent at the time, Dr. Kathryn Fedina, received numerous

complaints from a concerned parent, whose child had been disciplined by the district concerning an incident involving references to guns. Dr. Fedina had asked the middle school principal, Dr. Jennifer Wirt, to ask Mr. Romano to either park away from the school or cover the decal to temporarily draw less attention to his vehicle while the administration sought to deescalate the parent's complaint. See Da107. Dr. Wirt advised Mr. Romano that he had every right to keep the decal on his truck. This meeting occurred on December 19, 2022. Id.

The facts also demonstrate that before then Superintendent, Dr. Nicholas Bernice's decision not to recommend Mr. Romano for renewal for the 2023-2024 school year, Mr. Romano's SES scores were within the effective range but declining. See Da248, Da262. Thereafter, for the 2023-2024 school year, after Mr. Romano appeared before the Board and obtained the renewal of his contract for the 2023-2024 school year, Dr. Bernice transferred Mr. Romano from teaching seventh grade math to teaching sixth grade math. As a sixth-grade teacher, his teaching evaluations improved significantly. See Da273. Dr. Fedina, who had received the parent's complaints and asked Dr. Wirt to ask Mr. Romano if he would be willing to assist the district in de-escalating the parent complaint, by temporarily covering the decal, only served as Interim Superintendent from November 2022 until early January 2023, and thus had no input as to the non-renewal and transfer decisions made by Dr. Bernice. See Da50. Superintendent Dr. Bernice returned to his

position in the District in January 2023, and made the decision of non-renewal and to transfer Mr. Romano to the sixth grade. No evidence demonstrates that Dr. Bernice had any part in the conversations regarding Mr. Romano's truck decal.

Respondent argued in the underlying matter that the retaliatory conduct was Mr. Romano receiving the notice of non-renewal and his transfer of one grade level to the sixth grade. First, the facts clearly demonstrate that Mr. Romano was ultimately renewed. Moreover, the Courts have held that a transfer between grade levels, without more, is not retaliatory action sufficient to sustain a First Amendment retaliation claim. In Holmes v. Newark Pub. Sch., 2016 WL 3014404, at *12 (D.N.J. May 25, 2016), for example, a plaintiff was unable to sustain a First Amendment cause of action where the court determined that the transfers between grade levels "were anything more than neutral changes to a position that he subjectively deemed to be less desirable." Id., See Da288; see also Revell v. City of Jersey City, 2009 WL 3152110, at *6 (D.N.J. Sept. 28, 2009) (finding transfer not retaliatory because plaintiff did not show that transfer was a detrimental change in position), aff'd, 394 Fed. Appx. 903 (3d Cir. 2010). The Holmes Court went on to find that the plaintiff did not present any evidence that the lower grade level was inferior in any way or that the transfer would deter a person "of ordinary firmness from filing complaints." Id.; See also Revell v. City of Jersey City, 2009 WL 3152110, at *6 (D.N.J. Sept. 28, 2009), aff'd, 394 F. App'x 903 (3d Cir. 2010)

(Transfer between grade levels where no loss of compensation or benefits not retaliatory action that would "deter a person of ordinary firmness from exercising her free speech rights"); See Da301.

Mr. Romano was transferred from seventh to sixth grade following a series of declining evaluations. Dr. Bernice, who had no involvement with the situation concerning Mr. Romano's truck decal, decided that he could use a "fresh start" and transferred him to sixth grade, with no loss of benefits or compensation. See Da196 (26:10-27:3). Put simply, the transfer of Mr. Romano by a single grade level with no loss of benefits or compensation, while not being retaliatory or related to the truck decal in any way, could certainly not be sufficient to deter a person of ordinary firmness of expressing their constitutional right. A reasonable factfinder could not plausibly determine, based on the facts presented, sufficient evidence to satisfy a First Amendment retaliation claim. Thus, the Trial Court properly dismissed Respondent's First Amendment Retaliation claim.

d. Plaintiff Cannot Establish a First Amendment Political Retaliation Claim on Behalf of Mr. Romano as a Matter of Law.

To the extent Respondent also asserted a cause of action for political retaliation under the First Amendment, such a claim similarly fails as a matter of law. To establish retaliation due to political affiliation, a plaintiff must show: "(1) that he was employed at a public agency in a position that does not require a

political affiliation, (2) that the employee maintained an affiliation with a political party, and (3) that the employee's political affiliation was a substantial motivating factor in the adverse employment decision." Goodman v. Pennsylvania Tpk. Comm'n, 293 F.3d 655, 663 (3d Cir. 2002) (quoting Roberston v. Fiore, 62 F.3d 596, 600 (3d Cir. 1995)). If the aforementioned elements are satisfied, the employer "may avoid a finding of liability by demonstrating by a preponderance of the evidence that it would have made the same decision even in the absence of the protected affiliation." Robertson, 62 F.3d at 599.

Respondent cannot establish the final two prongs of the political retaliation test. To start, it is unclear what political party Mr. Romano would be affiliated with. The Second Amendment is contained in the Bill of Rights of the Constitution, and is associated with multiple political parties. Similarly, Mr. Romano being a hunter does not assign him to a political party. In fact, there is no mention in the factual record as to what political party Mr. Romano belongs to. Rather, the facts suggest that Mr. Romano may support the second amendment and enjoys hunting. This is not sufficient to establish an affiliation with a political party for purposes of political retaliation under the First Amendment.

Moreover, the motion record is devoid of any evidence to suggest that Mr. Romano's political views were a contributing factor towards the alleged retaliatory events, which again, were not retaliatory as a matter of law. Respondent suggested

below that the fact that Mr. Romano was a hunter and the principal, Dr. Wirt, was a vegan demonstrates the causal link to establish Mr. Romano was transferred due to his political beliefs. However, as the facts clearly show, Dr. Wirt had no part in the transfer of Mr. Romano. That decision was made by Dr. Bernice, who was on military leave when Mr. Romano was asked if he would assist in the attempted de-escalation of a parent complaint by temporarily drawing less attention to the truck decal within the school parking lot. See Da105. Similarly, the decision to notify Mr. Romano of the parent's complaint was made by then Interim Superintendent Dr. Fedina, who was not involved in the decisions to not recommend Mr. Romano for renewal and to transfer him to teach another grade level of math as a "fresh start."

For the reasons stated above, the Trial Court properly dismissed Respondent's purported First Amendment Retaliation claim, and the Court should uphold that aspect of the November 13, 2024 Decision.

CONCLUSION

For the aforementioned reasons, the Honorable Vicki A. Citrino's Decision granting summary judgment in favor of Respondent and denying summary judgment for the Board should be reversed and vacated. Further, the Board's motion for summary judgment should be granted.

Respectfully submitted,

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By: */s/ Mark A. Wenczel*
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Dated: May 2, 2025

RINGWOOD EDUCATION ASSOCIATION, Respondent, v. RINGWOOD BOARD OF EDUCATION Appellant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001159-24T4 ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY PASSAIC COUNTY LAW DIVISION DOCKET NO.: PAS-L-856-23 Sat Below: Hon. Vicki A. Citrino, J.S.C.

BRIEF ON BEHALF OF RESPONDENT RINGWOOD EDUCATION ASSOCIATION

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PRELIMINARY STATEMENT

This appeal arises from the Superior Court of New Jersey Law Division Passaic County November 13, 2024 Order granting summary judgement (hereinafter "the Order") in favor of the Ringwood Education Association ("the Association" or "Appellee") and holding the Ringwood Board of Education (hereinafter "the Board" or "Appellant") District Policy 3233 violative of the First Amendment rights of teaching staff members and unconstitutional. (Da24). District Policy 3233 proscribed the use "of school grounds and school time" for partisan political purposes. (Da160). Judge Citrino's Order was a lawful and proper application of longstanding precedent set forth in Green Township Education Association v. Rowe where the Appellate Division struck a school board policy that proscribed teacher speech outside the classroom and school facility. 328 N.J. Super. 525, 528 (App. Div. 2000).

On October 14, 2022, the Ringwood Board of Education Superintendent Dr. Nicholas Bernice sent an e-mail to the entire staff demanding the previously accepted practice of displaying campaign lawn signs under car windshields while parked on school grounds cease. (Da158). The Board policy cited was District Policy 3233 which proscribes teaching staff members from circulating political circulars or campaigning of any kind on school grounds. (Da160). In discovery, the Association demonstrated this overbroad and discriminatory policy was neither

applied nor enforced in practice until the Superintendent sent the October 14, 2022 email to the entire staff nor was it applied to non-staff, such as parents who drive on school property. (Da69). Judge Citirino correctly held this Policy was unconstitutionally overbroad and discriminatory towards teachers under established precedent. The Board sets forth no compelling argument to disturb Judge Citrino's rightful application of the Green precedent.

PROCEDURAL HISTORY

On March 20, 2023, Plaintiff filed the instant Complaint for Declaratory Judgment holding the District Policy 3233 unconstitutional for violating the First Amendment rights of teaching staff members. (Da1). On May 9, 2023 the Board filed its Answer. (Da9). Discovery and deposition commenced and closed. On September 13, 2024, the Board filed a Motion for Summary Judgement seeking dismissal of the Association's Complaint. On October 1, 2024, the Association filed a Cross-Motion for Summary Judgement. Oral argument was held on November 13, 2024 and Judge Citrino issued the Order the same day. (Da24).

STATEMENT OF FACTS

The Association accepts the Board's Statement of Facts in its entirety.

STANDARD OF REVIEW

The Court reviews de novo the grant or denial of a motion for summary judgment. Coyne v. State Dep't of Transp., 182 N.J. 481, 491 (2005). Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46–2(c). The judge must decide whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540, 666 A.2d 146 (1995). To the extent that the trial court's ruling with respect to the statute of repose was premised upon factual findings, those findings are entitled to substantial deference on appellate review, and are not overturned if they are supported by "adequate, substantial, and credible evidence." Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282, 293 (2001).

LEGAL ARGUMENT

I. JUDGE CITRINO'S ORDER LAWFULLY AND RIGHTFULLY APPLIED ESTABLISHED PRECEDENT SUCH THAT DISTRICT POLICY 3233 WAS PROPERLY STRUCK DOWN AS OVERBOARD AND AN UNCONSTITUTIONAL INFRINGEMENT ON THE FIRST AMENDMENT RIGHTS OF TEACHERS (Da24)

The United States Supreme Court set forth the analysis that guides the relationship between public employee speech and the workplace in Garcetti v. Cebellos, 547 U.S. 410, 410 (2006). First, there is a determination whether the employee spoke as a citizen on a matter of public concern. Id. *citing* Pickering v. Bd. of Educ., 391 U.S. 563, 568 (1968). If the answer is no, the employee has no First Amendment claim. Id. *citing* Connick v. Myers, 461 U.S. 138, 142 (1983). If the answer is yes, a First Amendment claim may follow. Id. The consideration is whether the government employer had sufficient justification for treating the employee differently from any other member of the public. Id. *citing* Pickering, supra, at 568. While "a government entity has broader discretion to restrict speech when it acts in its employer role…the restrictions it imposes must be directed at speech that has some potential to affect its operations." Id. Moreover, "a citizen who works for the government is nonetheless still a citizen." Id. Importantly, "the First Amendment limits a public employer's ability to leverage the employment relationship to restrict, incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens." Id. *citing* Perry v. Sindermann, 408 U.S.

593, 597 (1972). That is, "[s]o long as employees are speaking as citizens about matters of public concern, they must face only those speech restrictions that are necessary for their employers to operate efficiently and effectively." Id. *citing* Connick, supra, at 147.

The polestar case in New Jersey is Green Township Education Association v. Rowe, 328 N.J. Super 525, 528 (App. Div. 2000) wherein the Appellate Division made clear that Boards of Education have "no interest in barring teachers from expressing their views on educational policy." Id. at 535-537. The Court went even further finding, "[i]f the fact of employment is only tangentially and insubstantially involved in the subject matter of the employee's communication, it is necessary to regard the employee as the member of the public he seeks to be. In that event, the employee's right to free speech is considered paramount." Id.

Judge Citrino's Order is a proper and lawful application of the Green precedent. District Policy 3233 proscribed the use "of school grounds and school time" for partisan political speech. Judge Citrino's Order rightly deemed the policy overbroad. The Board's position would proscribe a teacher from campaigning for any candidate for public office outside of the school building when no such proscription exists for the general citizenry. This is what the Pickering and Green precedents sought to prevent and why Judge Citrino rightfully held that teachers placing candidate lawn signs under the windshield while their motor vehicles are

parked in the parking lots of the school does *not* equate to job-related speech. Judge Citrino also correctly held that District Policy 3233 "does not confine prohibitions on speech to the school building or classroom. Nor is it limited to situations in which students are present as set forth by *Green*." Citrino Order at 6.[1] Judge Citrino properly applied precedent when holding the District Policy overbroad and violative of the First Amendment rights of teachers.

II. THE BOARD PRESENTS NO COMPELLING ARGUMENT TO DISTURB JUDGE CITRINO'S LAWFUL AND PROPER ORDER (Da24)

A. JUDGE CITRINO'S ORDER DOES NOT MISCONSTRUE THE GREEN PRECEDENT (Da24)

Judge Citrino properly relied on the Green precedent. 328 N.J. Super. 525 (App. Div. 2000). There, the Board adopted the following policy in pertinent part:

> All employees are prohibited from active campaigning on school property on behalf of any candidate for local, state or national office or actively promoting any opinions on voting issues.
>
> All employees working in a facility of this district which is used as a polling place are prohibited on an officially declared election day from displaying any materials that would promote the election of any candidate or opinions on voting issues.
>
> All employees are prohibited from engaging in any activity with students during performance of the employees' duties, which activity

[1] Judge Citrino was obviously referring to Green's holding (at 505), that "[a] classroom is not a place for proselytizing students to advance a teacher's financial interests. Nor should a classroom be transmogrified into a teacher's soapbox. Id. at 538.

> is intended or designed to promote, further or assert a position on any voting issue, board issue, or collective bargaining issue.
>
> Id. at 501

The Appellate Division struck the above policy as unconstitutionally overbroad for the following reasons:

> "The problem with the Board's protocol is that its prohibitions are not invariably confined to the setting of the school facility or classroom. Nor are its restraints and prohibitions always limited to situations in which students are present. As written, the first clause prohibits (1) "[a]ll employees" from (a) "active campaigning," or (b) "actively promoting any opinions on voting issues," (3) on school property. The prohibition against "active campaigning" applies to employee conduct outside the presence of students. Read literally, the clause bars employees from using their lunch breaks or free periods to express their opinions to other willing adults even if no students are present. Read literally, the clause precludes teachers from speaking at board of education meetings conducted at the school facility. In a similar vein, the Board's prohibition against displaying campaign materials is not limited to school property. Instead, this clause prohibits (1) "[a]ll employees ... working in a facility of [the] district" (2) "which is used as a polling place," from (3) "displaying any materials that would promote" (a) "the election of any candidate", or (b) "opinions on voting issues," (4) "on an officially declared election day"".
>
> Id. at 501.

Just like the Board policy struck down in Green, Judge Citrino's Order rightfully struck District Policy 3233 for the same constitutional defects. District Policy 3233 proscribed the use "of school grounds and school time" for partisan political purposes. Just like the clause struck in Green, District Policy 3233, as written, proscribes employees from campaigning for any candidate for public

office outside the school building outside the presence of students. This proscription is unconstitutionally overbroad. The Appellate Division reasoned:

> "Free speech needs breathing space. Constitutionally protected speech may be muted and perceived grievances left to fester by the very existence of a statute or governmental policy. Even if moribund, an overly broad statute may chill or stifle constitutionally protected speech." Id. at 502. Moreover, the application of the policy subjects teachers to disparate treatment vis a vis the general citizenry. The Board's argument that teachers displaying campaign lawn signs in their motor vehicles in the school parking lot "are motivated by private concerns" is belied by the Appellate Division's holding that "the Board of Education has no interest in barring teachers from expressing their views on educational policy."
>
> Id. at 505.

Teachers are not second-class citizens. The United States Supreme Court made this abundantly clear in Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 506 (1969) ("First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate"). The Appellate Division reasoned the same: when a teacher shows up to work, he or she is not "relegated to a 'watered down' version of constitutional rights." Green, supra, at 504.

B. DISTRICT POLICY 3233 WAS UNCONSTITUTIONALLY OVERBROAD (Da160)

The Appellate Division clearly set forth the realms in which school boards can constitutionally circumscribe speech. Id. at 505. It held "[w]e have no doubt but that a carefully worded protocol tailored to prohibiting teachers from promoting positions on labor relations issues in the presence of students while on school property could pass constitutional muster." Id. at 505. District Policy 3233 was not carefully tailored to adhere to the aforenoted constitutional circumscriptions. As Judge Citrino's Order rightfully held "The Policy does not confine the prohibitions to the setting of the school facility or classroom. Nor it is limited to situations in which students are present as set forth by Green. Therefore, this policy is overbroad." Citrino Order at 6.

The Board takes issue with students seeing teachers engaging in free speech outside the school building during instructional hours. It argues "[s]tudents must walk by the political campaign signs on their way into the school building, being subjected to partisan political campaigning by their teachers, figures of authority, on school grounds during school hours." Appellant Brief at 19. The Board considers teachers campaigning for candidates for public office outside the school building "not just innocuous political speech" but something more menacing. The Board's argument is inimical to established precedent, which holds that "the Board of Education has no interest in barring teachers from expressing their views on

educational policy." Green, supra, at 505. As such, the Board presents no compelling argument to overturn Judge Citrino's lawful and proper Order.

CONCLUSION

For all the foregoing reasons, the Ringwood Education Association requests the Appellant's appeal be denied in its entirety.

Respectfully submitted,

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RINGWOOD BOARD OF EDUCATION, Appellant, vs. RINGWOOD EDUCATION ASSOCIATION, Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001159-24T4 ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY PASSAIC COUNTY: LAW DIVISION DOCKET NO.: PAS-L-856-23 Sat Below: Hon. Vicki A. Citrino, J.S.C.

REPLY BRIEF ON BEHALF OF APPELLANT RINGWOOD BOARD OF EDUCATION

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LEGAL ARGUMENT

Appellant Ringwood Board of Education (the "Board" or "Appellant") respectfully submits this brief in reply to the Brief in Opposition submitted by Respondent Ringwood Education Association's ("Respondent"). As is set forth in Appellant's Brief, the Trial Court erred in the application of Green Tp. Educ. Ass'n v. Rowe, 328 N.J.Super. 525 (App. Div. 2000) to the case at bar. The unconstitutional policy in Green differs substantially from the Board's Policy 3233 ("Policy 3233"). Policy 3233 does in fact confine its prohibitions to the school property and the school day, when students are present, as was expressly endorsed by the Appellate Division in Green.

Moreover, Policy 3233 limits its prohibition of teacher conduct to the advancing or furthering of interests in labor relations issues while in the presence of students and on school grounds. The restriction against political speech on school grounds during the school day is made applicable to all individuals on school premises during the school day, through application of Board Policy/Regulation 7510, and passes constitutional must both as drafted and applied in the instant matter.

POINT ONE

AS BOARD POLICY 3233 IS NOT OVERBROAD AND WAS PROPERLY APPLIED, REVERSAL OF THE TRIAL COURT ORDER IS WARRANTED.

In ruling against the Board and in favor of Respondent, the Trial Court erroneously found that the Respondent teachers' conduct did not "equate to job-related speech" and that Policy 3233 did not confine its prohibitions to the school facility or classroom where students were present. See Da024, Da017. In arriving at this conclusion, the Trial Court misapplied the Appellate Division's holding in Green and applicable First Amendment precedent to the facts of the instant matter.

The subject policy in Green contained a blanket prohibition of any political discussion amongst teachers, even outside of the presence of students. Board Policy 3233 only prohibits teachers from engaging in activity "in the presence of students while on school grounds, which is intended and/or designated to promote, further or assert a position(s) on labor relations issues" (such as a board of education election). See Da149.

In the instant matter, Respondent's teachers displayed board of education campaign lawn signs prominently in their cars in the school's parking lot, which students must pass while entering and exiting the school. These signs remained posted throughout the school day during school hours in the presence of students, and were posted on school property. Hence, the Board's application of Board

Policy 3233, in asking the teachers to remove the signs, is consistent with the Board's rights as a public employer under the First Amendment, as the prohibited conduct by the teachers was done on school grounds and in the presence of students, who are a captive audience while at school. Green, 328 N.J. Super. at 539 ("teachers serve as authority figures, and students are their captive audience.").

Contrary to Respondent's assertion that "the Board's position would proscribe a teacher from campaigning for any candidate for public office outside of the school building," Board Policy 3233 only prohibits campaigning on school grounds, during school hours, which is when students are present. See Rb5, Da149.[1] Moreover, the specific prohibition in this matter prohibits teachers from advancing labor relations issues on school property when students are present, and does not apply to "any candidate for public office." In the instant matter, teachers were posting local board of education candidate lawn signs in their car windshields. A board of education election undoubtedly implicates labor relations issues, as a board of education is responsible for making numerous decisions which directly impact teachers' employment.

[1] On pages 7 and 8 of its Brief, Respondent erroneously weaves argument into a purported block quote, misattributing the text to the Appellate Division's decision in Green. See Rb7, Rb8.

The Trial Court erred in holding that Board Policy 3233 does not confine its prohibitions to situations involving the school property where students are present. By referencing Board Policy 7510, the Use of School Facilities policy, Board Policy 3233 only proscribes conduct in furtherance of labor relations issues, such as a school board election, on school grounds, during the school day, which is when students are present. As set forth in Board Policy/Regulation 7510, "school facilities" are defined as including school grounds. For purpose of regulating "Political Activity," "school property" is defined as "any building or buildings used for school operations or any school grounds." Da166-172.

Significantly, the Appellate Division in Green opined that a "carefully worded protocol tailored to prohibiting teachers from promoting positions on labor relations issues in the presence of students while on school property could pass constitutional muster." Board Policy 3233 was carefully tailored to prohibit promoting positions on labor relations issues in the presence of students while on school property and was appropriately applied here to bar the promotion of such issues on school property by the posting of campaign lawn signs in car windshields of teachers on school property during the school day when students are present. Accordingly, Board Policy 3233 is not unconstitutionally overbroad, as drafted or applied, under Green or other First Amendment precedent.

POINT TWO

THE BOARD'S APPLICATION OF POLICY 3233 WAS WITHIN THE RIGHTS OF THE BOARD AND DID NOT INFRINGE ON RESPONDENT'S FIRST AMENDMENT RIGHTS.

The Trial Court erred in its overbroad misapplication of Green to the instant matter. The Respondent teachers' speech was conducted on school grounds, during school hours, with students present, in connection with their job duties. Thus, Respondent's speech, while relating to a matter of public concern, was inherently job-related and its interest in protection was outweighed by the government's interest in regulating such speech on school property to achieve the government's objectives.

"'[W]here government is employing someone for the purpose of effectively achieving its goals,' Waters v. Churchill, 511 U.S. at 675, 114 S.Ct. at 1888, 128 L.Ed.2d at 699, it has an interest in restricting its employee's speech in order to accomplish that objective." Green, supra, 328 N.J. Super. at 536.

While the Green Court determined that the school board policy at issue in Green was unconstitutional, the Court also determined that the teachers' speech in adorning political buttons targeted toward school board members was properly subject to restrictions by the state as an employer. Green, 328 N.J. Super. at 536. Specifically, the Green Court determined that while the political buttons worn by

the teachers related to a matter of public concern, the teachers also had a personal stake in the political issue. Id. The Green Court upheld the school's ban on the wearing of political buttons by teachers as not violative of the teachers' First Amendment rights. Id. The Court noted that while the wearing of buttons may appear to be innocuous, "the Board could reasonably have concluded that such displays carry a risk of interfering with the performance of [the] job." Green, 328 N.J. Super. at 539. In coming to this conclusion, the Court noted that the prohibition did not bar teachers from wearing buttons in other settings not involving the presence of students, who are a captive audience while at school. Id. As the Green Court noted, there is often no counterpoint to views expressed by the teachers. Id.

In the instant matter, Respondent teachers placed board of education candidate campaign lawn signs in their vehicles in the school parking lot. Boards of education are responsible for negotiating the contracts that govern the employment of teachers with their union, hiring superintendents who serve as the teachers' supervisors, the hiring and firing of teachers, overseeing teacher evaluations, among many other duties that directly relate to teaching staff members jobs. See N.J.S.A. 18A:27-1 (stating that no teacher shall be appointed without majority vote of a board of education); N.J.S.A. 18A:29-4.1 (granting boards of education the power to adopt salary schedule for teaching staff); N.J.S.A. 18A:29-

14 (power of the board of education to withhold salary increments of teachers); N.J.S.A. 18A:29-13 (power of the board of education to increase salary increments of teachers). Thus, in displaying the teachers' preferred Board of Education candidates' campaign signs in their vehicles on school grounds during school hours, the teachers were furthering their own self-interests rather than focusing on educating students. The Board has an interest in restricting such speech to accomplish its objective of educating its students, specifically on school property and during school hours in the presence of students. See Green, 328 N.J. Super. at 536. Policy 3233 does not prohibit teachers from engaging in political activity outside of school grounds or away from students privately in the school, as the policy held to be overbroad in Green did.

Moreover, the Board also has a legitimate interest in maintaining the appearance of political neutrality. See Weingarten v. Bd. of Educ. of City Sch. Dist. of City of New York, 680 F. Supp. 2d 595, 601–02 (S.D.N.Y. 2010) (holding that school district's "wish to maintain neutrality on controversial issues" through ban on teachers' political campaign buttons in classroom was "a legitimate pedagogical concern"); Castle v. Colonial Sch. Dist., 933 F. Supp. 458, 463 (E.D. Pa. 1996) (holding that schools "have an interest in avoiding an appearance of an 'official endorsement of candidates by the School District."). Thus, the Respondent teachers' political campaign signs prominently lining the parking lot of the school,

on school grounds during school hours, gives the appearance of an endorsement of said candidates by the Board. Accordingly, the Board was within its right to restrict such speech by Respondent teachers that presented the appearance of partisan political endorsement on behalf of the Board.

Thus, while a board of education election may typically be a matter of public concern, in the context of teachers employed by the Board, the Board's interest in ensuring its objective of educating its students and maintaining a politically neutral appearance outweigh the teachers right to expression regarding this particular job-related issue while on school grounds during school hours. Policy 3233 is narrowly tailored to only restrict speech related to furthering labor relations issues "while on school grounds in the presence of students." See Da168. According to the Appellate Division in Green, such a policy passes constitutional muster. See Green, 328 N.J. Super. at 537.

POINT THREE

POLICY 3233 IS NOT UNCONSITUTIONALLY OVERBROAD.

As written, Policy 3233 is not unconstitutionally overbroad despite Respondent's assertions. The Trial Court's reasoning for declaring Policy 3233 overbroad was based solely upon her finding that "[Policy 3233] does not confine the prohibitions to the setting of the school facility or classroom. Nor is it limited to situations in which students are present…". See Da025. The Trial Court's evaluation of Policy 3233 is not consistent with the application of the overbreadth doctrine, which requires a court find that such a policy prohibit a substantial amount of protected speech relative to its legitimate sweep.

The overbreadth doctrine "involves substantive due process considerations concerning excessive governmental intrusion into [constitutionally] protected areas." Green, 328 N.J. Super. at 531 (citing Karins v. Atlantic City, 152 N.J. 532, 544 (1998). A court may only deem a policy overbroad if the policy "'prohibits a substantial amount of protected speech' relative to its 'plainly legitimate sweep,' then society's interest in free expression outweighs its interest in the [policies] lawful applications, and a court will hold the law facially invalid." United States v. Hansen, 599 U.S. 762, 770 (2023). The issue is whether the prohibitions contained

in the protocol embrace subjects beyond their proper reach. Green, 328 N.J. Super. at 531.

Facial invalidation of a statute, regulation or governmental protocol "is, manifestly, strong medicine" that "has been employed ... sparingly and only as a last resort." Binkowski v. State, 322 N.J.Super. 359, 375 (App.Div.1999) (quoting Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973)); see also FW/PBS, Inc. v. Dallas, 493 U.S. 215, 223 (1990). "Facial overbreadth adjudication is an exception to our traditional rules of practice...." Id. "[T]he overbreadth of a statute must not only be real, but substantial as well, judged in relation to [its] plainly legitimate sweep." Id. In other words, "[f]acial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged statute." Id.

Here, Policy 3233 prohibits partisan political activity related to the advancement of labor issues in certain circumstances, during school hours and on school property, which is within the plainly legitimate sweep of the policy. Unlike the policy held to be overbroad in Green, Policy 3233 does not prohibit teachers from partisan political activity at the school during non-working hours, nor does it prohibit teachers from participating in political activity outside the presence of students. Moreover, the prohibition against teachers from engaging in political activity is no broader than the restriction imposed on all citizens with regard to the use of school grounds during school time, pursuant to Board Policy and Regulation

7510. See Da149, Da164-173. Policy 3233 was specifically developed by Policy Consultant Strauss Esmay in light of the Green holding, and is "a carefully worded protocol tailored to prohibiting teachers from promoting positions on labor relations issues in the presence of students while on school property." See Green, 328 N.J. Super. at 537 (App. Div. 2000).

Accordingly, Policy 3233 is not overbroad, as it only prohibits political speech in specific environments on school property while in the presence of students. Thus, Policy 3233 is not overbroad and is similarly not violative of Respondent's First Amendment rights.

CONCLUSION

For the aforementioned reasons, and the reasons set forth in Appellant's Initial Brief, the Trial Court's Decision granting summary judgment in favor of Respondent and denying summary judgment for the Board was erroneous and must be reversed and vacated. Further, the Board's motion for summary judgment should be granted.

Respectfully submitted,

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