IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

MISSOURI NATIONAL EDUCATION ASSOCIATION,	)	
And	)	
FERGUSON-FLORISSANT NATIONAL EDUCATION ASSOCIATION,	)	
And	)	
HAZELWOOD ASSOCIATION OF SUPPORT PERSONNEL,	)	
And	)	
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 42,	)	
And	)	
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 610,	)	
And	)	
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 148,	)	
And	)	
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1,	)	
Plaintiffs,	)	No.
v.	)	
	)	Div.
MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS,	)	
And	)	
	)	

STATE BOARD OF MEDIATION,)
)
And)
)
FERGUSON-FLORISSANT SCHOOL DISTRICT,)
)
And)
)
HAZELWOOD SCHOOL DISTRICT,)
)
And)
)
THE CITY OF BEL-RIDGE,)
)
And)
)
AFFTON FIRE PROTECTION DISTRICT,)
)
And)
)
CITY OF CRESTWOOD,)
)
And)
)
ST. LOUIS COMMUNITY COLLEGE,)
)
And)
)
OFFICE OF ADMINISTRATION –)
DIVISION OF PERSONNEL,)
)
And)
)
MISSOURI DEPARTMENT OF MENTAL)
HEALTH,)
)
And)
)
MISSOURI VETERANS COMMISSION,)
)
And)
)
MISSOURI DEPARTMENT OF CORRECTIONS,)
)
And)
)

ST. LOUIS COUNTY PROSECUTOR,)
)
Defendants.)

SERVE:

Missouri Department of Labor and
Industrial Relations
Anna Hui, Director
421 E. Dunklin St.
P.O. Box 504
Jefferson City, MO 65102-0504

State Board of Mediation
Todd Smith, Chair
3315 W. Truman Blvd., Rm 211
P.O. Box 2071
Jefferson City, MO 65102-2071

Ferguson-Florissant School District
c/o Cindy Ormsby, Esq.
Crotzer & Ormsby, LLC
130 S. Bemiston Ave., Suite 605
Clayton, MO 63105

Hazelwood School District
c/o Cindy Ormsby, Esq.
Crotzer & Ormsby, LLC
130 S. Bemiston Ave., Suite 605
Clayton, MO 63105

The City of Bel-Ridge
Willie Fair, Mayor
8920 Natural Bridge
Bel-Ridge, Missouri 62121

Affton Fire Protection District
Nick Fahs, Fire Chief
9282 Gravois Road
St. Louis, Missouri 63123

City of Crestwood
Tony Kennedy, Acting Mayor
1 Detjen Drive
St. Louis, Missouri 63126

St. Louis Community College
Dr. Jeff Pittman, Chancellor
3221 McKelvey Rd.
St. Louis, Missouri 63044

Office of Administration - Division of Personnel
Sarah H. Steelman, Commissioner
301 W. High Street, Room 430
Jefferson City, Missouri 65101

Missouri Department of Mental Health
Mark Stringer, Director
1706 East Elm Street
Jefferson City, MO 65101

Missouri Veterans Commission
Grace Link, Executive Director
205 Jefferson Street, 12th Floor
Jefferson City, MO 65102

Missouri Department of Corrections
Anne Precythe, Director
2729 Plaza Drive
Jefferson City, MO 65102

St. Louis County Prosecutor
Robert P. McCulloch, Pros. Atty.
100 South Central Avenue, 2nd Fl
Clayton, Missouri 63105

PETITION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

COME NOW Plaintiffs, by and through their attorneys, and for their Petition for Declaratory Judgment and Injunctive Relief state as follows:

PRELIMINARY STATEMENT

1. The Union Plaintiffs—seven labor organizations representing a broad array of public-sector employees—bring this action for declaratory and injunctive relief to challenge the constitutionality of a new law, House Bill 1413 ("HB 1413"), that enacts sweeping and

unjustified changes to the State's public-sector labor laws and that significantly burdens the Missouri constitutional rights of Plaintiffs and their members.

2. Plaintiff labor organizations bring suit on behalf of their members, and on their own behalves. As explained more fully below, HB 1413 creates a new public-sector collective-bargaining regime that imposes a raft of harsh restrictions on a disfavored set of public-employee labor organizations and their members, while completely exempting a more favored set of public-employee labor organizations and their members from the same. As a result, HB 1413 strips many—but not all—public-sector employees of collective bargaining rights and contractual protections, infringes on their rights to attain and retain union representation, and denies them vital free speech, association, and petition rights. Similarly, the Plaintiffs and other disfavored labor organizations will be hobbled in their ability to represent members, stripped of contractual rights, burdened with intrusive and expensive record-keeping and disclosure requirements, and denied vital free speech, association, and petition rights. These onerous and discriminatory restrictions violate the rights of the Plaintiffs and their members under the Missouri Constitution to organize and bargain collectively (Article I, Section 29); to free speech, association, and petition (Article I, Sections 8-9); to protection against impairment of contracts and retrospective operation of laws (Article I, Section 13); to equal protection (Article I, Section 2); and to protection against special laws (Article III, Section 40).

PARTIES

3. Plaintiff Missouri National Education Association ("Missouri NEA"), a Missouri not-for-profit corporation, is a state-wide organization affiliated with the National Education Association, and is headquartered in Jefferson City, in Cole County, Missouri. Missouri NEA is a "labor organization" within the meaning of new section 105.500(5), RSMo., which provides

services to approximately 35,000 educators, administrators, and other persons working in public K-12 education and higher education throughout the State, all of whom are "public employees" within the meaning of new section 105.500(7), RSMo. The members of Missouri NEA belong to 208 local affiliates, some of which are party to collective bargaining agreements with public employers that are "public bodies" within the meaning of new section 105.500.6, RSMo.

4. Plaintiff Ferguson-Florissant National Education Association ("Ferguson-Florissant NEA") is a voluntary unincorporated association, a local affiliate of Missouri NEA, and a "labor organization" within the meaning of new section 105.500(5), RSMo. It is headquartered in St. Louis County, Missouri. Ferguson-Florissant NEA represents approximately 876 full-time certificated instructional and educational support personnel employed by Defendant Ferguson-Florissant School District, all of whom are "public employees" within the meaning of new section 105.500(7), RSMo.

5. Plaintiff Hazelwood Association of Support Personnel ("Hazelwood ASP") is a voluntary unincorporated association, a local affiliate of Missouri NEA, a "labor organization" within the meaning of new section 105.500(5), RSMo., and is headquartered in St. Louis County, Missouri. Hazelwood ASP represents approximately 35 bus drivers employed by Defendant Hazelwood School District, all of whom are "public employees" within the meaning of new section 105.500(7), RSMo.

6. Plaintiff Laborers' International Union of North America, Local Union No. 42 ("LIUNA Local 42") is a voluntary unincorporated association and a "labor organization" within the meaning of the new section 105.500(5), RSMo. It is headquartered in the City of St. Louis, Missouri, but represents bargaining units in St. Louis County. LIUNA Local 42 represents approximately 2075 private- and public-sector employees in Missouri, the majority of whom are

not employed in public safety positions as defined in the new section 105.500(8), RSMo. However, LIUNA Local 42 represents a police bargaining unit of approximately 20 persons employed by Defendant City of Bel-Ridge, all of whom are "public employees" within the meaning of new section 105.500(7), RSMo.

7. Plaintiff Miscellaneous Drivers, Helpers, Healthcare and Public Employees Local Union No. 610, International Brotherhood of Teamsters ("Teamsters Local 610") is a voluntary unincorporated association and a "labor organization" within the meaning of new section 105.500(5), RSMo., and is headquartered in Maryland Heights, in St. Louis County, Missouri. Teamsters Local 610 represents approximately 1500 private- and public-sector employees in Missouri, the majority of whom are not employed in public safety positions as defined by HB 1413. However, Teamsters Local 610 represents a firefighter bargaining unit of approximately 36 persons employed by Defendant Affton Fire Protection District, as well as a police bargaining unit of approximately 21 persons employed by Defendant City of Crestwood, all of whom are "public employees" within the meaning of new section 105.500(7), RSMo.

8. Plaintiff International Union of Operating Engineers, Local 148 ("Operating Engineers Local 148") is a voluntary unincorporated association and "labor organization" within the meaning of new section 105.500(5), RSMo. It is headquartered in St. Louis County, Missouri. Operating Engineers Local 148 represents approximately 1600 private- and public-sector employees in Missouri, including a physical plant unit of approximately 39 persons employed by Defendant St. Louis Community College, all of whom are "public employees" within the meaning of new section 105.500(7), RSMo.

9. Plaintiff Service Employees International Union, Local 1 ("SEIU Local 1") is a voluntary unincorporated association and "labor organization" within the meaning of new

section 105.500(5), RSMo. It is headquartered in St. Louis County, Missouri. SEIU Local 1 represents approximately 7000 private- and public-sector employees in Missouri, the majority of whom are not trained or authorized by law to render emergency medical assistance or treatment as defined in new section 105.500(8), RSMo. However, SEIU Local 1 represents a patient care professional unit of approximately 828 persons employed by Defendants State of Missouri Office of Administration, Department of Mental Health, Department of Corrections, and Veterans Affairs Commission. The majority of patient care professionals in this unit are trained or authorized by law to render emergency medical assistance or treatment. Employees of the Missouri Department of Mental Health and the Missouri Veterans Commission are "public employees" within the meaning of new section 105.500(5), RSMo., but employees of the Missouri Department of Corrections are excluded from coverage under new section 105.503.2, RSMo.

10. Plaintiffs Missouri NEA, Ferguson-Florissant NEA, Hazelwood ASP, LIUNA Local 42, Teamsters Local 610, Operating Engineers Local 148, and SEIU Local 1 (collectively, "Union Plaintiffs") have standing to, and do, bring suit on their own behalves, as well as on behalf of their many members. The members of the Union Plaintiffs would have standing to sue in their own right; the interests that the Union Plaintiffs seek to protect are germane to their purposes; and neither the claims asserted, nor the relief requested requires the participation of their individual members. *See, e.g.*, *E. Mo. Coal. of Police v. City of Chesterfield*, 386 S.W.3d 755, 759 (Mo. 2012).

11. Defendant Missouri Department of Labor and Industrial Relations ("the Department") is a department of the State of Missouri with a principal place of business in Jefferson City, Cole County, Missouri. Under HB 1413, the Department is charged both with

enforcing several of the law's new requirements that are challenged in this action, and with promulgating regulations to implement those requirements. *See, e.g.*, new sections 105.540, 105.595, RSMo.

12. Defendant State Board of Mediation ("the SBM") is a division of the Department with a principal place of business in Jefferson City, Cole County, Missouri. Under HB 1413, the SBM is charged both with enforcing several of the law's new requirements that are challenged in this action, and with promulgating regulations to implement those requirements. *See, e.g.*, new sections 105.525, 105.575, 105.598, RSMo

13. Defendant Ferguson-Florissant School District is a public school district organized under Missouri law and located in St. Louis County, Missouri. It is a "public body" within the meaning of new section 105.500(6), RSMo. and responsible for implementing many of the requirements of HB 1413.

14. Defendant Hazelwood School District is a public school district organized under Missouri law and located in St. Louis County, Missouri. It is a "public body" within the meaning of new section 105.500(6), RSMo. and responsible for implementing many of the requirements of HB 1413.

15. Defendant City of Bel-Ridge is a municipality organized under Missouri law and located in St. Louis County, Missouri. It is a "public body" within the meaning of new section 105.500(6), RSMo. and responsible for implementing many of the requirements of HB 1413.

16. Defendant Affton Fire Protection District is a municipal corporation organized under Missouri law and located in St. Louis County, Missouri. It is a "public body" within the meaning of new section 105.500(6), RSMo. and responsible for implementing many of the requirements of HB 1413.

17. Defendant City of Crestwood is a municipality organized under Missouri law and located in St. Louis County, Missouri. It is a "public body" within the meaning of new section 105.500(6), RSMo. and responsible for implementing many of the requirements of HB 1413.

18. Defendant St. Louis Community College is a public two-year college organized under Missouri law and has its principal place of operation in St. Louis County, Missouri. It is a "public body" within the meaning of new section 105.500(6), RSMo. and responsible for implementing many of the requirements of HB 1413.

19. Defendants State of Missouri Office of Administration ("OA"), Missouri Department of Mental Health ("DMH"), the Missouri Veterans Commission ("MVC"), and the Missouri Department of Corrections ("DOC") are Departments of the State of Missouri with their principal places of business in Jefferson City, Cole County, Missouri. All four of these Departments have a presence in St. Louis County. The OA represents the DMH, the MVC, and the DOC in collective bargaining with the unit of patient care professionals represented by SEIU Local 1. DMH and MVC are "public bodies" within the meaning of new section 105.500(6), RSMo. DOC is excluded from the definition of "public body" under new section 105.500(6), RSMo.

20. Defendant Robert McCullough is the St. Louis County Prosecuting Attorney and has his principal place of business in St. Louis County, Missouri. Defendant McCullough is the chief law enforcement officer for St. Louis County, Missouri, with responsibility for enforcing the criminal penalties set forth in new section 105.555, RSMo. for St. Louis County. Defendant McCullough is sued in his official capacity.

JURISDICTION AND VENUE

21. The Court has jurisdiction over this action pursuant to section 527.010, RSMo.

22. Venue is proper in this Court pursuant to section 508.010.2(2), RSMo., because at least one of the Defendants named herein has its principal place of business in St. Louis County, Missouri.

FACTS

I. The Missouri Bill of Rights Guarantees All Employees The Right to Organize and Bargain Collectively

23. Since its adoption in 1945, the Missouri Constitution has explicitly recognized that "employees shall have the right to organize and bargain collectively through representatives of their own choosing." Mo. Const. art. I, § 29 ("Art. I, Sec. 29"). That right extends to all employees, regardless of whether they work in the private or the public sector. *Independence-Nat'l Educ. Ass'n v. Independence Sch. Dist.*, 223 S.W.3d 131 (Mo. 2007) ("*Independence-NEA*").

24. The Constitutional right to organize and bargain "through representatives of their own choosing," guarantees employees the freedom of choice in the selection of a bargaining representative. It also entails a corresponding duty on the part of public-sector employers to bargain in good faith. *American Fed'n of Teachers v. Ledbetter*, 387 S.W.3d 360, 364-68 (Mo. 2012). That duty requires a public employer to make "a serious attempt to resolve differences" through collective bargaining with its employees' representative, *id.* at 367, and to "match [the union's] proposals, if unacceptable, with counter-proposals," *id*. at 366 (quoting *NLRB v. American Nat'l Ins. Co.*, 343 U.S. 395, 402 (1951)). An agreement reached as a result of such bargaining is a binding contract, which a public employer may not repudiate or alter unilaterally. *Independence-NEA*, 223 S.W.3d at 140-41.

II. Plaintiffs' Representation of Public Employees Under Existing Public-Sector Labor Laws and Policies

25. Although the right to collective bargaining is secured by the Constitution, the Legislature and other public entities may establish procedures for the exercise of that right, *Independence-NEA*, 223 S.W.3d at 136, provided that such procedures "satisfy the constitutional requirements" of Art. I, Sec. 29, *City of Chesterfield*, 386 S.W.3d at 760.

26. Prior to the August 28, 2018 effective date of HB 1413, the State's public-sector labor law, chapter 105, Title 108, RSMo., has provided those "procedures" for many public employees. In broad terms, the existing law ensures that covered public employees may have the right to form and join labor organizations, to bargain with the employer "relative to salaries and other conditions of employment," and to have the results of that bargaining reduced to a written agreement. Sections 105.510–105.520, RSMo. (2017). Issues under the existing law "with respect to appropriateness of bargaining units and majority representative status" are resolved by the SBM.

27. The State's existing public-sector labor law does not cover certain categories of public-sector employees. *See* section 105.510, RSMo. (exempting "police, deputy sheriffs, Missouri state highway patrolmen, Missouri National Guard, all teachers of all Missouri schools, colleges and universities") (2017). Nevertheless, those employees and their chosen union representatives enjoy all of the rights guaranteed under Art. I, Sec. 29, *see Independence-NEA*, 223 S.W.3d at 136, and frequently organize and bargain collectively under local ordinances or policies that satisfy constitutional standards.

28. Under these existing regimes of state and local law, Plaintiffs are the recognized exclusive representatives of units of public employees. In some cases, that recognition has come about through SBM-conducted elections, in other cases through an election conducted by another

entity, and in other cases through the employer's voluntary recognition of the union's representative status based on a credible showing of majority support by the employees. Since those initial recognitions, the Plaintiffs' status as recognized exclusive representatives has continued even though employees remain free to seek a change in their representative. And, each of the Plaintiffs that currently has a collective-bargaining agreement with an employer, has contractual provisions in that agreement providing that the Plaintiff will continue to serve as the exclusive representative for the duration of that agreement. For example:

a. Plaintiff Ferguson-Florissant NEA was voluntarily recognized as the exclusive representative of full-time certificated instructional and educational-support personnel by Defendant Ferguson-Florissant School District. This recognition has since been expressly included in the parties' successive collective bargaining agreements. The current collective-bargaining agreement between Ferguson-Florissant NEA and Ferguson-Florissant School District is in effect until June 30, 2019, and recognizes the Ferguson-Florissant NEA as the exclusive representative for the duration of the agreement.

b. SEIU, Local 1 is the certified representative of patient care professionals in the Departments of Mental Health, Corrections, and Missouri Veterans Commission. SEIU Local 1's most recent collective bargaining agreement for the patient care professional unit, which expired on May 31, 2018, includes a provision recognizing SEIU Local 1 as the exclusive representative of patient care professionals in these three State Departments. SEIU, Local 1 has repeatedly asked the Office of Administration for dates for bargaining a new

labor agreement, but to date the Office of Administration has failed to provide dates.

c. Similar provisions assure the continued exclusive representative status of the following Plaintiffs until the conclusion of the applicable collective bargaining agreement: Plaintiff Hazelwood ASP (exclusive representative status in effect under agreement until June 30, 2020); Plaintiff LIUNA Local 42 (exclusive representative status in effect under agreement until April 5, 2021); Plaintiff Teamsters Local 610-Affton Fire Protection District unit (exclusive representative status in effect under agreement until December 31, 2020); Plaintiff Operating Engineers Local 148 (exclusive representative status in effect under agreement until June 30, 2021).

29. Under these existing regimes of state and local law, Plaintiffs also negotiated and reached agreement on wages, benefits, and a broad array of terms and conditions of employment. One of the terms contained in many of the Plaintiffs' agreements deals with payroll deduction, also known as dues checkoff, which is a common and convenient arrangement under which employers automatically deduct union dues from member paychecks and forward those dues directly to the union. Payroll deduction provisions have been negotiated by and are included in the collective bargaining agreements between Plaintiff LIUNA Local 42 and Defendant City of Bel-Ridge; Plaintiff Operating Engineers Local 148 and Defendant St. Louis Community College; and Plaintiff Ferguson-Florissant NEA and Defendant Ferguson-Florissant School District. Dues deduction was also included in the labor agreement, since expired, between SEIU, Local 1 and the State of Missouri. Plaintiff Missouri NEA receives dues from many of its

members through payroll deduction arrangements negotiated directly between its local affiliates and public employers.

30. As is traditional in both the private and public sectors, Plaintiffs' agreements also frequently address issues related to employee hiring, promotion, assignment, direction, transfer, scheduling, discipline, and discharge. And in some cases, they address if and how the terms of the agreement should be applied in times of fiscal emergencies. For example:

a. Plaintiff Ferguson-Florissant NEA's collective bargaining agreement with Defendant Ferguson-Florissant School District includes provisions for "just cause" and progressive discipline for educational support personnel, for paid release time for union officers and representatives to conduct certain union business, and for protocols for conducting employee transfers and layoffs. The agreement also includes a provision limiting the employer's ability to unilaterally modify the contract only to "emergency situations where … the District and the community has suffered serious damage due to natural disasters, acts of war or terrorism, or pandemic." In the "event of a serious financial situation that could not have been anticipated," the parties are to "discuss the situation and collaborate on possible solutions." In such cases, the contract further provides that the original terms of the contract are to be "reinstated" when "the District is able to resume normal operations and has achieved financial solvency."

b. Plaintiff Hazelwood ASP's collective bargaining agreement with Defendant Hazelwood School District includes provisions detailing the process by which unit employees can bid for bus routes, requiring layoff in reverse seniority

order, and recall from layoff in seniority order, and granting officers release time to conduct certain union business.

c. Plaintiff LIUNA Local 42's collective bargaining agreement with Defendant City of Bel-Ridge includes provisions limiting the employer's ability to discipline or terminate unit employees except for "just cause," and granting employees on the union's bargaining team release time for collective-bargaining activity.

d. Plaintiff Teamsters Local 610's collective bargaining agreement with Defendant Affton Fire Protection District includes provisions requiring "just cause" discipline, specifying the requirements for promotion, and detailing unit employee assignments.

e. Plaintiff Operating Engineers Local 148's collective bargaining agreement with Defendant St. Louis Community College includes provisions requiring "just cause" discipline, conducting layoffs in reverse seniority order, and granting recall from layoff in seniority order.

f. Plaintiff SEIU Local 1's recently expired collective bargaining agreement with Defendant State of Missouri includes provisions requiring "just cause" discipline and discharge and mandating that work-assignment decisions, layoffs, and recalls be conducted according to seniority.

31. The Plaintiffs also engage in traditional forms of speech, association, and protest to advance their positions in collective bargaining negotiations. For example, in 2017, Plaintiff Teamsters Local 610 and its members engaged in a demonstration at a city council meeting of Defendant City of Crestwood to voice their opposition to a pay proposal and to demand action on

ongoing collective-bargaining negotiations. Similarly, Plaintiff SEIU Local 1 has specifically bargained a provision in its now expired collective-bargaining agreement allowing employees to "participate in informational rallies so long as it is done during non-work time."

II. Public Employees' Political and other Free-Speech Activities Under Existing Law

32. Both unions and corporations are generally prohibited under Missouri law from making political contributions directly to candidates or party committees. *See* Mo. Const. art. VII, § 23.3(3). Nevertheless, current law allows unions to fund and participate in a broad array of other political activities. For example, unions can spend general treasury funds to support or oppose ballot measures. *See First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 784–95 (1978); *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 295–300 (1981). They can also use those funds to engage in independent speech supporting or opposing political candidates or to make contributions to political committees that engage in such independent speech. *See Citizens United v. FEC*, 558 U.S. 310, 340 (2010); *Free & Fair Election Fund v. Mo. Ethics Comm'n*, 252 F. Supp. 3d 723, 748–49 (W.D. Mo. 2017). Unions in Missouri are also permitted to make contributions to political action committees, *see* Mo. Const. art. VII, § 23.3(12), and to transfer dues funds to the union's own connected political action committee, *see* Mo. Ethics Comm'n Advisory Op. No. 2017.08.CF.016 (Aug. 25, 2017).

33. Pursuant to these existing laws, some of the Plaintiffs have spent funds consisting of member dues on political activities. For example, Plaintiff Operating Engineers Local 148 made multiple contributions to the campaign against Missouri Proposition A, a referendum involving the state's recently enacted "right to work" law. Plaintiff MNEA made contributions from its general treasury to its Ballot Issue Crisis Fund and wishes to continue doing so.

However, HB 1413 mandates annual written authorizations from every member prior to the expenditure of funds for or contributions in support of ballot measures.

III. House Bill No. 1413 Enacted Radical Changes to the State's Public-Sector Labor Law

34. On June 1, 2018, then-Governor Eric Greitens signed HB 1413 into law. This legislation, effective August 28, 2018, enacted extensive and drastic changes to the State's public-sector labor law, in large part by significantly revising chapter 105, Title 108, RSMo.

A. HB 1413 Arbitrarily Exempts Some Public-Sector Employees and Unions

35. For a favored group of public-sector unions and employees, HB 1413 will have no effect whatsoever. That is because HB 1413 completely exempts a new category of "public safety labor organizations" as well as all public-sector employees "who are members of [such] a public safety labor organization" from its coverage. New section 105.503, RSMo.; *see also id.* new section 105.501 (defining a "public safety labor organization" as any union that wholly or primarily represents persons (a) trained or authorized by law or rule to render emergency medical assistance or treatment, or (b) vested with the power of arrest for criminal code violations). In addition, HB 1413 completely exempts the Department of Corrections and its employees from its coverage. *See* new section 105.500(6) (excluding the Department of Corrections from the employers, or "public bod[ies]," subject to HB 1413's restrictions); *see also id*., new section 105.503 (providing that HB 1413's core provisions "shall not apply" to the Department of Corrections and its employees). For the sake of clarity, this Petition hereafter refers to all exempted public-sector unions and employees simply as "public safety" unions.

36. The carve-out favoring "public safety" unions was added to HB 1413 at the eleventh-hour in an evident attempt to save the legislation from defeat. Though HB 1413 initially

was introduced on December 1, 2017, the wholesale exception for "public safety labor organizations" was not added to the legislation until the very end of the process, as part of the May 16, 2018, Senate Substitute. The State Senate approved this significant addition that very same day, and the House of Representatives followed suit the following day.

37. Plaintiffs do not qualify as favored "public safety labor organizations" under HB 1413 because they do not wholly or primarily represent persons trained or authorized by law or rule to render emergency medical assistance or treatment, or vested with the power of arrest for criminal code violations. Nor do Plaintiffs—other than SEIU Local 1—represent employees of the Department of Corrections. Plaintiff SEIU Local 1 occupies the anomalous position of representing some patient care professionals employed by the Department of Corrections (who are excluded from HB 1413's coverage) in a broader unit that also includes employees of the Department of Mental Health and the Veterans Commission (who are subject to HB 1413's rollbacks).

38. As described in greater detail below, the result of HB 1413's wholesale exemption of favored "public safety" unions is to preserve bargaining and association rights to those unions and the employees they represent alone, while subjecting all other unions (the "penalized" unions) to such draconian restrictions as to place them, and the employees they represent, at a permanent and insurmountable disadvantage in terms of organizing, bargaining and the carrying out of their usual union functions.

B. Restrictions on Public Employees' Ability to Choose and Retain Representation by Penalized Unions

39. HB 1413 dramatically recasts—and severely restricts—the process for public employees to select or retain a penalized union like the Plaintiffs as their exclusive representative. In particular, HB 1413 invalidates the means by which many penalized unions

were initially recognized as representatives, and it subjects those unions to an immediate and burdensome requirement to conduct an "initial" certification election as though they had no prior representative or bargaining relationship with the employees and employer. And for all penalized unions that retain their certification after an initial election, HB 1413 imposes an unjustified and burdensome requirement that they be recertified triennially.

40. HB 1413 categorically prohibits public employers from voluntarily recognizing a penalized union, regardless of how strong and undisputed the level of employee support for that union, *see* new section 105.575, RSMo. Instead, such union—which include Plaintiff Ferguson-Florissant NEA and LIUNA Local 42—can only be certified as an exclusive bargaining representative following an "initial" election conducted by Defendant SBM.

41. To hold such an "initial" election, a penalized union must submit cards containing the signatures of at least thirty percent of the employees in the bargaining unit, and the State Board of Mediation must confirm that showing of support. *See* new section 105.575(1)-(2). And to prevail in the "initial" election, a penalized union must receive—not just a majority of the votes actually cast in the election—but a majority of the votes of all employees eligible to vote. In other words, HB 1413 treats *non*-votes in an initial representation election as "no" votes against the proposed representative. This barrier to employee choice of a union representative is unprecedented under Missouri law and applies only to penalized unions, even though public safety unions retain much broader rights to bargain and, hence, bind the employees they represent.

42. If a penalized union prevails in such an initial certification election, it must still stand for a recertification election every three years. *See* new section 105.575(12). As with the initial certification election, the penalized union must receive—not just a majority of the votes

actually cast in the election—but a majority of all employees eligible to vote in order to retain its status as exclusive representative. Again, this considerable procedural hurdle to representation applies only to penalized unions and no other unions.

43. In all elections, the penalized unions must pay a fee to participate. *See*, new section 105.575(15). By contrast, the favored unions seeking to represent a bargaining unit and groups seeking to decertify a penalized union do not pay a fee.

44. Some penalized unions—such as Teamsters Local 610 (City of Crestwood unit)—were initially recognized as a result of a representation election conducted by an entity other than the SBM because the SBM had no authority at the time to hold elections for those units. Defendant Smith asserted in a July 3, 2018 letter, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference, that the Board will interpret and enforce "the new law to require that a party seeking recertification must have been initially certified by the [SBM]." Based upon his interpretation, a penalized union that originally attained status as exclusive representative through a non-SBM-conducted election must face an immediate "initial certification" election in which it must be approved by a majority of all eligible voters. And if that union prevails in the initial certification election, it must stand for a recertification election every three years thereafter. *See* new section 105.575(12).

45. Even a penalized union that was initially recognized as a result of an SBM-conducted representation election—such as Plaintiff Hazelwood ASP—must still stand for its first recertification election by August 28, 2019, and for subsequent recertification elections every three years thereafter within two weeks of the anniversary date of the initial certification. *See* new section 105.575(12), RSMo. If such a penalized union is a party to a collective-

bargaining agreement that expires after August 28, 2020, its first recertification may occur any time prior to, but in no event later than, August 28, 2020. *See id.*

46. Plaintiff SEIU Local 1 would be required to stand for its first recertification election by August 28, 2019, and for triennial recertification elections thereafter. However, because of the exemption of the Department of Corrections from HB 1413, the nature of the unit to be recertified remains unclear.

47. The requirements for certification elections described above in paragraphs 39 - 44 apply regardless of whether the penalized union is a party to an existing collective-bargaining agreement that recognizes it as the exclusive representative beyond HB 1413's August 28, 2018 effective date or (for a penalized union that was certified pursuant to an earlier SBM-conducted election) beyond August 29, 2020. Several of the plaintiffs are parties to such agreements.

48. Because voluntary recognition and recognition following an election conducted other than by the SBM are both common methods by which public employers have historically recognized unions, the requirements for certification elections described above in paragraphs 39 - 44 will immediately injure numerous public employees, including many represented by Plaintiffs. These employees will be stripped of exclusive representation by their unions and forced to request initial certification through the burdensome SBM initial certification and election procedure under which their unions may retain representative status only if a majority of all employees in the unit vote for representation. At the very minimum, these employees will be denied the union representation that they have enjoyed (in some cases for many decades) while the time-consuming process of initial certification elections unfolds. And the Plaintiffs that are parties to existing collective-bargaining agreements that recognize their status as the exclusive representative will have those agreements substantially impaired, if not completely nullified.

49. HB 1413's favored "public safety" unions will suffer none of these harms. Because neither the initial certification elections described above in paragraphs 39 - 44, nor the triennial recertification elections apply to them, the employees they represent will continue to enjoy the services and representation of the union without the need to overcome the burdensome majority of the unit, rather than majority of the voters, threshold.

C. The Evisceration of Collective Bargaining Rights for Penalized Unions and the Employees they Represent

50. HB 1413 effectively eviscerates collective bargaining rights of penalized unions and the employees they represent both by granting employers unilateral rights to rewrite or void a bargained for agreement with penalized unions and by drastically reducing the subjects that may be bargained. These restrictions discriminate against penalized unions and the employees they represent and are so onerous as to render collective-bargaining by penalized unions all but meaningless.

51. HB 1413 prohibits penalized unions from bargaining collectively over "the right to hire, promote, assign, direct, transfer, schedule, discipline, and discharge public employees" and "work rules and standard operating procedures," by reserving all of these basic employment matters to the exclusive control and prerogative of a public employer. New section 105.585.1, RSMo. HB 1413 also restricts penalized unions' ability to bargain for so-called "release time" provisions, which are common and allow for one or more bargaining unit employees to receive regular pay for conducting certain union business. Such arrangements may now be bargained only for the limited "purposes of grievance-handling, advisory committees, establishing a work calendar, and internal and external communications." New section 105.585.5, RSMo. As noted above in paragraph 30, many of the Plaintiffs' existing collective bargaining agreements include provisions addressing one or more of these now-unlawful topics, meaning that those provisions

will be rendered unlawful when modified or upon expiration or renewal after the effective date of HB 1413. Such subjects of bargaining have long been considered mandatory subjects of bargaining and part of good faith bargaining. *See, Ledbetter*, 387 S.W.3d at 364-68.

52. HB 1413 also requires penalized unions to ratify proposed collective bargaining agreements before the agreement is presented to the public employer. After the union has ratified, HB 1413 grants the public employer the unilateral right to reject or rewrite or void altogether any portion of the already-negotiated and ratified agreement. New section 105.580.5, RSMo. Should the public employer do so, it may negotiate a replacement provision or simply unilaterally rework the final agreement as it so chooses. *See id.* HB 1413 further grants a public employer authority to open up and unilaterally revise a ratified collective bargaining agreement's "economic terms" "in the event of a budget shortfall." New section 105.580.6, RSMo. And HB 1413 grants public employers the right to unilaterally modify "for good cause" the "economic terms" of a collective bargaining agreement with a penalized union whenever the public employer "deems it necessary," and bargaining over the issue has failed to resolve the issue to the employer's satisfaction within thirty days time. *Id.*

53. The combined import of HB 1413's restrictions on collective bargaining for penalized unions (described above in paragraphs 50 - 52) is effectively to eviscerate collective bargaining rights for such unions and the employees they represent. Not only do those restrictions remove most commonplace employment matters from the scope of bargaining, but they subject bargaining over the few issues that remain to the employer's unilateral nullification or revision, making the bargaining process little more than a charade. Further these provisions purport to void altogether existing contract provisions for which Plaintiffs have already bargained.

54. Yet again, HB1413's favored "public safety labor organizations" will suffer none of these harms. They will continue to enjoy the full sweep of bargaining rights under existing law, their contracts will remain intact, their employers will not be permitted to unilaterally rewrite or void a collectively bargained agreement and the employees they represent will continue to enjoy the full benefits of the agreements that their unions have reached.

D. Restrictions on the Rights of Public Employees Represented by Penalized Unions to Speak Freely and Petition

55. HB 1413 also enacts sweeping restrictions on the free speech and association rights of public employees who are represented by a penalized union.

56. HB 1413 requires that every collective bargaining agreement between a public employer and a penalized union prohibit "any … interference with the operations of any public body," as well as "picketing of any kind," and further specify that employees who participate in such "pickets" "shall be subject to immediate termination of employment." New section 105.580.2, RSMo.

57. The restrictions on and penalties for "picketing" and "interference" of any kind do not apply to public employees who have declined union representation entirely or who are fortunate enough to be represented by a favored "public safety" union.

E. Restrictions on the Rights of Penalized Unions to Speak Freely and Petition the Government for Redress

58. HB 1413 also enacts broad restrictions on the rights of penalized unions to engage in constitutionally protected expressive and political activities.

59. HB 1413 prohibits penalized unions from taking any action "intended to cause the removal or replacement of any designated representative" of a public employer. New section 105.580.2, RSMo. The phrase "intended to cause the removal or replacement of any designated

representative" of a public employer is not defined by statute. On its face, it would prohibit, among other things, petitioning for the removal or reassignment of a supervisor for workplace-related reasons, by way of a grievance or otherwise, no matter how inappropriate or unlawful the supervisor's conduct might be. It might even be construed as prohibiting any efforts to defeat an elected public employer representative such as a school board member.

60. Such activity is commonplace among public sector unions and reflects the exercise of core protected rights of speech and petition. For example, MNEA locals have endorsed candidates for school board, Teamsters Local 610 has endorsed candidates for the Crestwood City Council, and Local 42 has also endorsed candidates for local office.

61. Yet again, HB1413's favored "public safety" unions are exempt from such restrictions and remain free to engage in petitioning or political activity intended to cause the removal or replacement of any public employer representative.

F. Restrictions on Penalized Unions' Ability to Collect and Spend Union Dues Paid by Public Employee Members

62. HB 1413 also significantly restricts penalized unions (including Plaintiffs) in their collection of members' dues and their use of such dues to fund a range of constitutionally protected political speech and activity.

63. HB 1413 prohibits penalized unions from receiving any member's dues through payroll deduction, except where the non-exempt union has first obtained the member's written or electronic authorization, which must be renewed on an annual basis. *See* new section 105.505.1, RSMo. Thus, upon HB 1413's effective date of August 28, 2018, Plaintiffs Ferguson-Florissant NEA, LIUNA Local 42, and Operating Engineers Local 148 will no longer be entitled to rely on the dues checkoff provisions contained in their existing collective-bargaining agreements and

will, instead, need to undertake the burdensome and time-consuming task of obtaining an individual authorization each year from all of their members.

64. HB 1413 also imposes a significant restriction on the ability of penalized unions (including Plaintiffs) to make political contributions and expenditures. It prohibits such unions from using any portion of any member's dues to make either a political "contribution" or a "political" expenditure," as those terms are defined by section 130.011, RSMo., without first obtaining the members' "informed, written or electronic authorization," which must also be renewed annually. New section 105.505.2, RSMo. HB 1413 does not define what constitutes adequate "informed … authorization." Moreover, this annual advance authorization requirement may not be waived even by a member who wishes to do so, and no employees' dues may be increased in lieu of payments for contributions or expenditures. *See* new sections 105.505(3)-(4), RSMo.

65. Yet again, HB 1413's favored "public safety" unions are exempt from these restrictions. They remain free to rely on collectively bargained dues checkoff provisions without the need to obtain annual reauthorizations from each member for those deductions. They also remain free to make political contributions and expenditures from dues funds without advance authorization from each member.

66. Indeed, HB 1413's restriction on the political activity of penalized unions applies to no other entity. Private corporations, unions that represent employees only in the private sector, trade associations, and other membership organizations or non-profits all remain free to use their treasury funds for political contributions and expenditures without advance authorization from individual members or shareholders. In addition, charities that receive money

through payroll deductions pursuant to Section 33.103, RSMo., may use that money to make contributions and expenditures in support of ballot measures.

G. Imposition of Onerous Record-Keeping and Reporting Requirements on Penalized Unions

67. HB 1413 subjects all penalized unions representing public employees—regardless of their size, available resources, or capacity—to a number of new, intrusive, and burdensome record-keeping and reporting requirements.

68. HB 1413 requires that all penalized unions "maintain financial records substantially similar to and no less comprehensive than the records that are required to be maintained in accordance with 29 U.S.C. Section 431(b) or any successor statute." New section 105.505(6), RSMo. All penalized unions must provide those financial records "in a searchable electronic format to every public employee it represents," and must likewise retain records and underlying data and documents "by which the records may be verified, explained, or clarified," for at least five years. Id., new section 105.505(7)-(8). This new recordkeeping and disclosure requirement is not only burdensome, but vague, given that the federal law cited in this provision of HB 1413, 29 U.S.C. § 431(b), does not require unions to "maintain" any record, much less in a "searchable electronic format." On the contrary, this provision of the federal Labor-Management Reporting and Disclosure Act ("LMRDA") requires only that unions covered by the federal law file financial reports with the Department of Labor. It is therefore wholly unclear whether HB 1413 requires penalized unions to maintain records that contain the same information as would a report filed under 29 U.S.C. § 431(b), all of the many underlying documents that would substantiate the information contained in a report filed under 29 U.S.C. § 431(b), or something else entirely.

69. HB1413's reporting requirements are also vague and unclear concerning their application to private sector unions that represent some public employees that have different reporting requirements under federal law, including whether they are exempt from HB1413's disclosure requirements pursuant to new section 105.503-3, whether smaller labor organizations may file the short form reports permitted by the LMRDA, or whether they may satisfy HB1413 by submitting their LMRDA reports.

70. HB 1413 requires—in addition to the vague disclosure obligation identified in paragraph 68— that every penalized union, apparently no matter how small, file annually with the Department a financial report disclosing a wide range of financial information, including all assets and liabilities; receipts of any kind; salaries and disbursements to officers and employees; all direct and indirect loans; as well as an "itemization schedule" detailing the "purpose, date, total amount, and type or classification of each disbursement … along with the name and address of the entity receiving the expenditure" in a variety of categories (e.g., contract negotiation and administration; organizing activities; litigation; public relations activities; training activities; etc.). New section 105.533.2, RSMo. These reporting requirements extend well beyond the requirements of the LMRDA.

71. Along with this annual filing requirement, HB 1413 imposes expansive record-keeping requirements, obligating every penalized union, officer and employee (other than clerical and custodial employees) to maintain for at least five years comprehensive and detailed records and underlying documentation (such as receipts) showing "with sufficient detail" the information and data against which the reports can be "verified, explained, or clarified, and checked for accuracy and completeness." New section 105.545, RSMo.

72. HB 1413's annual disclosure requirements are particularly onerous insofar as they require extensive and intrusive information about a penalized union's political activities, including information that the union may not even have in its own possession. For example, the annual financial report must disclose:

a. Detailed information regarding all expenditures for: political activities; activities attempting to influence the passage or defeat of federal, state, or local legislation, or the content or enforcement of federal, state, or local regulations or policies; and voter education and issue advocacy activities. New section 105.533(2)(6), RSMo.

b. The percentage of the reporting union's total expenditures spent on the above categories of political activity. New section 105.533(2)(7), RSMo.

c. The names, addresses, and activities, of any law firms, public relations firms, or lobbyists whose services the reporting union used for any of the above categories of political activity. New section 105.533(2)(8), RSMo.

d. The candidates, committees, and organizations to which the reporting union contributed financial or in-kind assistance, as well as the amount provided. New section 105.533(2)(9), RSMo.

e. Both the committees or political action committees with which the reporting union is affiliated or to which it provides contributions and the amounts that the reporting union contributed to such committees, as well as information about all of *those committees*' activities (i.e., the amounts and recipients of the financial support that each committee provided)—information that is not likely to be in the union's possession. New section 105.533(2)(10), RSMo.

73. The penalties imposed for even inadvertent non-compliance with these many new and onerous record-keeping and reporting requirements are draconian. Any delay in filing these reports is punished with a $100 per day fine. HB 1413 also makes it a crime to make a knowingly false statement or material omission from a report. It is likewise a crime to make a knowingly false entry in records required to be kept by HB 1413, or to knowingly conceal, withhold, or destroy such records. Both offenses can result in fines of up to $10,000, and imprisonment for up to one year. *See* new section 105.555, RSMo.

74. Plaintiffs will be required to devote considerable time, energy, and financial resources to complying with these new record-keeping and reporting requirements. These demands will be extremely burdensome for all Plaintiffs, but particularly so for the smaller unions. For example, Plaintiff Hazelwood ASP, which represents only 35 bus drivers employed by Defendant Hazelwood School District, employs no professional staffers, and relies entirely on elected member leaders for all governance, financial, and record-keeping functions, will be extraordinarily hard-pressed to comply with these new demands. Plaintiff Missouri NEA has local affiliates throughout the State of Missouri whose membership is small in comparison to the size of the bargaining unit. Many do not even serve as exclusive bargaining representative. Yet these local affiliates without staff are subject to the same onerous record-keeping and reporting requirements as large labor organizations. Many of the local Missouri NEA affiliates will be severely burdened by the record-keeping and reporting requirements of HB 1413.

75. The considerable demands posed by these new record-keeping and reporting requirements will impair Plaintiffs' ability effectively to represent the employees in the bargaining units they represent. The cost of complying with these requirements—in time, energy, and money—will necessarily come at the expense of other vital union activities, such as

collective bargaining, contract enforcement, the representation of individual unit employees in employment matters, the provision of member benefits, etc. While these burdens will be felt most acutely by smaller unions like Plaintiff Hazelwood ASP, they will adversely affect all Plaintiffs.

76. The daily fines and potential criminal penalties for non-compliance with the record-keeping and reporting requirements will have a chilling effect. Plaintiffs will likely have a harder time persuading their members (and in Missouri NEA's case, their local affiliates' members) to run for elected union office. Some of Missouri NEA's smaller affiliates may well shut down their operations rather than attempt to guess about the meaning of the burdensome and unclear disclosure requirements and run the risk of fines and criminal penalties.

77. Yet again, HB 1413's favored "public safety labor organizations" are exempt from these vague and onerous recordkeeping and disclosure requirements. They remain free to devote the considerable resources that would otherwise be necessary for compliance with these requirements to the representation of employees. They also remain free of the specter of fines and criminal prosecution for even small or inadvertent missteps in attempting to comply with them.

H. HB 1413's Implementation and Enforcement Mechanisms

78. HB 1413 gives the Department authority to enact regulations for the inspection and examination, on the request of any person, of the information and data contained in any report or other document filed with the Department. New section 105.540, RSMo.

79. HB 1413 gives the SBM authority to promulgate rules "necessary to implement" all of the provisions described in paragraphs 35 - 77, but no regulations will be in place on the effective date or for some time thereafter given the requirements of the rulemaking process.

80. Many of HB 1413's core provisions may be enforced—not just by public employers, the relevant agencies, or prosecutors—but by virtually any public entity or indeed citizen of the state. If a public employer or union violates, or is about to violate, any of the provisions described in paragraphs 39 - 45 and 50 - 54, the Department, any "public body," or "any citizen of the state of Missouri" may bring a civil enforcement action in which a court may award damages, injunctive relive, and attorney fees. New section 105.595, RSMo.

81. HB 1413 gives the "public employee [the union] represents" authority to enforce the union's duty to provide financial records required "in a searchable electronic format." New section 105.505(7), RSMo. Similarly, any "member" can bring an action to enforce her right, for "just cause," to inspect records necessary to verify the information in the union's annual financial report. New section 105.505(7)105.533(3).

COUNT ONE: Claim for Violation of the Rights of Plaintiffs' Members Under Article I, Section 29 of the Missouri Constitution of 1945

82. Plaintiffs incorporate and re-allege each and every allegation contained in the foregoing paragraphs of the Complaint, as though fully set forth herein.

83. The Bill of Rights of the Missouri Constitution declares that "employees shall have the right to organize and bargain collectively through representatives of their own choosing." Art. I, Sec. 29. This right is fundamental, and governmental action infringing on it is subject to strict judicial scrutiny to determine whether it is necessary to accomplish a compelling state interest. *See United C.O.D. v. State*, 150 S.W.3d 311, 313 (Mo. 2004) (explaining that rights are "fundamental" if they are "explicitly or implicitly protected by the Constitution").

84. The entire scheme by HB 1413 violates the Art. I, Sec. 29 rights of Plaintiffs' public employee members, in multiple ways as detailed below:

a. New section 105.575, RSMo., by voiding Plaintiffs' status as exclusive representative where Plaintiffs were recognized other than through an SBM election, denies the members of those Plaintiffs their right to union representation until and unless they comply with the new burdensome and time-consuming initial certification procedures.

b. New section 105.575, RSMo., denies Plaintiffs' members' right to union representation by creating arbitrary, unreasonable and unconstitutional procedural hurdles to public employees' selection and retention of a union of their choice by, *e.g.*, prohibiting voluntary recognition of a penalized union even where employee preference is clear and undisputed; denying public employees union representation unless the union is supported by a majority of eligible voters, rather than a majority of votes as union representation is now and will continue to be determined for "public safety" employees represented by a public safety labor organization; and by requiring public employees to repeat and pay a fee for this unreasonably burdensome election process every three years.

c. New section 105.580, RSMo., denies Plaintiffs' members' rights to bargain collectively in good faith through the union of their choosing, by reserving to public employers the unilateral right to rewrite and void agreements reached with penalized unions.

d. New section 105.585, RSMo., denies Plaintiffs' members' rights to bargain collectively through the union of their choosing, by reserving to public employers that negotiate with penalized unions complete discretion over basic

"terms and conditions of employment" that unions—including Plaintiffs—have traditionally bargained over and that favored "public safety" unions may still bargain over in any unit they represent. These terms and conditions include such bread-and-butter matters as employee assignment and transfer rights and procedures; employee discipline and termination standards and procedures; layoff and recall protocols; and release time provisions.

e. New sections 105.505, 105.580. RSMo., deny Plaintiffs' members' rights to union representation by imposing new, arbitrary and onerous restrictions on the ability of Plaintiffs to collect and spend their members' dues, as well as to engage in otherwise lawful concerted activity in furtherance of organizing, bargaining, and other forms of collective representation.

85. These restrictions also operate to deny employees free choice in the selection of an exclusive representative, by enacting a discriminatory two-tiered system of favored "public safety" unions and penalized unions (like Plaintiffs), thereby coercing employees to choose a "public safety" union if they are able to do so.

86. Likewise, new section 105.585.2, RSMo., violates the Art. I, Sec. 29 rights of Plaintiffs' public employee members, by stripping them of their rights to engage in certain expressive activities if they work under a collective bargaining agreement negotiated by a penalized union, thereby coercing them into choosing to be represented by a "public safety" union or forgoing collective bargaining altogether. New sections 105.505, 105.533, and 105.535-105.555, RSMo., violate the Art. I, Sec. 29 rights of all of Plaintiffs' members—public- and private-sector alike—by imposing new, onerous, and unjustified record-keeping and disclosure

requirements, the cost of complying with which will unreasonably impede Plaintiffs' effective representation of all of their members.

87. The restrictions described in paragraphs 84 - 86 significantly burden the right of employees represented by Plaintiffs to "organize and bargain collectively through representatives of their own choosing." Art. I, Sec. 29. HB 1413 cannot survive the strict scrutiny applied to statutes that burden fundamental rights. It does not serve a compelling government interest, and in any event, it is not narrowly tailored or the least restrictive means for advancing a compelling interest. Indeed, HB 1413 is so lacking in justification and so poorly tailored to any legitimate governmental purpose that it cannot survive lower levels of scrutiny either.

88. The amendments to chapter 105, Title 108, RSMo., enacted by HB 1413 are so essential to, inseparably connected with, and dependent upon, the provisions that violate Art. I, Sec. 29, discussed above, that it cannot be presumed that the General Assembly would have enacted any valid provisions in the absence of the invalid ones, and the valid provisions, if any, are incomplete and incapable of being executed in accordance with the legislative intent. *See* section 1.140, RSMo. In particular, the overarching discriminatory distinction drawn between privileged "public safety labor organizations" that are entirely exempt from all of these new provisions, and the penalized unions that are subject to them, runs through all of HB 1413's amendments to chapter 105, Title 108, RSMo. The General Assembly thus intended all of the provisions of HB 1413 to discriminatorily fall on—and restrain and burden—penalized unions and the employees they represent.

89. Plaintiffs will be irreparably harmed if the provisions of HB 1413 impairing their rights under the Art. I, Sec. 29 are not enjoined. Not only is the deprivation of a constitutional right a presumptively irreparable injury, but Plaintiffs will have no adequate remedy at law to

compensate for the interruption, interference with, and diminution of its members' union representation caused by the enforcement of HB 1413.

COUNT TWO: Claim for Violation of Plaintiffs' Rights Under Article I, Sections 8 and 9 and Article VIII, Section 23.3(3) of the Missouri Constitution of 1945

90. Plaintiffs incorporate and re-allege each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

91. The Missouri Constitution of 1945 guarantees the right to freedom of speech and association, and the right to petition the government for redress of grievances. Mo. Const. Art. I, §§ 8-9 ("Art. I, Sec. 8-9").

92. New section 105.505, RSMo. violates Plaintiffs' rights to free speech and association by singling out penalized unions for speech restrictions applied to no other entities in the state—namely, requiring that penalized unions obtain the annual, informed, written or electronic consent of every member before using any portion of that member's dues for political purposes. This restriction is impermissible speaker-based discrimination, and there is no compelling governmental interest that justifies denying Plaintiffs the right to expend general treasury funds on political advocacy.

93. New Section 105.505 also violates Plaintiffs' and their members' rights under Article VIII, Section 23.3(3) by prohibiting the use of dues of a public employee to fund a continuing committee absent authorization every 12 months. At the same time, other organizations, such as trade organizations, are not required to obtain such authorizations for the use of dues.

94. The constitutional guarantees of free speech and association similarly protect Plaintiffs against any unjustified or unduly burdensome disclosure requirements. *See, e.g.*,

Milavetz, Gallop & Milavetz, P.A. v. United States, 559 U.S. 229 (2010). These protections are at their acme in the case of compelled disclosures regarding political activities. *See, e.g.*, *Buckley v. Valeo*, 424 U.S. 1 (1976). New section 105.553, RSMo. violates Plaintiffs' free speech rights by singling out penalized unions for new mandatory disclosure requirements of political and other expressive activity that apply to no other entities in the state, thereby subjecting them to discriminatory, intrusive, burdensome and unjustified disclosure requirements including that they submit annual, detailed disclosures regarding both their political activities and expenditures, as well as the activities and expenditures of any continuing committees or political action committees that Plaintiffs support.

95. New sections 105.505, 105.533, 105.535, 105.545, and 105.555, RSMo. also violate Plaintiffs' free speech rights by singling out penalized unions and imposing on them burdensome and intrusive record-keeping and reporting requirements that are both discriminatory and unjustified by any governmental interest.

96. New section 105.505, RSMo. violates Plaintiffs' free speech rights by singling out penalized unions and prohibiting them from engaging in "any conduct" intended to remove or replace any "representative" of a public employer such as petitioning a public employer for the removal or reassignment of a public servant, or working for the electoral defeat of an elected public official.

97. Plaintiffs will be irreparably harmed if the provisions of HB 1413 impairing their rights under Art. I, Sec. 8-9 are not enjoined. The deprivation of these core constitutional rights, even momentarily, is an irreparable injury. Moreover, Plaintiffs will have no adequate remedy at law to compensate for the burdens and chill on speech caused by the enforcement of HB 1413.

COUNT THREE: Claim for Violation of the Rights of Plaintiffs' Members Under Article I, Sections 8 and 9 of the Missouri Constitution of 1945

98. Plaintiffs incorporate and re-allege each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

99. The constitutional right to free speech and association guarantees both the right to engage in peaceful, non-obstructive picketing, *see, e.g.*, *Thornhill v. Alabama*, 310 U.S. 88 (1940), *Katz Drug Co. v. Kavner*, 249 S.W.2d 166 (Mo. 1952), as well as the right to organize individuals to join a union. *See, e.g.*, *Serv. Employees Int'l Union Local 2000 v. State,* 214 S.W.3d 368, 372-73 (W.D. Mo. Ct. App. 2007); *Int'l Ass'n of Firefighters, Local No. 3808 v. City of Kansas City*, 220 F.3d 969, 973 (8th Cir. 2000).

100. New section 105.585, RSMo. violates Plaintiffs' free speech and association rights by singling out penalized unions and prohibiting them and their members from engaging in even peaceful, non-obstructive picketing, and by threatening Plaintiffs' members with "immediate termination" for engaging in any picketing "over any personnel matter."

101. New section 105.585, RSMo. likewise violates Plaintiffs' free speech and association rights by singling out penalized unions and prohibiting them, under pain of immediate termination of the union's members, from engaging in any activity deemed a "strike" if it creates "any … interference with the operations of any public body." This vague and overbroad definition of the term "strike" encompasses constitutionally protected conduct that cannot be restricted absent the most compelling governmental justification.

102. The provisions of HB 1413 described in paragraphs 100 - 101 violate Plaintiffs' members' constitutional right to free association by enacting a discriminatory two-tiered system of privileged "public safety" unions and penalized unions—such as Plaintiffs—thereby

disadvantaging Plaintiffs' members in the exercise of their statutory and constitutional rights solely based on their decision to associate with a penalized union.

103. Plaintiffs' members will be irreparably harmed if the provisions of HB 1413 impairing their rights under Art. I, Sec. 8-9 are not enjoined. The deprivation of these core constitutional rights, even momentarily, is an irreparable injury. Plaintiffs' members have no adequate remedy at law to compensate for the burdens and chill on speech caused by the enforcement of HB 1413.

COUNT FOUR: Claim for Violation of Plaintiffs' Rights against Impairment of Contracts and Retrospective Operation of Laws Pursuant to Article I, Section 13 of the Missouri Constitution

104. Plaintiffs incorporate and reallege each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

105. The Missouri Constitution of 1945 guarantees "[t]hat no … law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted." Mo. Const. Art. I, § 13 ("Art. I, Sec. 13").

106. New section 105.575, RSMo. violates the rights of Plaintiff Ferguson-Florissant NEA, Hazelwood ASP, LIUNA Local 42, and Teamsters 610 under Art. I, Sec. 13 by impairing their contractual rights to continued exclusive representative status by way of voiding all such recognition provisions except those resulting from an SBM election. This impairment is substantial, as the revocation of recognition will prevent Plaintiffs from meaningfully representing their unit employees, and it cannot be justified as reasonable and necessary to serve an important public purpose.

107. New section 105.505, RSMo. violates the rights of Plaintiffs Ferguson-Florissant NEA, LIUNA Local 42, and Operating Engineers Local 148 under Art. I, Sec. 13 by purporting

to void the payroll deduction provisions for which they have collectively bargained, and impairs their collectively-bargained contracts. This impairment is substantial, given the vital importance of stable, ongoing, and predictable financing to union operations, and it cannot be justified as reasonable and necessary to serve an important public purpose.

108. New section 105.585, RSMo. violates the rights of Plaintiffs Ferguson-Florissant NEA, Hazelwood ASP, LIUNA Local 42, Teamsters Local 610, and Operating Engineers Local 148 under Art. I, Sec. 13 by purporting to void the other provisions of collective bargaining agreements addressing subjects that are now exclusively reserved by HB 1413 to the public employer, impairing their collectively-bargained contracts. This impairment is substantial, given that these Plaintiffs specifically bargained for these provisions, and that many of these provisions deal with matters of acute concern to the public employees whom these Plaintiffs represent (e.g., employee discipline standards and procedures; layoff and recall protocol; job assignment bidding procedures, etc.). This substantial impairment of these Plaintiffs' contract rights cannot be justified as reasonable and necessary to serve an important public purpose.

109. New section 105.585,RSMo. also violates the rights of Plaintiffs Ferguson-Florissant NEA, LIUNA Local 42, and Teamsters Local 610 under Art. I, Sec. 13's prohibition of retrospective operation of laws, even in the absence of a collective bargaining agreement. These Plaintiffs' right to serve as the exclusive collective bargaining representatives of their respective bargaining units was obtained through non-SBM elections or voluntary recognition that was valid at the time. *See, Independence NEA, supra.* HB1413 purports to retrospectively abolish that status and impose new duties and obligations to obtain it in violation of Art. I, Sec. 13. *See, Jane Doe I v. Phillips*, 194 S.W.3d 833 (Mo. 2006).

110. Plaintiffs will be irreparably harmed if the provisions of HB 1413 impairing their contract rights and their rights against retrospective operation of laws in violation of Art. I, Sec. 13 are not enjoined. Plaintiffs have no adequate remedy at law to compensate for even the temporary loss of the contractual protections that form the heart of their collective bargaining relationship with their members' employers.

COUNT FIVE: Claim for Violation of Plaintiffs' Rights to Equal Protection

111. Plaintiffs incorporate and re-allege each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

112. The Missouri Constitution of 1945 provides, in relevant part, "that all persons are created equal and are entitled to equal rights and opportunity under the law…" Mo. Const. art. I, § 2 ("Art. I, Sec. 2").

113. HB 1413 violates Art. I, Sec. 2 by impermissibly and arbitrarily creating two classes of public-sector unions that are subject to wildly different legal regimes. The favored new classification of "public safety" unions are free to continue the full sweep of collective representation and bargaining rights under existing law. All other unions representing public employees—the penalized unions—are subject to sweeping new requirements and restrictions.

114. There is no conceivable permissible justification for this new legal distinction between favored "public safety labor organizations" and penalized unions. It cannot be justified with reference to any purported special characteristics of public safety employment, as it is not based on either the identity of the public employees or the type of work they perform. Instead, this pervasive favoritism in the exercise of employees' constitutionally protected rights turns solely on the type of union that the public employees join. Thus, even units of public employees who are indisputably public safety employees—like the City of Bel-Ridge police first

responders, the Affton Fire Protection first responders, and the State of Missouri patient care professionals—are subject to HB 1413 because they have chosen to be represented by Plaintiffs LIUNA Local 42, Teamsters Local 610, and SEIU Local 1, respectively, rather than a union that "wholly or primarily" represents public safety employees. But by the same token, even units of public employees who are indisputably not public safety employees—e.g., municipal janitors or sanitation workers—who have chosen to be represented by a "public safety labor organization" will remain exempt from the many restrictions and burdens of HB 1413.

115. Plaintiffs and their members will be irreparably harmed if these provisions of HB 1413 impairing their rights under Art. I, Sec. 2 are not enjoined. The deprivation of these core constitutional rights, even momentarily, is an irreparable injury. Moreover, Plaintiffs and their members will have no adequate remedy at law to compensate for the discriminatory burdens and chill on the exercise of constitutionally protected rights caused by the enforcement of HB 1413.

COUNT SIX: Claim for Violation of Prohibition Against Special Laws Under Missouri Constitution Article III, Section 40

116. Plaintiffs incorporate and re-allege each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

117. The Missouri Constitution of 1945 provides, in relevant part, that "The general assembly shall not pass any … special law: … regulating labor …; granting to any … association or individual any special or exclusive right, privilege or immunity; … [or] where a general law can be made applicable." Mo. Const. art. III, § 40 (27), (28), (30) ("Art. III, Sec. 40").

118. HB 1413 violates Art. III, Sec. 40 by arbitrarily and impermissibly distinguishing between favored "public safety labor organizations" and penalized unions and by specifically targeting penalized unions for severe restrictions and burdensome and intrusive requirements, while exempting "public safety labor organizations" from all of the same. HB 1413 thus

constitutes a "special law" that regulates labor (specifically, the rights of public employees represented by non-exempt unions and their representatives); grants exclusive rights and privileges to certain associations (specifically, the privileged "public safety labor organizations"); and acts where a general law could have been made applicable (i.e., a general public labor relations law).

119. Plaintiffs and their members will be irreparably harmed if the provision of HB 1413 impairing their rights under Art. III, Sec. 40 are not enjoined. The deprivation of this constitutional right, even momentarily, is an irreparable injury. Moreover, Plaintiffs and their members will have no adequate remedy at law to compensate for the discriminatory burdens and chill on the exercise of constitutionally protected rights caused by the enforcement of HB 1413.

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Award Plaintiffs such preliminary injunctive and ancillary relief as may be necessary to avert irreparable injury during the pendency of this action and to preserve the possibility of effective final relief;

B. Enter judgment declaring that the provisions of HB 1413 referenced in paragraphs 84 - 86 above violate Article I, Section 29 of the Missouri Constitution and, further, that these violations render invalid all of HB 1413's amendments to chapter 105, Title 108, RSMo.;

C. Enter judgment declaring that the provisions of HB 1413 referenced in paragraphs 92 - 96 and 100 - 101 above violate Article I, Sections 8-9 and Article VIII, Section 23.3(3) of the Missouri Constitution and enjoining the Defendants from enforcing those provisions against the Plaintiffs and their members;

D. Enter a judgment declaring that the provisions of HB 1413 referenced in paragraphs 106 - 109 above violate Article I, Section 13 of the Missouri Constitution and

enjoining the Defendants from enforcing those provisions against the Plaintiffs and their members;

E. Enter a judgment declaring that HB 1413's amendments to chapter 105, Title 108, RSMo., violate Article I, Section 2 of the Missouri Constitution and enjoining the Defendants from enforcing those provisions against the Plaintiffs and their members;

F. Enter a judgment declaring that HB 1413's amendments to chapter 105, Title 108, RSMo., violate Article III, Section 40 of the Missouri Constitution and enjoining the Defendants from enforcing those provisions against the Plaintiffs and their members;

G. Enter a judgment (i) declaring that the entirety of HB 1413 is void because the unconstitutional provisions of the legislation are inseparably connected with the remaining provision and it cannot be presumed the legislature would have enacted the remaining provisions without the unconstitutional ones; and (ii) enjoining the Defendants from enforcing any provision of HB 1413 against the Plaintiffs and their members;

H. Enter a permanent injunction preventing Defendants from enforcing HB 1413 in a manner that violates the rights of Plaintiffs or their members under Art. I, Sec. 29; Art. I, Sec. 8-9 and Article VIII, Section 23.3(3); Art. I, Sec. 13; Art. I, Sec. 2; or Art. III, Sec. 40.

I. Award Plaintiffs' costs incurred herein; and

J. Grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

SCHUCHAT, COOK & WERNER

/s/ *Sally E. Barker*
Sally E. Barker (M.B.E. #26069)
Loretta K. Haggard (M.B.E. #38737)
George O. Suggs (M.B.E. #31641)
Christopher N. Grant (M.B.E. #53507)
1221 Locust Street, Second Floor
St. Louis, MO 63103
(314) 621-2626
FAX: (314) 621-2378
Emails: seb@schuchatcw.com
lkh@schuchatcw.com
gos@schuchatcw.com
cng@schuchatcw.com

Attorneys for Plaintiffs

NATIONAL EDUCATION ASSOCIATION

/s/ *Alice O'Brien*
Alice O'Brien (District of Columbia #454999)
Jason Walta (District of Columbia #479522)
1201 16th Street, NW
Washington, DC 20036-3290
(202) 833-4000
Email: aobrien@nea.org
Email: JWalta@nea.org
Pro Hac Vice Motion pending

Attorneys for Plaintiffs

SPECTOR, WOLFE, MCLAUGHLIN & O'MARA

/s/ *Daniel M. McLaughlin*
Daniel M. McLaughlin (M.B.E. #52750)
710 South Kirkwood Road
Kirkwood, MO 63122
(314) 909-0303
Email: dan@spectorwolfe.com

Attorneys for Plaintiff Laborers' International Union of North America, Local 42

HAMMOND AND SHINNERS, P.C.

/s/ *Greg A. Campbell*
Greg A. Campbell (M.B.E. #35381)
Nathan A. Gilbert (M.B.E. #68093)
13205 Manchester Rd, Suite 210
Des Peres, MO 63131
(314) 727-1015
Email: gcampbell@hammondshinners.com
Email: ngilbert@hammondshinners.com

Attorneys for Plaintiff International Brotherhood of Teamsters, Local 610 and International Union of Operating Engineers, Local 148

STATE BOARD OF MEDIATION

3315 West Truman Boulevard
P.O. Box 2071
Jefferson City, MO 65102-2071
Phone: 573-751-3614
Fax: 573-751-0083
www.labor.mo.gov/SBM
Email: sbm@labor.mo.gov

MICHEAL L. PARSON
GOVERNOR

ANNA S. HUI
DEPARTMENT DIRECTOR

TODD SMITH
CHAIRMAN

July 3, 2018

Dear Ms. Schofield:

We are in receipt of your letter dated June 22, 2018.

As of August 28, 2018, House Bill 1413 which was passed by the legislature and signed into law by the governor earlier this year will become effective. In Section 105.575.1, the new law requires the following:

> Any labor organization wishing to represent a bargaining unit as an exclusive bargaining representative *shall present to the board cards containing the signatures of at least thirty percent of the public employees* in the bargaining unit indicating that they wish to select the labor organization in question as their exclusive bargaining representative for the purposes of collective bargaining. (emphasis added).

The section also requires that "Voluntary recognition by any public body of a labor organization as an exclusive bargaining representative shall be prohibited. *Recognition as an exclusive bargaining representative may only be obtained by a labor organization through an election conducted under this section.*" (emphasis added).

Furthermore, Section 105.575.12 provides that:

> All labor organizations *that have previously been certified* shall be recertified during the twelve-month period beginning on August 28, 2018, provided that any labor organization that has a labor agreement that expires after August 28, 2020, may be recertified at any time prior to, but in no event later than, August 28, 2020. (emphasis added).

The State Board of Mediation interprets the new law to require that a party seeking recertification must have been initially certified by the Board. While you assert that your organization was certified in 2010, that election does not appear to have been conducted by the Board.

Additionally, since a copy of your collective bargaining agreement was not included with your correspondence, we are unable to determine the expiration date this agreement and whether recertification is required to be completed in 2019 or in 2020 as required by the new law.

If you have any further question, or should you desire to schedule an election, please do not hesitate to contact us by phone or at the address above.

Cordially yours,

Todd Smith