UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WISCONSIN EDUCATION ASSOCIATION COUNCIL; WISCONSIN STATE EMPLOYEES UNION, AFSCME DISTRICT COUNCIL 24, AFL-CIO; WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL EMPLOYEES, AFSCME DISTRICT COUNCIL 40, AFL-CIO; AFSCME DISTRICT COUNCIL 48, AFL-CIO; AFT-WISCONSIN, AFL-CIO; SEIU HEALTHCARE WISCONSIN, CTW, CLC; and WISCONSIN STATE AFL-CIO,

Plaintiffs,

Case No. _____

v.

SCOTT WALKER, Governor of the State of Wisconsin; MICHAEL HUEBSCH, Secretary, Department of Administration; GREGORY L. GRACZ, Director, Office of State Employee Relations; JAMES R. SCOTT, Chair, Wisconsin Employment Relations Commission; JUDITH NEUMANN, Member, Wisconsin Employment Relations Commission; RODNEY G. PASCH, Member, Wisconsin Employment Relations Commission,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. NATURE OF THE ACTION

1. At the request of Wisconsin Governor Scott Walker, a Defendant in this action, the Wisconsin Legislature enacted legislation commonly known as the "Budget Repair Bill" and officially titled "2011 Wisconsin Act 10" (the "Act"). Although the stated purpose of the Act is to address the state's projected budget deficit during a temporary economic downturn, the vast majority of the Act's provisions operate to achieve three permanent and fundamental changes to Wisconsin's decades-old system of labor relations in the public sector. The first is to eliminate or reduce to a shell the existing collective bargaining rights of a disfavored class of state and municipal workers, while maintaining the robust bargaining rights of a favored class consisting of those employees falling within a newly-created category deemed "public safety" employees. The favored class consists of certain fire fighters and certain law enforcement officers, whereas the disfavored class consists of all other public workers who had been covered by Wisconsin's collective bargaining laws. The second permanent and fundamental change is to make it prohibitively difficult for the disfavored class of employees, and only the disfavored class, to retain a union as their bargaining representative. The third change is to weaken the ability of employees in the disfavored class, and only the disfavored class, to support financially their unions' activities, including, importantly, their First Amendment-protected political speech activities.

2. The distinctions between the two classes of employees bear no rational relationship to the stated budgetary objectives of the Act or to any other legitimate State

purpose, and the Act's labor relations provisions therefore violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and must be enjoined and declared invalid.

3. The provision of the Act that denies the disfavored class of employees, and only that class, the ability to finance their unions' free speech and associational activities through the mechanism of dues deduction is unconstitutional for the additional reason that it makes an impermissible speaker-based and viewpoint-based distinction between similarly-situated employees and employee organizations and therefore violates the First and Fourteenth Amendments of the United States Constitution.

4. Confirming the invalidity of the distinctions the Act makes between "public safety" and other employees is that those distinctions, while lacking a discernable connection to any legitimate governmental objective, bear a remarkably close connection to the illegitimate objective of punishing the political opponents and rewarding the political supporters of the Governor. That is because all of the unions and employee associations that supported the election of the Governor are classified by the Act as favored "public safety" employees—a classification created for the first time in the Act and corresponding to no prior demarcation of different classes of public employees—and none of those unions or associations are in the disfavored class.

5. This action is brought pursuant to 42 U.S.C. §1983 by labor organization plaintiffs who are the collective bargaining representatives of State and municipal

employees suing on their own behalf and on behalf of their members, who are public employees adversely affected by the Act.

6. Plaintiffs seek declaratory and injunctive relief, pursuant to 28 U.S.C. §§2201, 2202, Fed. R. Civ. P. 57 and 65, and the Court's equitable powers, and attorneys' fees, pursuant to 42 U.S.C. §1988.

II. JURISDICTION AND VENUE

7. Because this case arises under 42 U.S.C. §1983, this Court has federal question jurisdiction under 28 U.S.C. §1331 as well as under 28 U.S.C. §1343(a)(3), which provides federal courts with jurisdiction to redress federal civil rights violations.

8. Venue is proper in this Court under 28 U.S.C. §1391(b).

III. PARTIES

9. The Wisconsin Education Association Council (WEAC) is a statewide organization affiliated with the National Education Association and is headquartered in Madison, Wisconsin. WEAC is a labor organization within the meaning of the Wisconsin Municipal Employment Relations Act (MERA), Wis. Stat. §111.70(1)(h), and the State Employment Labor Relations Act (SELRA), Wis. Stat. §111.81(12), and it provides services to approximately 86,000 actively employed teachers and education support professionals, including employees classified as "general" employees under Act 10. The employees whom WEAC represents belong to 625 local unions which are parties to 730 collective bargaining agreements with school districts, technical colleges, and the State of Wisconsin. WEAC sues on behalf of its members and its local affiliates, as well as on its own behalf.

10. WEAC's members will be adversely affected in many ways if the Act is permitted to take effect, including through the loss of the legal protection they currently have under Wisconsin law against unilateral changes by their employers to their terms and conditions of employment. WEAC's affiliates and WEAC will be adversely affected in many ways as institutions if the Act is permitted to take effect, including through the loss of bargaining rights currently possessed by WEAC's affiliates and through the loss of revenues to WEAC and its affiliates derived from membership dues and nonmember fair-share fees.

11. Plaintiff Wisconsin State Employees Union, AFSCME District Council 24, AFL-CIO (Council 24) is a labor organization within the meaning of SELRA, Wis. Stat. §111.81(12). Council 24 represents approximately 24,000 employees of the State of Wisconsin, including employees classified as "general" employees under the Act such as correction officers, and University of Wisconsin Hospitals and Clinics Board (UW Hospitals Board) employees. Council 24 sues on behalf of its members and on its own behalf.

12. Council 24's members will be adversely affected in many ways if the Act is permitted to take effect, including through the loss of the legal protection they currently have under Wisconsin law against unilateral changes by their employers to their terms and conditions of employment. Council 24 will be adversely affected in many ways as an institution if the Act is permitted to take effect, including through the loss of the bargaining rights that it currently possesses and through the loss of revenues to Council 24 derived from membership dues and nonmember fair-share fees.

13. Plaintiff Wisconsin Council of County and Municipal Employees, AFSCME District Council 40, AFL-CIO (District Council 40), is a labor organization within the meaning of MERA, Wis. Stat. §111.70(1)(h). District Council 40 represents approximately 33,200 municipal employees in 577 bargaining units in cities, counties and other municipalities in all of Wisconsin's counties except Milwaukee County, substantially all of whom are classified as "general" employees under the Act. District Council 40 sues on behalf of its members and on its own behalf.

14. District Council 40's members will be adversely affected in many ways if the Act is permitted to take effect, including through the loss of the legal protection they currently have under Wisconsin law against unilateral changes by their employers to their terms and conditions of employment. District Council 40 will be adversely affected in many ways as an institution if the Act is permitted to take effect, including through the loss of the bargaining rights that it currently possesses and through the loss of revenues to District Council 40 derived from membership dues and nonmember fair-share fees.

15. Plaintiff AFSCME District Council 48, AFL-CIO (District Council 48) is a labor organization within the meaning of MERA, Wis. Stat. §111.70(1)(h). District Council 48 represents approximately 8,065 municipal employees in Milwaukee County, Wisconsin, including employees classified as "general" employees under the Act. District Council 48 sues on behalf of its members and on its own behalf.

16. District Council 48's members will be adversely affected in many ways if the Act is permitted to take effect, including through the loss of the legal protection they

currently have under Wisconsin law against unilateral changes by their employers to their terms and conditions of employment. District Council 48 will be adversely affected in many ways as an institution if the Act is permitted to take effect, including through the loss of the bargaining rights that it currently possesses and through the loss of revenues to District Council 48 derived from membership dues and nonmember fair-share fees.

17. Plaintiff AFT-Wisconsin, AFL-CIO (AFT-W) is a labor organization within the meaning of MERA, Wis. Stat. §111.70(1)(h), SELRA, §111.81(12) and the UW System Faculty and Academic Staff Labor Relations Act (FASLRA), §111.96(13). AFT-W represents approximately 11,032 employees of the State of Wisconsin, including but not limited to professional and science employees, physicians and dentists, assistant public defenders, UW teaching assistants, and graduate assistants; AFT-W also represents 7,734 municipal employees throughout Wisconsin, including but not limited to public education employees in school districts and technical colleges. All of the foregoing are classified as "general" employees under the Act. In addition, AFT-W represents approximately 1,330 UW faculty and academic staff under FASLRA; and approximately 200 professional and science employees of the UW Hospitals and Clinics Authority (UW Hospitals Authority) under the Wisconsin Employment Peace Act (WEPA), Wis. Stat. §111.01, *et seq*. AFT-W sues on behalf of its members and its local affiliates, as well as on its own behalf.

18. AFT-W's members will be adversely affected in many ways if the Act is permitted to take effect, including through the loss of the legal protection they currently

have under Wisconsin law against unilateral changes by their employers to their terms and conditions of employment. AFT-W's affiliates and AFT-W will be adversely affected in many ways as institutions if the Act is permitted to take effect, including through the loss of bargaining rights currently possessed by AFT-W's affiliates and through the loss of revenues to AFT-W and its affiliates derived from membership dues and nonmember fair-share fees.

19. Plaintiff SEIU Healthcare Wisconsin, CTW, CLC (SEIU Healthcare WI) is a labor organization within the meaning of Wis. Stat. §§111.70(1)(h) and 111.81(12). SEIU Healthcare WI represents approximately 1,100 health care workers employed by the State of Wisconsin under SELRA; and approximately 600 health care workers employed by nine local governments throughout Wisconsin under MERA. All of the foregoing are classified as "general" employees under the Act. In addition, SEIU Healthcare WI represents approximately 2,000 health care professionals employed by the UW Hospitals Authority under WEPA. SEIU Healthcare WI also represents approximately 5,000 home care providers authorized to bargain with Wisconsin's Department of Health Services under SELRA, Wis. Stat. §§111.815(1) and 111.825(2g).

20. SEIU Healthcare WI's members will be adversely affected in many ways if the Act is permitted to take effect, including through the loss of the legal protection they currently have under Wisconsin law against unilateral changes by their employers to their terms and conditions of employment. SEIU Healthcare WI will be adversely affected in many ways as an institution if the Act is permitted to take effect, including through the loss of the bargaining rights that it currently possesses and through the loss

of revenues to SEIU Healthcare WI derived from membership dues and nonmember fair-share fees.

21. Plaintiff Wisconsin State AFL-CIO is a federation of labor organizations which represent more than 200,000 employees throughout the State of Wisconsin. In 2010, its affiliates represented 101,147 employees in the public sector, including employees classified as "general" employees under the Act. The Wisconsin State AFL-CIO sues on behalf of its members, who will be adversely affected in many ways if the Act is permitted to take effect, including through the loss of the legal protection they currently have under Wisconsin law against unilateral changes by their employers to their terms and conditions of employment.

22. Plaintiffs WEAC, AFSCME District Councils 24, 40 and 48, AFT-W, SEIU Healthcare WI and Wisconsin State AFL-CIO (collectively Plaintiff Labor Organizations) have standing to sue on behalf of their members under the doctrine of associational standing. Associational standing exists because (i) members of the respective labor organizations would have standing to sue in their own right to redress the injuries they will suffer if the Act were permitted to take effect, including the loss of legal protection against unilateral employer changes to the terms and conditions of their employment and the loss of their right to pay their dues and thereby support their unions' respective political programs through payroll deduction; (ii) the objectives of this lawsuit are germane to the objectives of the Plaintiff Labor Organizations; and (iii) the participation of individual members in this lawsuit is not necessary to accord the relief sought.

23. Defendant Scott Walker is the Governor of Wisconsin. The Governor is obligated to "transact all necessary business with the officers of the government," and "take care that the laws be faithfully executed." Wis. Const. Art. V, Sec. 4. In his capacity as Governor, Defendant Walker is the decision maker with respect to certain issues pertaining to the wages, hours and other conditions of employment of state employees, including issues pertaining to whether the State, in its capacity as employer, should increase, freeze or decrease, or attempt to increase, freeze or decrease wages, benefits and other costs of compensating state employees. But for Act 10, the Governor's power to alter or reduce wages, hours and other conditions of employment would be constrained by SELRA, and his power remains constrained by SELRA with respect to "public safety employees."

24. Enjoining the Governor will be necessary in order for this Court to grant full relief in the event that Act 10 is invalidated, so that the Governor will be subject to the constraints of SELRA with respect to "general" employees as well as with respect to "public safety" employees. Governor Walker is also responsible for enforcement of the Act and for ensuring compliance by Wisconsin Executive Branch officials with the federal constitutional limits on their authority to implement the provisions of the Act. Defendant Walker is sued in his official capacity. Defendant Walker has his office at the Office of the Governor, State Capitol, 115 East, Madison, Dane County, Wisconsin, within this District.

25. Defendant Michael Huebsch is the Secretary of the Department of Administration (DOA), which is responsible for, *inter alia*, administering payroll

deduction of union dues and fair-share fees. Defendant Huebsch and DOA will be responsible for implementing and administering the provisions of Act 10 that affect, *inter alia*, those subjects. Defendant Huebsch is sued in his official capacity. Defendant Huebsch has his office at the Department of Administration, 101 E. Wilson St. Madison, Wisconsin 53703, within this District.

26. Defendant Gregory L. Gracz is the director of the Office of State Employment Relations (OSER) which, pursuant to SELRA, is responsible for: negotiating and administering collective bargaining agreements with all collective bargaining units of state employees, except for home care providers; the employer functions of the executive branch and coordinating collective bargaining activities with operating state agencies on matters of agency concern; and representing the state in its responsibility as an employer with regard to certain collective bargaining units. Among his statutory responsibilities are to "establish and maintain, wherever practicable, consistent employment relations policies and practices throughout the state service." Wis. Stat. §111.815.

27. Defendant Gracz and OSER will be responsible for implementing and administering the collective bargaining provisions of Act 10 as they relate to State employees, both general and "public safety," including the differential treatment of the scope of collective bargaining, dues deductions and fair-share prohibitions. Defendant Gracz is sued in his official capacity. Defendant Gracz has his office at the Office of State Employment Relations, 101 East Wilson Street, 4th Floor, Madison, Dane County, Wisconsin, within this District.

28. Defendant James R. Scott is the chair of the Wisconsin Employment Relations Commission (WERC), which is responsible for implementing, enforcing, administering and resolving disputes arising under WEPA, MERA, SELRA and FASLRA, including but not limited to: the prevention of prohibited or unfair labor practices by employers; resolving by declaratory ruling, mediating, arbitrating and fact-finding labor disputes; conducting representation elections and certifying duly-elected collective bargaining representatives; authorizing by referendum fair-share and maintenance of membership agreements. Wis. Stat. §§111.07-.14, 111.70(4), 111.825(4)-(6), 111.83, 111.84(4), 111.85-.88, 111.990, 111.991(4)-.995, 111.9993.

29. The Commission will be responsible for interpreting and implementing the collective bargaining provisions and prohibitions of the Act, including the differential treatment of municipal and state general and "public safety" employees, the dues deduction and fair-share prohibitions, as well as the annual re-certification elections. Defendant Scott is sued in his official capacity. Defendant Scott has his office at the WERC, 1457 East Washington Avenue, Madison, Dane County, Wisconsin, within this District.

30. Defendant Judith Neumann is a commissioner on the WERC, which has the responsibilities and functions set out above. Defendant Neumann is sued in her official capacity. Defendant Neumann has her office at the WERC, 1457 East Washington Avenue, Madison, Dane County, Wisconsin, within this District.

31. Defendant Rodney G. Pasch is a commissioner on the WERC, which has the responsibilities and functions set out above. Defendant Pasch is sued in his official

capacity. Defendant Pasch has his office at the WERC, 1457 East Washington Avenue, Madison, Dane County, Wisconsin, within this District.

IV. FACTS

Background

32. 2011 Wis. Act 10, enacted on March 11, 2011, and until recently enjoined by a state court from being published or implemented, significantly amends and repeals portions of Chapter 111, governing Wisconsin employment relations law.

33. Subchapter I, Wis. Stat. §111.01 *et seq*., known as the Wisconsin Employment Peace Act (WEPA), governs employment relations and collective bargaining for certain employees, including childcare workers and UW Hospitals Authority employees.

34. Subchapter IV, Wis. Stat. §111.70 *et seq*., the Municipal Employment Relations Act (MERA), governs employment relations and collective bargaining of municipal employers and representatives of municipal employees. MERA's provisions were first enacted in 1959.

35. Subchapter V, Wis. Stat. §111.80 *et seq*., the State Employment Labor Relations Act (SELRA), governs employment relations and collective bargaining of State employers and representatives of certain, defined State employees. SELRA was first enacted in 1965.

36. Subchapter VI, Wis. Stat. §111.95 *et seq*., the University of Wisconsin System Faculty and Academic Staff Labor Relations Act (FASLRA), enacted in 2009,

governs employment relations and collective bargaining of the UW System and representatives of faculty and academic staff.

37. Municipal employers under MERA are cities, counties, villages, towns, metropolitan sewerage districts, school districts, long-term care districts, transit authorities, and other political subdivisions of the State. Wis. Stat. §111.70(1)(j).

38. To effectuate its provisions regarding collective bargaining and other aspects of labor relations, the Act creates a distinction between classes of public employees that never had been drawn under prior law.

39. In particular, the Act creates the class of "public safety" employees, who are covered by either MERA or SELRA, and for whom full collective bargaining and union associational rights are preserved; and the class of "general" employees for whom collective bargaining and union speech and associational rights are severely impaired. (2011 Wis. Act 10 Secs. 214, 216, 268, 272)

40. To identify "public safety" employees, Act 10 picks and chooses certain protective service employees, while omitting others, who are classified as "protective occupation" participants under the Wisconsin Retirement System (WRS) and whose principal duties "involve active law enforcement or active fire suppression or prevention" exposing the employee "to a high degree of danger or peril" and "requiring a high degree of physical conditioning." Wis. Stat. §§40.02(48)(a), (am). (Secs. 216, 272)

41. Act 10 identifies as "public safety" employees only the following classifications within the WRS definition of protectives: for purposes of MERA, only

police officers, fire fighters, deputy sheriffs, county traffic police officers, and village police officer-fire fighters, (Sec. 216) Wis. Stat. §§40.02(48)(am)9., 10., 13., 15., 22.; for purposes of SELRA, only state troopers and state motor vehicle inspectors in the State Patrol, (Sec. 272) Wis. Stat. §§40.02(48)(am)7., 8..

42. Act 10 excludes from its new "public safety" category those employees within the following WRS protective classifications: UW Police, Wisconsin Capitol Police, conservation wardens, state probation and parole officers, special criminal investigation agents of the Wisconsin Department of Justice and more than sixteen other job classifications. *See* Wis. Stat. §§40.02(48)(a), (am). Officers in the UW Police and the Capitol Police are "police officers" for purposes of Wis. Stat. §40.02(48)(am)9. Certain State employees, including but not limited to fire-crash rescue specialists at state-operated airfields, are "fire fighters" for purposes of Wis. Stat. §40.02(48)(am)10. Under the Act, "police officer" and "fire fighters" are, however, excluded from SELRA's definition of "public safety" employees.

43. The Act classifies as "general" employees all public employees who are not "public safety" employees and who were formerly within the purview of MERA and SELRA. (Secs. 214, 268)

The Act Eliminates Coverage and Extinguishes Collective Bargaining for Certain Employees

44. The Act eliminates coverage and extinguishes collective bargaining rights for certain employees of the UW Hospitals Authority and UW Hospitals Board, UW System faculty and academic staff, home care providers and child care providers. (Secs.

186-197, removing UW Hospitals Authority employees and child care providers from WEPA; 265, 269, 279, 281, 282, 283, 287, 291, 292, 304, 307, 313, 316, 317, 318, removing UW Hospitals Board employees and home care providers from SELRA; 323, repealing FASLRA)

The Act Bans Virtually All Collective Bargaining Rights for "General Employees" While Preserving Collective Bargaining Rights for "Public Safety" Employees

45. Prior to the Act, municipal and state employers had a duty to bargain in good faith, with the intention of reaching an agreement, regarding wages, hours, and conditions of employment. §§111.70(1)(a), 111.70((3)(a)4., 111.81(1), 111.84(1)(d). The breadth of subjects within this scope of bargaining included hours of work, safety conditions and other conditions of employment, vacation, holidays, health insurance, retirement, subcontracting, standards for discipline, layoff procedures, and grievance and arbitration procedures.

46. With respect to "general" employees, but not "public safety" employees, Act 10 permits state and municipal employers to bargain only over "total base wages," which excludes overtime, premium pay, merit pay, performance pay, supplemental pay, pay schedules and pay progressions. (Secs. 169, 186, 188-189, 194-199, 210, 221, 229, 233, 236, 238-239, 245, 262, 265, 269, 279, 281-283, 287, 291-292, 303-310, 313, 314, 323, 359, 367-368)

47. The Act defines total base wages as limited to the amount of any increase or decrease in the consumer price index, unless approved by a referendum. (Secs. 168, 245, 314, 327)

48. Collective bargaining over any other "factor or condition of employment" is prohibited in the case of general employees, but not "public safety" employees. (Secs. 210, 245, 262, 314)

49. The Act eliminates interest arbitration as a means for resolving impasse for municipal "general" but not "public safety" employees, while maintaining longstanding restrictions against strikes as to both classes of employees. (Sec. 237) §§111.70(4)(L), 111.77, 111.89. Consequently, municipal employers will be free to implement their final offers when impasse is reached and thereby retain ultimate control even in the single remaining subject on which the employer may bargain—"total base wages"—as to general employees, but not "public safety" employees.

Terms of Contracts Limited to One Year for General Employees but Not "Public Safety" Employees

50. Prior to the Act, municipal employers were obligated to bargain over proposed two-year collective bargaining agreements, although school-district contracts could extend up to four years, and all others up to three years. §§111.70(3)(a)4, 111.70(4)(cm)8m. State employees were permitted to negotiate contracts that coincided with the fiscal year or biennium. §111.92(3).

51. The Act limits to one year's duration all collective bargaining agreements for state and municipal general employees but not for "public safety" employees. (Secs. 221, 238, 319, 320)

Annual Re-certification Election Required for Labor Organizations Representing General Employees, but Not "Public Safety" Employees

52. Prior to the Act, a bargaining representative could be decertified where (i) the employer, one or more bargaining unit employees or another labor organization petitioned for a WERC-certified election; (ii) the petition was supported by a "showing of interest" in decertification by at least 30 percent of the represented employees or, in the case of an employer petition, "objective considerations" providing reasonable cause that the bargaining representative no longer enjoyed majority support; and (iii) the union failed to secure the votes of a majority of those *voting* in such an election. §§111.70(3)(a)(4), 111.70(4)(d), 111.83; Wis. Admin. Code §§ERC 11.02(3), 21.02.

53. In contrast, the Act requires unions representing general employees, but not those representing "public safety" employees, to undergo annual automatic WERC-supervised re-certification elections to retain their status as the certified bargaining representatives, regardless whether any represented employee actually seeks a vote. (Secs. 242, 289, 9132, 9155) And a general union subject to a re-certification election under the Act, but not a "public safety" union, is decertified unless at least 51 percent of those *eligible* to vote cast their ballots in favor of retaining the union. (Secs. 242, 289, 9132, 9155)

54. Absent 100 percent voter participation, then, a union representing general employees can retain its certified bargaining status only by winning a supermajority vote, whereas a union representing "public safety" employees is not subject to such a condition on retaining its status. For example, with 70 percent voter turnout and a 70

percent vote in favor of the union, the union still would lose under this antidemocratic rule by capturing "only" 49 percent of the eligible vote.

Public Employers Prohibited From Deducting Labor Organization Dues for General Employees but Not "Public Safety" Employees

55. For decades, state and municipal employers and unions have been permitted to negotiate provisions for the deduction of employees' labor organization membership dues. §§111.70(3)(a)6, 111.84(1)(f). Unions may lawfully spend, and the union plaintiffs here regularly do spend, union membership dues on *both* "representational" activities—meaning negotiation with the employer and administration of the contract (e.g., grievance handling)—and on non-representational activities, including First Amendment-protected political speech and advocacy such as get-out-the-vote campaigns in elections for public office or ballot measures, union-to-member communications expressing the union's endorsement of political candidacies or ballot measures, and union communications to the public expressing the union's view on issues and causes of public concern.

56. The Act prohibits State and municipal employers from deducting union dues for general employees, including for general employees who desire the deductions and present their employers with written authorizations. (Secs. 58, 227, 298)

57. The Act, however, permits unions representing "public safety" employees to negotiate provisions for deduction of labor organization dues, and the State is not barred from honoring written requests to deduct union dues of a "public safety" employee. (Secs. 58, 223, 227, 295, 298)

Public Employers Prohibited From Entering into Fair-Share Agreements for General Employees but Not "Public Safety" Employees

58. Employees represented by a union are not required to join the union, pay membership dues to the union or otherwise support financially those aspects of a union's activities that are non-representational in nature, including activities constituting advocacy on political or social issues. Prior to the Act, however, State and municipal employers could negotiate fair-share agreements requiring "all or any of the employees in the collective bargaining unit . . . to pay their proportionate share of the cost of the collective bargaining process and contract administration" and "requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employees." §§111.70(1)(f), (2), 111.85.

59. The Act prohibits all State and municipal employers from entering into fair-share agreements with unions that represent general employees, but not with those unions that represent "public safety" employees. (Secs. 190-192, 198, 200, 203, 213, 217, 219, 225, 299)

Pension Contributions by General Employees

60. Currently, contributions to the Wisconsin Retirement System (WRS) for general employees, including teachers, are comprised of employer and employee portions totaling 11.6 percent. Current law permits the employer to pay all or part of the employee-required contribution. Wis. Stat. §§40.05(1)(a), (b).

61. Act 10 requires general employees to contribute "an amount equal to one-half of all actuarially required contributions" out of their paychecks: 5.8 percent for

2011. The Act requires this same contribution from all "general" employees, including those such as "police officers" and "fire fighters" covered by SELRA who are classified as "protectives" by WRS, but not as "public safety employees" under the Act. (Secs. 67, 69-73, 75, 76)

62. The Act forbids employers from covering any part of the general employees' portion. (Sec. 74)

63. Under the Act, labor organizations of "public safety" employees, but not those of "general" employees, may negotiate for their employers to pay the employee portion of the contribution. (Sec. 74)

Health Insurance Contributions by State and Local Government Employees Participating in the State Health Plan

64. State employees receive health care coverage under plans offered by the Group Insurance Board (State plans). Local government employers may also participate in the State plans. Under prior law, the State and local government employers who participated in the State health plans were required to contribute at least 80 percent of "the average premium cost of plans offered in the tier with the lowest employee premium cost" for full-time employees, and half that amount for part-time employees. §40.05(4)(ag).

65. The Act creates a cap on the employer contribution of not more than 88 percent of the average premium cost in the tier with the lowest employee premium cost. State employees participating in the State health plans are required by the Act to

contribute twelve percent of the premium for the respective tier of the plan for 2011. (Secs. 77, 88, 9115)

66. The 88 percent of health insurance premium to be paid by the State is the maximum participating employers can pay under the law. There is no minimum amount the employers are required to pay and, after 2011, the director of OSER annually determines the amount the State will pay. (Secs. 77, 9115)

67. Under the Act, local governmental employers participating in the State plans cannot pay more than 88 percent of the average premium cost in the tier with the lowest premium cost beginning in 2012. (Sec. 88)

68. Because the Act prohibits bargaining on health insurance, health insurance premiums for general municipal employees whose local governments do not participate in the State plans will be determined unilaterally by the employer under the Act. (Sec. 88, 245)

69. Under the Act, labor organizations representing "public safety" employees retain the right to bargain regarding health insurance, including the amount of premium contribution. (Sec. 77, 88, 210, 246, 303).

Legislative History of 2011 Wisconsin Act 10

70. On February 11, 2011, newly-inaugurated Governor Walker issued Executive Order #14 ordering the Legislature, already convened in a special session pursuant to his Executive Order #1, to "consider and act upon legislation relating to the Budget Repair Bill."

71. Known as the Governor's Budget Repair Bill, Act 10 was introduced by the Senate and Assembly Committees on Organization as companion (identical) bills by the request of the Governor and without sponsorship by any legislator. It was introduced on February 14, 2011 in the Senate as Senate Bill 11 (SB 11) and the next day, on February 15, in the Assembly as Assembly Bill 11 (AB 11), and immediately referred to the Joint Committee on Finance.

72. Also on February 14, the Legislative Fiscal Bureau reported to members of the Legislature a summary of the fiscal effects of SB / AB 11, which it described as "Budget Adjustment Legislation."

73. Prior to and during the week following introduction of SB 11, Governor Walker issued several press releases and made public addresses to explain that the budget repair bill was needed to balance the state budget and to give government the tools to manage during economic crisis.

Governor Walker's 2010 Gubernatorial Campaign

74. The two largest "public safety" bargaining units under MERA are the Milwaukee police officers, represented by the Milwaukee Police Association (MPA), and the Milwaukee fire fighters, represented by Milwaukee Professional Fire Fighters, Local 215 (Local 215). MPA and Local 215 endorsed Governor Walker's campaign and funded a television advertisement supporting him.

75. Another union of police officers, the West Allis Professional Police Association, also endorsed Governor Walker.

76. Wisconsin Law Enforcement Association (WLEA) is the bargaining representative for troopers and inspectors in the Wisconsin State Patrol, and for many other law enforcement personnel employed by the State. WLEA did not endorse a candidate in the governor's race; however, the lobbying group for the state troopers, the Wisconsin Troopers Association (WTA), endorsed Governor Walker.

77. The only protective service law enforcement constituencies of the WLEA that the Act exempts from its provisions restricting collective bargaining rights are those constituencies that are represented for lobbying purposes by the WTA—the entity that endorsed Governor Walker. Conversely, police constituencies in WLEA who are not represented by WTA, such as the Capitol Police, receive no exemption from those provisions; they are placed in the disfavored "general" employee category even though they are sworn law enforcement officers in the protective service.

78. Notably, the Act's official drafting records, maintained by the Legislative Reference Bureau, include a note entitled, "Alternative Approach to Collective Bargaining," which states in relevant part:

- Carve out a new bargaining unit from WLEA for the State Troopers

79. The Wisconsin Sheriffs and Deputy Sheriffs Association PAC also endorsed Governor Walker.

80. Employees in all of the labor organizations that endorsed Governor Walker have been classified under the Act as "public safety" employees, exempt from the provisions that eliminate or restrict collective bargaining rights.

VI. CLAIMS

Count 1: Equal Protection

81. All paragraphs above are realleged as if set out fully herein.

82. The Act creates classes of "public safety" employees and general employees (all others), subjecting general employees to a panoply of burdens and deprivations of rights, while exempting "public safety" employees from all of the injurious provisions.

83. The Act forbids general employees and their collective bargaining representatives from bargaining collectively with their employers over all subjects except for a newly-created, limited concept of "total base wages," and exempts "public safety" employees and their collective bargaining representatives from this prohibition.

84. The Act forbids general employees from maintaining their certification without undergoing annual re-certification elections, and exempts "public safety" employees and their unions from this requirement.

85. The Act forbids public employers and the collective bargaining representatives of general employees from entering into collective bargaining agreements of longer than one-year's duration, and exempts "public safety" employees and their collective bargaining representatives from this prohibition.

86. Further, the Act forbids public employers from collecting union dues from general employees while exempting the employers of "public safety" employees from this prohibition.

87. The Act also forbids public employers from entering into fair-share agreements with general employees and their unions and exempts "public safety" employees from this prohibition.

88. The Act's classifications of general employees and "public safety" employees and their differential treatment have no rational relation to budget repair or any other legitimate government interest. Consequently, the Act's differential treatment of public employees violates the equal protection guarantee of the Fourteenth Amendment of the United States Constitution.

89. The distinctions the Act makes between "public safety" and other employees not only lack any rational connection to a legitimate governmental objective, they bear a remarkably close connection to the illegitimate objective of punishing the political opponents and rewarding the political supporters of the Governor. That is because all of the unions and employee associations that supported the election of the Governor are classified by the Act as favored "public safety" employees and none of those unions or associations are in the disfavored class.

90. The Equal Protection Clause forbids legislation that creates classifications either for the purpose of disadvantaging groups that are out of political favor or for the purpose of bestowing rank political favors to the supporters of those in power, because those purposes are not legitimate governmental objectives.

Count 2: First Amendment

91. All paragraphs above are realleged as if set out fully herein.

92. As set out above, unions may lawfully expend membership dues, and all of the plaintiff unions here do expend such union dues, on political advocacy and other forms of expression protected by the First Amendment of the United States Constitution. Where a union is able to secure an agreement with the employer to permit the union to collect dues on behalf of members who authorize payroll deduction or dues check-off, such an agreement facilitates the union's ability to finance its lawful and protected political advocacy and speech.

93. The Act, by adopting a speaker-based and viewpoint-based classification to distinguish between those unions who may secure dues check-off arrangements and those who may not do so, violates the First Amendment as well as the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

REQUEST FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment that the provisions of the Act referenced in paragraphs [83-87] violate the rights of plaintiffs to equal protection under the laws in contravention of the Fourteenth Amendment of the United States Constitution, and that the provision of the Act referenced in paragraph [86] violates the rights of freedom of speech and association protected by the First and Fourteenth Amendments of the United States Constitution;

B. Enter preliminary and permanent orders enjoining defendants, their successors, and all those acting in concert with them or at their direction from implementing or enforcing provisions of the Act referenced in paragraphs [82-87];

C. Award plaintiffs' attorneys' fees and costs, pursuant to 42 U.S.C. §1988; and

D. Grant such other and further relief as may be necessary to preserve or restore the *status quo ante.*

June 15, 2011.

Respectfully submitted,

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**Pro hac vice* applications pending