IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Fight Back Fund; International Union of Operating Engineers, Local 150, AFL-CIO; and, James M. Sweeney,	)	
Plaintiffs,	)	Case No.
v.	)	Judge:
	)	Magistrate Judge:
Illinois State Board of Elections; William J. Cadigan, Katherine S. O'Brien, Laura K. Donahue, Cassandra B. Watson, William R. Haine, Ian K. Linnabary, Charles W. Scholz, and William M. McGuffage, in their official capacities as Board Members for the Illinois State Board of Elections; and, Jesse White, in his official capacity as Illinois Secretary of State,	)	
Defendants.	)	

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Count I
Violation of Free Speech Under First Amendment
to the United States Constitution

Introduction

This is an action to declare unconstitutional, enjoin and/or modify the requirement contained in Article XIV, Section 2, of the Illinois Constitution which requires that proposed amendments to the Illinois Constitution be passed by the legislature at least six months prior to the next general election. This case is an emergency in light of the current public health crisis caused by the novel coronavirus, which resulted in the Governor's emergency orders effectively shutting down the State. Consequently, the General Assembly cancelled sessions in both the House and the Senate from March 18, 2020, through at least May 3, 2020.

Accordingly, Plaintiffs Fight Back Fund, James M. Sweeney, and the International Union of Operating Engineers, Local 150, AFL-CIO, hereby file suit against the Illinois State Board of Elections; William J. Cadigan, Katherine S. O'Brien, Laura K. Donahue, Cassandra B. Watson, William R. Haine, Ian K. Linnabary, Charles W. Scholz, and William M. McGuffage, in their official capacities as Board Members for the Illinois State Board of Elections; and, Jesse White, in his official capacity as Illinois Secretary of State, for constitutional violations arising under Article III, Section 3, of the Illinois Constitution and the First and Fourteenth Amendments to the United States Constitution and brought under 42 U.S.C. § 1983. In support thereof, Plaintiffs allege the following:

Jurisdiction and Venue

1. This Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States. This Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) because this action seeks to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States. Finally, this Court has supplemental jurisdiction over the claims for the deprivation of rights under the Illinois Constitution pursuant to 28 U.S.C. § 1367(a).

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants maintain offices and/or reside in this District. Plaintiffs Sweeney and Local 150 also maintain offices and/or reside in this District.

Parties

3. Plaintiff Fight Back Fund is a not-for-profit social welfare organization headquartered in Countryside, Cook County, Illinois. The Fight Back Fund is funded by contributions from tens of thousands of working people who are taxpayers and voters in the state

of Illinois and has the purpose of promoting fairness, opportunity, and equal pay. Plaintiff Fight Back Fund is a strong supporter of House Joint Resolution Constitutional Amendment ("HJRCA") 37, better known as the Collective Bargaining Freedom Amendment. HJRCA 37, which was introduced by Representative Lance Yednock on January 23, 2020, and supported by Senator Ram Villivalam, proposes to amend the Bill of Rights Article of the Illinois Constitution to prohibit any law from being passed that restricts or interferes with the ability of workers to join together and collectively bargain over wages, hours, and terms and conditions of employment, including union security agreements.

4. While these taxpayer and voter contributors have standing to sue in their own right, one purpose of the Fight Back Fund is to stand up for middle class families by opposing so-called "Right-to-Work" laws. The Fight Back Fund can help vindicate its contributors' rights and obtain appropriate relief in this case.

5. Plaintiff Sweeney is a state and municipal taxpayer, registered voter, and resides in Chicago, Cook County, Illinois. Plaintiff Sweeney is President-Business Manager of the International Union of Operating Engineers, Local 150, AFL-CIO, and strong supporter of the proposed Collective Bargaining Freedom Amendment.

6. Plaintiff International Union of Operating Engineers, Local 150, AFL-CIO ("Local 150" or "the Union"), is a "labor organization" under federal law. Local 150's principal office is located in Countryside, Cook County, Illinois. It negotiates and administers collective bargaining agreements which cover the work performed by employees within the geographic jurisdiction of the Union and this Court. Local 150 represents thousands of Illinois voters and taxpayers, most or all of which support the proposed Collective Bargaining Freedom Amendment to the Illinois Constitution that was introduced by Representative Yednock and supported by Senator Villivalam.

7. While these resident taxpayer and voter members have standing to sue in their own right, one purpose of a union is to help protect the constitutional and property rights of its members, and Local 150 can help vindicate its members' rights and obtain appropriate relief in this case.

8. Defendants William J. Cadigan, Katherine S. O'Brien, Laura K. Donahue, Cassandra B. Watson, William R. Haine, Ian K. Linnabary, Charles W. Scholz, and William M. McGuffage are members of the Illinois Board of Elections and are empowered to enforce and administer Illinois election laws, including certifying to the several county clerks all proposals to amend the constitution.

9. Defendant Illinois Board of Elections is specifically empowered by Illinois law to certify all proposals to amend the Constitution. It maintains an office located in Chicago, Illinois.

10. Defendant Jesse White is named in his official capacity as the duly elected Secretary of State. After proposed constitutional amendments are passed by the General Assembly, the Secretary of State's office is charged with the responsibility of publishing the proposed constitutional amendment at least one month before the next election, in accordance with the procedures set forth in the Illinois Constitutional Amendment Act, 5 ILCS § 20/0.01, *et seq*. The Secretary of State maintains an office in Chicago, Illinois.

11. At all times relevant to this action, Defendants are engaged in state action under color of state law.

12. Defendants are being sued in their official capacities for declaratory and injunctive relief under 42 U.S.C. § 1983 and 28 U.S.C. § 2201, as well as costs and attorneys' fees under 42 U.S.C. § 1988(b).

Background

13. The Great Depression of the 1930s, triggered by the stock market crash of 1929, left millions of Americans out of work—by some estimates, nearly 25 percent of the workforce. U.S. Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1957*, at 78 (U.S. Govt. Printing Office, Washington, D.C., 1960); Ira Katznelson, *Fear Itself: The New Deal and the Origins of Our Time* (Liveright Publishing Co., New York 2013). Labor strikes and other forms of industrial unrest plagued an already weakened economy.

14. In 1932, Americans elected Democratic Party candidate Franklin D. Roosevelt to the first of his four terms as President. Along with Democratic majorities in Congress, FDR pledged a New Deal for Americans to fight the Depression. Chief among the New Deal Reforms was the codification of the eight-hour workday, guaranteeing overtime over forty (40) hours worked and a minimum wage. Fair Labor Standards Act (FLSA), 29 U.S.C. § 203 (1935).

15. The New Deal also guaranteed for the first time the rights of all private sector employees to "form, join, and assist" unions. 29 U.S.C. § 157. The purpose of the National Labor Relations Act (NLRA) as stated in the "Findings and Declaration of Policy" of the NLRA states (29 U.S.C. § 151):

> It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

According to the U.S. Senate Committee Report:

> The first objective of the Bill is to promote "industrial peace." II Leg. Hist. NLRA 2300 (1935). Congress relied on economic statistics showing productivity lost to strikes, but also spoke repeatedly of the violence associated with "industrial strife" and economic unrest.

> The second major objective of the Bill is to encourage, by developing the procedure of collective bargaining, that equality of bargaining power which is a prerequisite to equality and opportunity and freedom of contract." II Leg. Hist. NLRA 2302 (1935). Congress believed the "economic adjustment" necessary to end the Great Depression and fix the "boom-bust economic" cycle was to improve the bargaining power of average workers so as "to stabilize competitive conditions and to spread adequate consumer purchasing power throughout the nation at large."

16. The passage of the Wagner Act in 1935 led to an explosion of union organizing and strikes in America. Opposition to the New Deal and the NLRA grew in the late 1930s. Southern Democrats in Congress abandoned President Roosevelt and aligned themselves with anti-union business interests in the North. As Professor Katznelson explained:

> Labor organizing, they saw, stimulated civil rights activism. A powerful labor movement that pressed against employment discrimination threatened to level wages across racial lines and directly challenged Jim Crow. It also encouraged blacks to leave the South, and diminished the southern establishment's control over those who stayed…Distressed by these developments and keenly aware of the dangers that threatened the South's racial order, southern members closed ranks in Congress to reshape the framework within which unions and the labor market could operate. For their Republican partners, labor remained an issue of party and ideology. For southern legislators, labor had become race.

17. "The 'Right-to-Work' label has a nice sound to it but is misleading," said federal district court Judge Philip P. Simon in *Sweeney v. Daniels*, 2013 WL 209047, *1 (N.D. Ind. January 17, 2013). "What these types of laws actually prohibit are 'union security clauses,' which are provisions in collective bargaining agreements between labor unions and employers that condition employment on a worker joining a union." *Id.* Or, under well-settled Supreme Court law, the option to pay their "fair share" of the costs of union representation in lieu of union membership. *Id.*

18. In its modern usage, the phrase "Right-to-Work" first appeared in 1941 in a Labor Day editorial published in the *Dallas Morning News*. "Cheryl Hall, DMN Writer Coined Term 'Right to Work' Opposed Forced Union Membership," *The Dallas Morning News* (July 12, 2010),

http://tinurl.com/vance-muse. Soon after reading the editorial, self-described white supremacist Vance Muse sought and received permission to use the phrase in an anti-union, anti-integration political campaign. *Hearings Before a Special Committee to Investigate Lobbying Activities, United States Senate 75th Congress, Second Session, Part 6, April 14, 15, 16, and 17, 1936* at 1972-1973 (U.S. Gov't Printing Office, Washington: 1936); Stetson Kennedy, *Southern Exposure* pp. 84, 253 (Doubleday & Co., Inc., Garden City, New York, 1946). At least one author believes Muse and the Christian American Association to have been linked to the Ku Klux Klan. Mark Ames, "You Hate 'Right to Work' More than You Know. Here's Why." (nsfwcorp, December 12, 2012).

19. Texas lobbyist Muse and his Christian American Association had advanced so-called Anti-Violence laws throughout World War II designed to limit labor strikes. Katznelson, *Fear Itself* at 396; Mark Dixon, "Limiting Labor: Business Political Mobilization and Union Setback in the States," 19 *The Journal of Policy History*, 313, 321 (No. 3 Penn State Univ., 2007). Muse and the CAA turned to promoting Right-to-Work laws soon thereafter. In a letter to Stetson Kennedy, Muse bragged, "We have successfully sponsored anti-violence laws in Texas, Arkansas, Mississippi, Florida and Alabama; we are directing a campaign in Arkansas for a RIGHT TO WORK amendment to the state constitution and are cooperating with Attorney General Tom Watson, who is sponsoring a somewhat similar movement in Florida." Stetson Kennedy, *Southern Exposure*, 253 (Doubleday & Co., N.W., 1946).

20. Between 1944 and 1947, twelve states adopted anti-closed-shop laws—laws which are now called "Right-to-Work." Archibald Cox, *et al.*, *Labor Law* at 1122 (Foundation Press 13th ed. 2002). In general, those laws outlawed the "closed shop"—contract clauses which required employers to hire only union members.

21. After World War II ended, the United States experienced an unprecedented wave of strikes as union members sought to recover from wage and price controls adopted in the name of winning the war. Katznelson, *Fear Itself*, at 391 ("at one point nearly 2,000,000 workers were on strike simultaneously; 3,470,000 workers struck in 1945, and 4,600,000 in 1946, when fully 116,000,000 man days were lost to the economy."). Public opinion turned sharply against organized labor, and in 1946, American voters returned Republicans to control of Congress for the first time in a generation. David M. Oshinsky, *Senator Joseph McCarthy and the American Labor Movement* (Univ. of Missouri Press, Columbia Missouri, 1976) (Gallup poll conducted in December 1946 which asked "Should Congress…pass new laws to control labor unions?" received 66 percent support). In 1946, Republicans gained 55 House seats to take a three-vote majority, and 13 seats in the Senate to go up 51 to 45. Historical Statistics at 691, 139-145. Reigning in labor was at the top of the legislative agenda, and Republicans promptly introduced legislation which came to be known as the Taft-Hartley Act. Formally named the Labor-Management Relations Act (LMRA), Taft-Hartley was a top-to-bottom overhaul of the NLRA.

22. At least nine states passed Right-to-Work closed shop laws in the spring of 1947 while the debates over the Taft-Hartley amendments to the NLRA heated up in Congress.[1] Taft-Hartley eliminated the protection of the closed shop from Section 8(3) of the NLRA, and allowed states to regulate union security clauses requiring "membership" in the union as a condition of employment.[2] When Congress adopted Taft-Hartley on June 23, 1947, it included a new Section

[1] They include: Virginia (January 21, 1947); Arkansas (February 19, 1947); Tennessee (February 21, 1947); Arizona (March 20, 1947); Georgia (March 27, 1947); and, Iowa (April 28, 1947). Texas considered and rejected a Right-to-Work law in 1945, but then passed it on September 7, 1947. "Texas Ban on Closed Shop," 20 LRRM 3004 (BNA 1947).

[2] The Wagner Act passed in 1935 specifically authorized closed-shop contract clauses in its proviso to Section 8(3): "Provided, that nothing in this Act,…shall preclude an employer from making an agreement with a labor organization…to require as a condition of employment membership therein…" Outlawing the closed shop was one of the principle objectives of the Taft-Hartley amendments to the Wagner Act. *NLRB*

14(b). It states (29 U.S.C. § 164(b)):

> **(b) Agreements requiring union membership in violation of State law**
> Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

23. In the years after the passage of Taft-Hartley, several more states passed Right-to-Work laws. Their racist origins and pernicious effect on working people was obvious. As Reverend Martin Luther King, Jr., put it in 1961:

> In our glorious fight for civil rights, we must guard against being fooled by false slogans, such as "right to work." It is a law to rob us of our civil rights and job rights. Its purpose is to destroy labor unions and the freedom of collective bargaining by which unions have improved wages and working conditions of everyone…Wherever these laws have been passed, wages are lower, job opportunities are fewer and there are no civil rights. We do not intend to let them do this to us. We demand this fraud be stopped. Our weapon is our vote.

The Fight Against "Right-to-Work" Laws in the Midwest

24. In recent years, the states surrounding Illinois have fought to prevent "Right-to-Work" from being enacted in their states. Indiana, Michigan, Missouri, Wisconsin, and Kentucky have all engaged in legal and legislative battles to prevent bans on the ability to negotiate over the inclusion of union security clauses in collective bargaining agreements.

25. For example, on February 1, 2012, Indiana Governor Mitch Daniels signed into law Indiana House Bill 1001, also known as Indiana Code § 22-6-6 and titled, "Chapter 6. Right to Work." On February 22, 2012, James M. Sweeney and Local 150 filed suit in the U.S. District Court for the Northern District of Indiana (Case No. 2:12-cv-00081). In that complaint, the Union alleged that the Indiana Right-to-Work law violated various provisions of the Constitutions of the United States and the State of Indiana.

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v. General Motors Corp., 373 U.S. 734 (1963) ("the most serious abuses of compulsory unionism were eliminated by abolishing the closed shop.").

26. During the lame duck session on December 11, 2012, the Michigan legislature enacted its "Right to Work" law, signed later that day by the Governor. *Michigan State AFL-CIO, et al. v. Callaghan*, Case No. 13-cv-10557 (filed February 11, 2013). The core provision of the law is almost identical to that passed in Indiana, prohibiting as a condition of employment any requirement that individuals "became or remain a member of a labor organization," or "pay any dues, fees, assessments or other charges" of any kind to a union. MCL § 423.14(1) (b) and (c).

27. *Mother Jones* magazine attributed the passage of the Right-to-Work law in Michigan in 2013 to Richard "Dick" DeVos, the right-wing billionaire owner of Amway. Andy Knoll, "Meet the New Kochs. The DeVos Clan's Plan to Defund the Left: They beat Big Labor in its own backyard. Next up: your state?" (*Mother Jones*, January/February 2014). Defeated in his campaign for Governor of Michigan in 2006, DeVos waited until the 2010 elections put Republicans in control of the state legislature and Governor's mansion. Governor Rick Snyder repeatedly said Right-to-Work was not on his agenda, but money in support of the measure poured in from around the country. By the end of 2012, DeVos and his allies had overcome resistance from Snyder and other moderate Republicans. As *Mother Jones* concluded, "The Michigan fight has given hope—and a road map—to conservatives across the country working to cripple organized labor and defund the left. Whereas party activists had for years viewed Right-to-Work as a pipe dream, a determined and very wealthy family, putting in place all the elements of a classic political campaign, was able to move the needle in a matter of months."

28. Meanwhile, on January 17, 2013, the District Court in Indiana entered its Memorandum and Order dismissing Local 150's Complaint challenging Indiana's Right-to-Work law. *Sweeney v. Daniels*, 2013 WL 209047 (N.D. Ill. January 17, 2013). The Court dismissed all of the Union's claims under the U.S. Constitution (Counts I-VII, X-XI), *id.* at *4-11; and dismissed

the counts alleging violations of the Indiana Constitution without prejudice to those claims being refiled in state court (Counts VIII-IX). *Id.* at *12-13.

29. On February 11, 2013, Local 150 filed its "Complaint for Declaratory Judgment and Injunctive Relief" in the Indiana trial court. In that Complaint, the Union challenged Indiana's Right-to-Work law as a violation of the Indiana Constitution.

30. On September 5, 2013, the Indiana trial court declared Sections I.C. § 22-6-6-8 and I.C. § 22-6-6-10 of the Indiana Right-to-Work law unconstitutional. The court held that the provisions of the Indiana Right-to-Work law in issue violated Article 1, Section 21, of the Indiana Constitution, which states that "[n]o person's particular services shall be demanded, without just compensation." Ind. Const. art. 1, § 21. As the trial court explained, because unions are required under federal law to provide services to nonmembers regardless of their failure to make any payments to the union for those services, "the effect of I.C. 22-6-6-8 and I.C. 22-6-6-10…is to demand particular services without just compensation."

31. Meanwhile, in *Sweeney v. Pence,* 767 F.3d 654 (7th Cir. 2014), the federal appeals court affirmed the dismissal of Local 150's U.S. Constitution and preemption claims. However, in dissent, Wood, C.J. said (*id.* at 671):

> The plain language of Section 14(b)…does not support such sweeping force for Indiana's Right-to-Work law…no ruling of the Supreme Court has gone this far, and the legislative history is inconclusive. I would find Sections 8(2) and 8(3) [of Indiana's Right-to-Work law] preempted by federal statute.

32. On November 6, 2014, the Indiana Supreme Court reversed the Lake County Circuit Court's decision and upheld the constitutionality of the Indiana Right-to-Work Law. *Zoeller v. Sweeney*, 19 N.E. 3d 749 (Ind. 2014). The Court ruled that there was no state demand for the Union's particular services and hence no violation of the Indiana Constitution.

33. Shortly before receipt of the Indiana Supreme Court's decision, Local 150 petitioned the 7th Circuit Court of Appeals to rehear the *Sweeney v. Pence* case *en banc*. On January 13, 2015, the full Court denied the Petition by a tie vote, 5 to 5. The judges voting to rehear the case adopted Judge Wood's panel opinion dissent as their basis to do so.

34. For many years, the Missouri legislature had passed "Right-to-Work" laws, only to have them vetoed by the Governor. In 2016, Missouri elected Republican Eric Greitens, who in short order received another Right-to-Work bill and signed it in February 2017. Jeff Stein, "Missouri voters defeat GOP-backed 'right to work' law, in victory for unions, Associated Press protects," https://www.washingtonpost.com/business/2018/08/08/missouri-voters-defeat-gop-backed-right-work-law-victory-unions-associated-press-projects/?noredirect=on&utm_term=.994f6e1b05b2.

35. Organized labor mounted an aggressive petition campaign to get a "veto" initiative on the ballot. An "initiative" state, Missouri previously rejected a Right-to-Work law in 1978. At a time when about 20 percent of the workforce was organized, Missourians rejected Right-to-Work by a 67-percent/32-percent vote. In 2018, the citizens of Missouri again rejected Right-to-Work 60 to 40.

36. Conservative attacks on labor unions which focused on "Right-to-Work" laws reached their apex in Wisconsin in 2015. Like Republican governors in Indiana and Michigan, Wisconsin Governor Scott Walker had deflected talk of a Right-to-Work bill as a "distraction." Gordon Lafer, *The One Percent Solution: How Corporations Are Remaking America One State at a Time*, at 79 (ILR Press, Cornell Univ. Ithaca and Lord, 2017). In more candid conversations, however, Walker said, "The first step is we're going to deal with collective bargaining for all public employee unions because you divide and conquer…That opens the door" to Right-to-Work.

Id. Once Walker eviscerated public sector collective bargaining by limiting the subjects upon which unions and employers could agree and crippled public sector unions with onerous annual recertification requirements, he changed his mind and signed a Right-to-Work law in February 2015. *Id.*

37. Beginning in January 2015, several Kentucky counties passed Right-to-Work ordinances. *United Auto Workers v. Hardin County, Kentucky*, 160 F. Supp. 3d 1004, 1006-1007 (W.D. Ky. 2016). Opponents of the law succeeded in court challenges which argued Right-to-Work laws passed by units of government below the state level were preempted by the NLRA, *id.* at 1014, but the Court of Appeals reversed. In January 2017, however, the State of Kentucky passed its own statewide Right-to-Work law.

38. Right-to-Work laws remain the most pernicious anti-union, anti-labor laws as they were always intended to be. Even before COVID-19, income inequality in America has increased, as wages stagnate and living standards erode. *See, e.g.*, F. Manzo, IV and R. Bruno, "Which Labor Market Institutions Reduce Income Inequality?: Labor Unions, Prevailing Wage Laws, and Right-to-Work Laws in the Construction Industry," at ii (*Research Report*, January 29, 2014) ("The largest contributor to rising income inequality has been the long-term decline of labor union membership"). Many economists believe U.S. unemployment could reach levels equal to the Great Depression. *See, e.g.,* Michael D. Farren, "Unemployment Rate May Exceed the Great Depression's Peak," https://www.mercatus.org/bridge/commentary/unemployment-rate-may-exceed-great-depression%E2%80%99s-peak. More than ever, American workers need the voice unions give them.

"Right-to-Work" in Illinois

39. Illinois workers have fought their own battles over Right-to-Work in recent years. After Governor Bruce Rauner took office in 2015, he immediately began attacking workers' rights and specifically pushed for "Right-to-Work" on a local government level as part of his so-called "Turnaround Agenda." Later that year, the Village of Lincolnshire became the only government entity to pass a "Right-to-Work" ordinance, but it was invalidated by this Court in *Int'l Union of Operating Engineers, Local 399, AFL-CIO v. Vill. of Lincolnshire, Illinois*, 228 F. Supp. 3d 824 (N.D. Ill. 2017), aff'd sub nom. *Int'l Union of Operating Engineers Local 399 v. Vill. of Lincolnshire*, 905 F.3d 995 (7th Cir. 2018), cert. granted, judgment vacated sub nom. *Vill. of Lincolnshire, Ill. v. Int'l Union of Operating Engineers Local 399*, 139 S. Ct. 2692 (2019).

40. In response to Governor Rauner's efforts, the Illinois General Assembly passed a bill in 2017 which prohibited local governments from establishing so-called "Right-to-Work zones." Governor Rauner vetoed the bill, and the Illinois House fell one vote short of overriding him.

41. Despite Governor Rauner's actions and beliefs, there was data in 2018 to suggest that Americans' approval of labor unions was at its highest level since 2003. https://illinoisepi.files.wordpress.com/2019/08/ilepi-pmcr-uci-state-of-the-unions-illinois-2019.pdf (citing Saad, Lydia (2018). Labor Unions Approval Steady at 15-Year High. Gallup).

42. Three months after the people of Missouri overwhelmingly rejected "Right to Work," at the November 6, 2018, General Election, Lance Yednock was elected to the Illinois House of Representatives, and Governor J.B. Pritzker defeated incumbent Governor Rauner.

43. In an effort to undo some of the damage done to labor relations by the previous Illinois' governor's administration, on February 13, 2019, Senator Villivalam filed Senate Bill

1474, the Collective Bargaining Freedom Act, with the Secretary of the Illinois Senate, which, *inter alia*, provides that the authority to enact laws or rules that restrict the use of union security agreements between an employer and a labor organization vests exclusively with the General Assembly.

44. On March 7, 2019, the Illinois Senate voted 42 to 12 in favor of the bill. Upon passing the Senate and arriving in the House, Representative Yednock was added as a Chief Sponsor of the bill.

45. On April 3, 2019, the Illinois House voted 101 to 8 in favor of the bill, as amended in the House. Soon after, on April 10, 2019, the Illinois Senate concurred with the House-amended bill by a vote of 51 to 0. Governor Pritzker signed the Collective Bargaining Freedom Act into law on April 12, 2019.

46. The fight against Right-to-Work has been expensive, taxing the resources of unions and their supporters in opposition to some of the wealthiest individuals and corporations in the Country. After the Collective Bargaining Freedom Act was passed, many citizens in the State of Illinois, including Plaintiffs, sought to amend the Bill of Rights Article of the Illinois Constitution to prohibit any law from being passed that restricts or interferes with the ability of workers to join together and collectively bargain over wages, hours, and terms and conditions of employment, including union security agreements. However, the only way to put such an amendment before the Illinois voters is through a constitutional convention or with a 3/5 vote of the General Assembly.

Revisions to the Constitution of the State of Illinois

47. The Constitution of the State of Illinois may be amended subject to the requirements of Article XIV of the Illinois Constitution. Illinois Constitution article XIV.

48. Article XIV provides three distinct procedures to amend the Illinois Constitution (Ill. Const. art. XIV):

> (1) by a constitutional convention approved by three-fifths of the members elected to each house of the Illinois General Assembly and voters at the general election;
>
> (2) by a proposed amendment approved by a three-fifths vote of the Illinois General Assembly, which becomes effective if approved at the general election by either three-fifths of those voting on the question or a majority of those voting in the election; or
>
> (3) by submitting to the Illinois Secretary of State a petition for an amendment to Article IV of the constitution, signed by Illinois registered voters in an amount equal to at least eight percent of the total votes cast for Illinois Governor in the preceding gubernatorial election, and shall become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election.

49. In pertinent part, Article XIV, Section 2 (Amendments by General Assembly), states that "[a]mendments approved by the vote of three-fifths of the members elected to each house shall be submitted to the electors at the general election next occurring *at least six months after such legislative approval* (emphasis added)…" Ill. Const. art. XIV, § 2(a).

50. The six-month "waiting period" required by Article XIV, Section 2, was imposed at the Sixth Illinois Constitutional Convention. *See* Record of Proceedings, Sixth Illinois Constitutional Convention.

51. Prior to its adoption, the Convention debated and discussed the purpose of the six-month waiting period for amendments to the Illinois Constitution. *See* Record of Proceedings, Sixth Illinois Constitutional Convention.

52. During the Convention, "Committee Proposal 1," which contained the proposed six-month requirement, was submitted to the delegates. In the subsequent debate and records, the spokesperson for the responsible committee, Mr. Tomei, explained to the delegation that the purpose of six-month requirement was to allow the public time in which to "review amendments

submitted by the General Assembly," 2 Record of Proceeding, Sixth Illinois Constitutional Convention, 442, and to "give the legislature itself the opportunity to reconsider and withdraw" the proposed amendment. 7 Record of Proceedings, Sixth Illinois Constitutional Convention, 2293. Mr. Tomei explained that the committee "felt that the public ought to have an opportunity to hear the arguments" of the various invested parties, either for or against the proposed amendment. 2 Record of Proceeding, Sixth Illinois Constitutional Convention, 444.

53. In further explaining the Committee's proposal regarding the six-month period, Mr. Tomei cited to the "three-month period" then-present in the Illinois Constitution of 1870 for support, noting, at that time, a proposed amendment to the constitution was required to be published in full at least three months preceding the election upon which it would be voted. 2 Record of Proceeding, Sixth Illinois Constitutional Convention, 444; Illinois Constitution of 1870, Article XIV, Section 2.

54. However, while the Constitution adopted by the Sixth Illinois Constitutional Convention included the six-month requirement found in Article XIV, it requires that the amendment proposal, along with explanations, be published to the voters only *one month* prior to the election upon which it will be voted. Ill. Const. art. XIV, § 2(b).

COVID-19 and the Collective Bargaining Freedom Amendment

55. Following the bipartisan success of the Collective Bargaining Freedom Act and the session, generally, Representative Yednock and Senator Villivalam seized on the momentum and continued to craft ballot language for an amendment to the Illinois Constitution, to be voted on at the November 3, 2020, General Election.

56. In December 2019, an outbreak of respiratory disease caused by a novel coronavirus emerged in Wuhan, China. The coronavirus disease, now known as "COVID-19," is

an infectious disease that can spread from person to person and can result in serious illness and death.

57. In the January 22, 2020, edition of *Crain's Chicago Business*, political columnist Greg Hinz was the first to report on the Collective Bargaining Freedom Amendment.

58. In his column, Mr. Hinz stated that "[t]he exact language of the proposed amendment is not yet available. But [IUOE Local 150] has begun discussing it with legislative leaders and Gov. J.B. Pritzker, and it says an actual amendment will be filed later this week by Sen. Ram Villivalam, D-Chicago, and Rep. Lance Yednock, D-Ottawa." Mr. Hinz also confirmed that Senator Villavlam intended to sponsor the proposed amendment in the Senate. https://www.chicagobusiness.com/greg-hinz-politics/powerful-union-pushes-right-work-ban-illinois.

59. On January 23, 2020, Representative Lance Yednock filed with the Clerk of the Illinois House of Representatives legislation to initiate the procedure for the Collective Bargaining Freedom Amendment to be considered before the General Assembly. The Bill, formally titled, House Joint Resolution Constitutional Amendment 37, provides that "no law shall be passed that restricts or interferes with the ability of workers to join together and collectively bargain over wages, hours, and terms and conditions of employment, including any law that prohibits or restricts the right of private sector employers and employees, through a representative of their own choosing, to enter into and administer union security agreements." 101st General Assembly, State of Illinois, House Joint Resolution Constitutional Amendment 37 (HJRCA 37).

60. In the January 24, 2020, edition of *Crain's Chicago Business*, the Crain's Editorial Board focused on the proposed Collective Bargaining Freedom Amendment. The column, although hostile to the proposal, initiated the public debate regarding the merits of the proposed

Collective Bargaining Freedom Amendment. The Editorial Board noted that "the reason for concern now is that the [IUOE Local 150] has already begun discussions about it with legislative leaders and Gov. J.B. Pritzker. Legislation could come at any moment, and there appears to be plenty of momentum in Springfield to make sure it's heard." https://www.chicagobusiness.com/opinion/wrongheaded-idea-about-right-work-illinois.

61. On January 27, 2020, the Collective Bargaining Freedom Amendment was read in full for the first time in the House and referred the House Rule Committee. http://www.ilga.gov/legislation/BillStatus.asp?DocNum=37&GAID=15&DocTypeID=HJRCA&LegId=123265&SessionID=108.

62. On January 30, 2020, after the coronavirus outbreak had spread well beyond China, the World Health Organization declared that COVID-19 constitutes a Public Health Emergency of International Concern.

63. On January 31, 2020, as a result of confirmed cases of COVID-19 in the United States, Health and Human Services Secretary Alex M. Azar, II, declared a nationwide public health emergency retroactive to January 27, 2020.

64. On February 13, 2020, Representative Kelly M. Cassidy was added as a co-sponsor of the Collective Bargaining Freedom Amendment. http://www.ilga.gov/legislation/BillStatus.asp?DocNum=37&GAID=15&DocTypeID=HJRCA&LegId=123265&SessionID=108.

65. On February 14, 2020, Representative Jonathan Pizer was added as a co-sponsor of the Collective Bargaining Freedom Amendment. http://www.ilga.gov/legislation/BillStatus.asp?DocNum=37&GAID=15&DocTypeID=HJRCA&LegId=123265&SessionID=108.

66. On February 18, 2020, Representative Lawrence Walsh, Jr. was added as a chief cosponsor of the Collective Bargaining Freedom Amendment. http://www.ilga.gov/legislation/B

illStatus.asp?DocNum=37&GAID=15&DocTypeID=HJRCA&LegId=123265&SessionID=108.

67. On February 19, 2020, Representative Karina Villa and Representative Michael Haplin were added as chief cosponsors of the Collective Bargaining Freedom Amendment. http://www.ilga.gov/legislation/BillStatus.asp?DocNum=37&GAID=15&DocTypeID=HJRCA&LegId=123265&SessionID=108.

68. On February 27, 2020, the Centers for Disease Control issued guidance recommending, among other things, that members of the public practice "social distancing" and minimize close contact with others in order to slow the spread of COVID-19.

69. In the February 28, 2020, edition of the *Capitol Fax* subscriber-only morning email briefing, Rich Miller, the editor and proprietor of *Capitol Fax*, opined about the legislative fate of the Collective Bargaining Freedom Amendment, stating, " [t]here's no doubt that 150's new proposal will easily pass both chambers if it makes it to the floor." Rich Miller went on to state that "[o]ne House Republican official privately predicted it would get as many as 90 votes in that chamber…"

70. On March 9, 2020, the Governor of Illinois proclaimed the entire State of Illinois a disaster area. *See* GUBERNATORIAL DISASTER PROCLAMATION, March 9, 2020.[3]

71. On March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic.

72. On March 11, 2020, the Offices of the Speaker of House of Representatives ("Office of the Speaker") and the Senate President communicated to their members that the legislative session days scheduled for March 18 through March 20, 2020, were officially canceled. https://capitolfax.com/2020/03/11/session-canceled-for-next-week/.

[3] https://www2.illinois.gov/sites/gov/Documents/APPROVED%20-%20Coronavirus%20Disaster%2020WORD.pdf.

73. Regarding the cancellation, Senate President Don Harmon stated, "[g]iven the recommendations for social distancing as a safeguard to slow the spread of this virus, the Illinois Senate is going to do its part. The Friday, March 20, session day had already been cancelled. The Senate will also cancel the March 18 and 19 session days… [w]e will constantly monitor the situation and make future decisions based on best practices and advice from the state's public health and emergency preparedness professionals." https://capitolfax.com/2020/03/11/session-canceled-for-next-week/.

74. On March 13, 2020, the Governor of Illinois banned all "public and private gatherings" with 1,000 or more persons. That Order declared in relevant part ("Executive Order in Response to COVID-19" (COVID-19 Executive Order No. 2)):[4]

> Beginning March 13, 2020, all public and private gatherings in the State of Illinois of 1,000 or more people are cancelled for the duration of the Gubernational Disaster Proclamation. A public or private gathering includes any event in which appropriate social distancing measures cannot be maintained, such as concerts, festivals, conferences, sporting events, or other planned events with large numbers of people in attendance. A public or private gathering does not include normal school or work attendance.

75. On March 13, 2020, the President of the United States declared a national emergency (retroactive to March 1, 2020) due to the COVID-19 outbreak in the United States.

76. On March 16, 2020, the Governor closed all bars and restaurants and banned gatherings of 50 or more people. "Executive Order in Response to COVID-19" (COVID-19 Executive Order No. 5).[5]

77. On March 18, 2020, the Offices of the Speaker and Senate President communicated to their members that the legislative session days scheduled for March 24 through March 27, 2020, were officially canceled. https://capitolfax.com/2020/03/18/house-cancels-session-next-week-

[4] https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-04.aspx.
[5] https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-07.aspx.

extends-committee-deadline-will-caucus-by-phone/.

78. In her March 18, 2020, correspondence to House members, the Chief of Staff for the Office of the Speaker stated that the session schedule is "in flux" and, further, that members should "be re-evaluating any and all travel plans, including those made for the weeks April and April 12 (legislative spring break)." https://capitolfax.com/2020/03/18/house-cancels-session-next-week-extends-committee-deadline-will-caucus-by-phone/.

79. On March 19, 2020, the *Southern Illinoisan* published an article that spoke directly to the legal and practical health and safety challenges the General Assembly faces in convening session during the COVID-19 pandemic. https://thesouthern.com/news/local/govt-and-politics/general-assembly-can-t-hold-remote-meetings-citing-state-law/article_0033e340-8a79-5947-8660-8bbb0f242368.html. One such challenge noted by a spokesman for Senate President Don Harmon is that "Article IV, Section 5 of the Illinois Constitution says sessions of each house of the General Assembly must be open to the public unless two-thirds of the members vote to close them." Moreover, Senate President Harmon's spokesperson referenced a state law that says legislative sessions must be held "in the seat of government," which is Springfield. *Id.*, citing 25 ILCS 5/1 and 5/ ILCS 190/1. The column went on to note that under the law, the governor may convene a session "at some other place when it is necessary, in case of pestilence or public danger," but the spokesman for the Senate President said the words "some other place" would most likely be interpreted to mean some other physical location. *Id.*, citing 25 ILCS 5/1 and 5/ ILCS 190/1.

80. On March 20, 2020, the Governor ordered everyone in Illinois to shelter at home, with limited exceptions for "essential" activities and services, prevented individuals from gathering in groups of ten or more, and required everyone to maintain a six-foot distance from

others.[6]

81. On March 25, 2020, the Office of the Speaker communicated to House members that the legislative session days scheduled for March 31 through April 3, 2020, were officially canceled. Additionally, the Office of the Senate President communicated to Senators that that the legislative session days scheduled for March 31 through April 2, 2020, were officially canceled. https://capitolfax.com/2020/03/25/house-cancels-next-weeks-scheduled-session/.

82. On April 1, 2020, Governor Pritzker issued COVID-19 Executive Order No. 16, which, *inter alia*, extended COVID-19 Executive Order No. 8 through April 30, 2020. *See* "Executive Order in Response to COVID-19 (COVID-19 Executive Order No. 16).[7]

83. No legislative session days were scheduled or held in the House or Senate for the week of April 5, 2020.

84. No legislative session days were scheduled or held in the House or the Senate for the week of April 12, 2020.

85. On April 16, 2020, the Office of the Speaker communicated to House members that the legislative days scheduled for April 21 through April 24, 2020, were officially canceled. https://capitolfax.com/2020/04/16/house-cancels-next-weeks-session/.

86. On April 23, 2020, the Office of the Speaker communicated to House members that the legislative days scheduled for April 28 through April 30, 2020, were officially cancelled. https://capitolfax.com/2020/04/23/house-cancels-next-weeks-session-2/.

87. On April 30, 2020, Governor Pritzker issued COVID-19 Executive Order No. 30, which stated that healthcare resource utilization would not peak until May, that resources would not be sufficient without social distancing, and that the death rate would be 10 to 20 times higher

[6] https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-10.aspx.
[7] https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-18-aspx.

without a stay-at-home order.[8] Therefore, the stay-at-home order was extended through May 30, 2020.

88. Under Article XIV, Section 2 (Amendments by General Assembly) requirement that legislatively initiated amendments "be read in full on three different days in each house and reproduced before the vote is taken on final passage," any amendment must have been acted upon the initiating-chamber by April 29, 2020 in order to meet the six-month requirement to qualify for placement on the November 3, 2020, General Election ballot. Ill. Const. art. XIV, § 2(a).

89. Because the session scheduled to take place April 28 through April 30, 2020, was canceled, even with the previously referenced support from the General Assembly in mind, Plaintiffs did not have the opportunity to petition in the General Assembly to pass the Collective Bargaining Freedom Amendment for placement on the November 3, 2020, General Election ballot.

90. Per the House Calendar for the legislative year 2020, the House was scheduled to hold 33 days of regular, non-perfunctory session through May 3, 2020. However, due to the severity of the pandemic, the House was forced to cancel 18 consecutive regular session days, leading up to May 3, with the last session day taking place on March 5, 2020.

91. Per the Senate Calendar for the legislative year 2020, the Senate was scheduled to hold 32 days of regular, non-perfunctory session through May 3, 2020. As was the case in the House, due to the severity of the pandemic, the Senate was forced to cancel 17 consecutive regular session days, leading up to May 3, with the last session day taking place on March 5, 2020.

92. On May 6, 2020, Speaker Michael J. Madigan issued a press release regarding the House plan to return to Springfield stating, "While I am eager to see a return to normalcy, we are talking about people's lives, and any plan for a return to Springfield must have the health and

[8] https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-32.aspx.

safety of all those involved as a top priority, including the communities the members represent." https://ilhousedems.com/2020/05/06/statement-from-speaker-madigan-23/.

93. Because of the Governor's emergency orders and related actions by the General Assembly, Plaintiffs lost their rights to petition for the advance of the Collective Bargaining Freedom Amendment and vote in support of the amendment in November.

94. Under present circumstances, Illinois' ballot-access requirement of requiring proposed constitutional amendments be proposed six months in advance of the election violate rights guaranteed to Plaintiff by the First and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983.

95. A real and actual controversy exists between the parties.

96. Plaintiff has no adequate remedy at law other than this action for declaratory and equitable relief.

97. Plaintiff is suffering irreparable harm as a result of the violations complained of herein, and that harm will continue unless declared unlawful and enjoined by this Court.

WHEREFORE, Plaintiffs respectfully request the following relief:

a. a declaration that the six-month requirement in Article XIV, Section 2(a), of the Illinois Constitution violates the First and Fourteenth Amendments to the U.S. Constitution facially by unreasonably restricting Plaintiffs' associational and voting rights;

b. that this Court award Plaintiffs' costs and expenses, including its attorneys' fees, pursuant to 42 U.S.C. § 1988; and,

c. such other relief as the Court deems just and equitable.

Count II

1-97. For paragraphs 1 through 97 of Count II, Plaintiffs incorporate and reallege paragraphs 1 through 97 of Count I of their Complaint.

98. Article III, Section 3, of the Illinois Constitution states that "[a]ll elections shall be free and equal." Ill. Const.1970, art. III, Section 3).

99. Under the present circumstances, the Illinois ballot-access requirement that proposed constitutional amendments be passed by the General Assembly six months in advance of the election violates Plaintiffs' rights guaranteed by Article III, Section 3, of the Illinois Constitution.

100. A real and actual controversy exists between the parties.

101. Plaintiffs have no adequate remedy at law other than this action for declaratory and equitable relief.

102. Plaintiffs are suffering irreparable harm as a result of the violations complained of herein, and that harm will continue unless declared unlawful and enjoined by this Court.

WHEREFORE, Plaintiffs respectfully request the following relief:

a. a declaration that the six-month requirement in Article XIV, Section 2(a), of the Illinois Constitution violates Article III, Section 3, of the Illinois Constitution by unreasonably restricting Plaintiffs' right to associate for political purposes, Plaintiffs' access to being on the ballot, and the right of Plaintiffs as voters to have the opportunity to vote on the proposed constitutional amendment

b. that this Court award Plaintiffs' costs and expenses, including its attorneys' fees; and,

c. such other relief as the Court deems just and equitable.

Dated: May 8, 2020

Respectfully submitted,

By: /s/ Dale D. Pierson
One of the Attorneys for Plaintiffs

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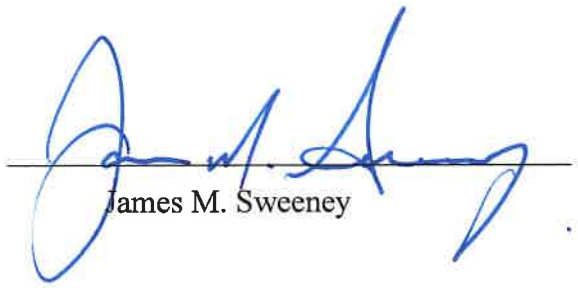
VERIFICATION

I, James M. Sweeney, state under oath that the foregoing claims are true and correct to the best of my knowledge and belief.

Dated: May 6, 2020



James M. Sweeney