IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ANDERSON FEDERATION OF TEACHERS, AVON FEDERATION OF TEACHERS, MARTINSVILLE CLASSROOM TEACHERS ASSOCIATION, G. RANDALL HARRISON, SUZANNE LEBO, and SHANNON ADAMS	)	
Plaintiffs.	)	**Case No. 1:21-cv-01767-SEB-DML**
v.	)	
TODD ROKITA, in his official capacity as the Attorney General of the State of Indiana, KATIE JENNER, in her official capacity as the Secretary of Education of the State of Indiana, and TAMMY MEYER, in her official capacity as the Chair of the Indiana Education Employment Relations Board	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION

I. INTRODUCTION

The Plaintiffs, a group of school employees and their unions, bring this action to enjoin enforcement of Indiana's new Senate Enrolled Act 251, which nullifies the existing dues authorization agreements between teachers, Indiana's school corporations, and the teachers' union. representatives. SEA 251 abrogates existing dues authorization agreements in violation of the contract impairment provision of Article I, Section 10 of the United States Constitution by nullifying existing contractual arrangements for dues deductions and forcing teachers and their unions to establish alternate, burdensome means of dues deduction. Teachers' unions and the school employees that they represent are being singled out in violation of teachers' First

Amendment rights to freedom of association and freedom of speech. SEA 251 impermissibly burdens both rights. By prescribing specific content for the new dues deduction agreement it requires, SEA 251 compels teachers to speak a message dictated by the State. Moreover, SEA 251 also establishes new and burdensome terms for wage assignments that apply only to teachers and only when the assignment is to support the teachers' unions. No employees other than teachers, no unions other than teacher unions, no other non-profit organizations, and no other wage assignments governed by Indiana law are subject to these terms. With respect to SEA's burdens on both speech and association, the State does not have a sufficiently compelling interest to justify the burden that SEA 251 imposes.

II. STATEMENT OF THE CASE[1]

A. Dues Authorization Agreements Before 2021 Passage of SEA 251

The Plaintiffs are teacher Unions that represent school employees in Indiana and teachers represented by those teacher Unions. The Unions are parties to collective bargaining agreements ("CBAs") with the school corporations which employ the teachers that the Unions represent. Provisions in these CBAs create a system whereby the dues that teachers pay to their Unions are deducted from the teachers' paychecks by the school corporations and then transmitted to the teachers' Unions.

Dues deductions are simply wage assignments that are generally governed by I.C. 22-2-6-2. That provision authorizes an assignment of wages if the assignment is (A) in writing, (B) signed by the employee personally, (C) by its terms revocable at any time by the employee upon written notice to the employer; (D) agreed to in writing by the employer and (E) for the purpose of paying any of the eighteen (18) types of costs specified in the statute. These costs include: **(1)**

[1] The statement of case is drawn from the allegations in Plaintiffs' Complaint for Injunctive Relief and supporting declarations, as well as the relevant provisions of Indiana law.

Premium on a policy of insurance obtained for the employee by the employer; **(2)** Pledge or contribution of the employee to a charitable or nonprofit organization; **(3)** Purchase price of bonds or securities, issued or guaranteed by the United States; **(4)** Purchase price of shares of stock, or fractional interests in shares of stock, of the employing company; **(5)** Dues to become owing by the employee to a labor organization of which the employee is a member; **(6)** Purchase price of merchandise, goods, or food offered by the employer; **(7)** Amount of a loan made to the employee by the employer;**(8)** Contributions, assessments, or dues of the employee to a hospital service or a surgical or medical expense plan or to an employees' association, trust, or plan existing for the purpose of paying pensions or other benefits to said employee or to others designated by the employee; **(9)** Payment to any credit union, nonprofit organizations, or associations of employees of such employer organized under any law of this state or of the United States; **(10)** Payment to any person or organization regulated under the Uniform Consumer Credit Code (IC 24-4.5) for deposit or credit to the employee's account; **(11)** Premiums on policies of insurance and annuities purchased by the employee on the employee's life; **(12)** The purchase price of shares or fractional interest in shares in one (1) or more mutual funds; **(13)** A judgment owed by the employee;**(14)** The purchase, rental, or use of uniforms, shirts, pants, or other job-related clothing;**(15)** The purchase of equipment or tools necessary to fulfill the duties of employment; **(16)** Reimbursement for education or employee skills training; **(17)** An advance for payroll or vacation; and **18)** The employee's drug education and addiction treatment services under IC 12-23-23.

"Any direction given by an employee to an employer to make a deduction from the wages to be earned by said employee, after said direction is given, shall constitute an assignment of the wages of said employee." Ind. Code § 22-6-1(a). "For the purposes of this chapter, the

term 'employer' shall also include the state and any political subdivision of the state." *Id.* § 22-6-1(b).

Prior to the passage of SEA 251, the provision in Indiana's statute governing Collective Bargaining for Teachers providing for dues deductions for teachers -- I.C. 20-29-5-6 -- mirrored the provisions in the general wage assignment statute. It stated:

> **(a)** The school employer shall, on receipt of the written authorization of a school employee:
>
> **(1)** deduct from the pay of the employee any dues designated or certified by the appropriate officer of a school employee organization that is an exclusive representative of any employees of the school employer; and
>
> **(2)** remit the dues described in subdivision (1) to the school employee organization.
>
> **(b)** Deductions under this section must be consistent with:
>
> **(1)** IC 22-2-6; [general wage assignment statute described above]
>
> **(2)** IC 22-2-7; [assignment of wages to wage brokers] and
>
> **(3)** IC 20-28-9-18. [assignment of wages for insurance or to annuity accounts]

Within this legal framework, Plaintiffs, the teachers they represent and the School Corporations which employ those teachers made arrangements for the payment of union dues through payroll deduction that prevailed for decades. The teachers signed agreements authorizing their School Employer to withhold amounts from their paychecks and to remit those amounts to their Unions to pay their dues; the School Corporations agreed to withhold the amounts and remit them to the Unions; and the Unions agreed to accept dues payment through this payroll deduction system. The authorization through which teachers authorized the deduction of their dues from their paychecks stated:

> I hereby request the MSD of Martinsville to withhold dues for the Martinsville to withhold dues for the Martinsville Classroom Teachers Association (MCTA) in substantially equal installments from my pay in accordance with the collective bargaining agreement. The total of such deductions shall be the amount specified each year by the treasurer of the MCTA, and the proceeds from such deductions are to be forwarded

promptly to that officer of the Association. I also request that this written authorization remain in effect from year to year unless it is revoked in writing by me.

[Exhibit 1B: Dues Authorization Form for Martinsville Classroom Teachers Association]

My signature below authorizes the Avon community School Corporation to deduct dues from my payroll checks for the Avon Federation of Teachers in an amount of and according to a schedule agreed upon by the Avon Federation of Teachers. Such dues shall then be forwarded to the treasurer of the Avon Local 3519. My membership and dues will stay in effect until I notify the treasurer in writing otherwise.

[Exhibit 2B: Dues Authorization Form for Avon Federation of Teachers Local 3519]

Authorization Agreement

This is to authorize the Anderson Community School Corporation to withhold from my pay the established dues to the Anderson Federation of Teachers. It is understood this authorization shall remain in force until notification is made to the school administration and the Anderson Federation of Teachers.

[Exhibit 3B: Dues Authorization Form for Anderson Federation of Teachers Local 519]

The Unions and School Corporations agreed to this payroll deduction system in their CBAs. The Anderson agreement provides in relevant part:

> the school employer shall, on written authorization of a school employee, deduct from each pay of such employee, starting with the second pay, and each pay thereafter of such employee any dues designated or certified by the appropriate officer of the Union and shall remit such dues to the Union after each deduction.

[Exhibit 3A: Anderson Collective Bargaining Agreement]

The Avon agreement provides:

> [The] Board agrees to deduct Union membership dues from the salaries of those teachers who have authorized such deductions. Such authorization shall be provided by the Union and submitted to the Board on or before the fourth (4^{th}) pay date of the school year. Such authorization shall continue in effect from year to year unless revoked in writing by the teacher. Additional authorization will be accepted anytime with deductions beginning within four (4) weeks of the submission of the authorization.
>
> ****
>
> Deductions shall be made in twenty-one (21) equal installments, beginning with the sixth (6^{th}) paycheck in the amount to be determined each October. Total

> remaining Union dues from non-returning teachers will be deducted accordingly from their last payroll check. The proceeds from the deductions shall be forwarded by the Board to the Treasurer of the Union within five (5) school days after the checks from which the deduction were made are delivered to the teachers.

[Exhibit 2A: Avon Collective Bargaining Agreement]

> And the Martinsville Agreement provides:
>
> Teachers who authorize dues deductions shall have dues deducted each year at the same rate unless the School Corporation receives written notification from the teacher to cease making such deductions not less than two weeks prior to the first pay of the new school year. The Association shall certify the amount of the unified dues to the Corporation on or before August 1 of each school year. The School Corporation shall provide a list of the membership authorizations on file to the Association prior to October 1. The first deduction will be the first pay of the school year for all continuing members…

[Exhibit 1A: Martinsville Collective Bargaining Agreement]

Each of the CBAs has an expiration date of June 30, 2021, but under both the Avon and Martinsville Agreements – and many teacher CBAs in effect throughout the State -- teacher salaries are paid through bi-weekly payments from the beginning of the school year in August of one year to the beginning of the school year in August of the next. Thus, even though the CBAs expire on June 30, 2021, the School Corporations' contractual obligation to pay salary and the teachers' contractual right to receive salary both extend beyond June 30, 2021, into August 2021 when the 26th biweekly payment is made. The School Corporations' commensurate obligation to deduct dues from the teachers' paychecks and remit those dues to the Unions likewise extends beyond June 30, 2021 until August 2021, as does the Unions' right to receive those dues.

B. Dues Authorization Agreements After the Passage of SEA 251

During the 2021 legislative session, the legislature passed SEA 251 which amended Ind. Code 20-29-5-6, *supra* at 3-4, by adding the following:

> **(c)** After June 30, 2021, the following apply to a deduction authorization by a school employee under subsection (a) or when a school employer agrees with a school employee organization to deduct school organization dues from a school employee's pay:

(1) A school employee has the right to resign from, and end any financial obligation to, a school employee organization at any time. The right described in this subdivision may not be waived by the school employee.

(2) The authorization for withholding form shall include the school employee's full name, position, school employee organization, and signature and shall be submitted directly to the school employer by the school employee. After receiving the authorization for withholding form, the school employer shall confirm the authorization by sending an electronic mail message to the school employee at the school employee's school provided work electronic mail address and shall wait for confirmation of the authorization before starting any deduction. If the school employee does not possess a school provided work electronic mail address, the school employer may use other means it deems appropriate to confirm the authorization.

(3) An authorization for school employee organization dues to be deducted from school employee pay shall be on a form prescribed by the attorney general, in consultation with the board, and shall contain a statement in 14 point type boldface font reading: "I am aware that I have a First Amendment right, as recognized by the United States Supreme Court, to refrain from joining and paying dues to a union (school employee organization). I further realize that membership and payment of dues are voluntary and that I may not be discriminated against for my refusal to join or financially support a union. I authorize my employer to deduct union dues from my salary in the amounts specified in accordance with my union's bylaws. I understand that I may revoke this authorization at any time.".

(4) Authorizations by a school employee for the withholding of school employee organization dues from the school employee's pay shall not exceed one (1) year in duration and shall be subject to annual renewal. Any authorization submitted by a school employee to the school employer before July 1, 2021, expires on July 1, 2021, and must be resubmitted in accordance with this subsection.

(5) Upon the submission of a written or electronic mail request to a school employer, a school employee shall have the right to cease the withholding of school employee organization dues from their pay. Upon receipt of a request, the school employer shall:

(A) cease the withholding of school employee organization dues from the school employee's pay beginning on the first day of the employee's next pay period; and

(B) provide written or electronic mail notification of the school employee's decision to the school employee organization.

The notification in clause (B) must occur within a reasonable time to ensure that the school employee is not required to have dues withheld during the school employee's next pay period or any subsequent pay period.

(6) A school employer shall annually provide, at a time the school employer prescribes, written or electronic mail notification to its school employees of their right to cease payment of school employee organization dues and to withdraw from that organization. The notification must also include the following:

(A) The authorization form described in subsection (c)(3).

> **(B)** The amount of dues that the school employee will be liable to pay to the school organization during the duration of the authorization, if the employee does not revoke the authorization before it expires.
>
> **(d)** On or before July 1, 2021, and not later than July 30 of each year thereafter, the attorney general, in consultation with the board and the department, must notify all school employers of the provisions described in subsection (c). This notice must include the authorization form described in subsection (c)(3).

If permitted to take effect on July 1, 2021, SEA 251 would:

(1) prohibit the Avon and Martinsville School Corporations—and any other school corporations on a biweekly pay and dues deduction system -- from deducting the dues they are contractually obligated to deduct from the bi-weekly salary payments they are obligated to make under current dues deduction authorizations and current CBAs between July 1 and the new school year beginning in August 2021;

(2) extinguish the Avon Federation's and Martinsville Classroom Teachers' Association's contractual right to receive those dues – and the rights of any other unions in school corporations using the 26 biweekly pay and dues deduction system;

(3) extinguish all of the current dues authorization agreements that the Plaintiffs, the teachers they represent and the School Corporations who employ them have executed as well as comparable authorization agreements used throughout the State;

(4) substitute for the authorization agreements that teachers, unions and school corporations have freely and voluntarily entered into over the years an authorization agreement drafted by the State which contains a message dictated by the State which all teachers who seek to have union dues deducted must adopt by signing the authorization and speak when they submit the authorization to their school corporation; and

(5) impose upon teachers and their unions -- and only upon those parties -- much more burdensome terms for assigning wages than exist for any other employees or unions involved in assigning wages for any of the myriad other purposes permitted by law.

II. LEGAL ARGUMENT

A. STANDARD FOR INJUNCTIVE RELIEF

To be granted a preliminary injunction, Plaintiffs "must establish that [they are] [1] likely to succeed on the merits, that [they are] [2] likely to suffer irreparable harm in the absence of preliminary relief, that [3] the balance of the equities tips in [their] favor, and that [4] an injunction is in the public interest." *Higher Soc'y of Ind. v. Tippecanoe Cty.*, 858 F.3d 1113, 1116 (7th Cir. 2017) (citing *Winter v. NRDC, Inc*., 555 U.S. 7, 20 (2008)). Plaintiffs must provide "a 'strong' showing" that they are likely to succeed, which is a lesser burden of proof than the preponderance of the evidence. *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 763 (7th Cir. 2020). A preliminary injunction is "designed to protect both the parties and the process while the case is pending." *Id.*

Plaintiffs rely on three well-established Constitutional principles: First, Article I, Section 10, Clause 1 (the "Contract Clause") prohibits "States from passing laws 'impairing the Obligation of Contracts.' *Elliott v. Board of School Trustees of Madison Consolidated Schools*, 876 F.3d 926, 928 (7th Cir. 2017) Here, SEA 251 impairs existing contractual rights and obligations found in both collective bargaining agreements and dues authorization agreements which require School Corporations to withhold dues from teacher paychecks and remit those dues to Plaintiff Unions beyond July 1, 2021.

Second, the First Amendment right to freedom of speech protects individuals from being compelled to speak a particular message. *Nat'l Institute of Family and Life Advocates v. Becerra*, 585 U.S. ____; 138 S. Ct. 2361, 2371 (2018); *Riley v. Nat'l Fed. Of Blind of North*

Carolina, 487 U.S. 781, 795 (1988); *Wooley v. Maynard*, 430 U.S. 705, 713-714 (197); *West Va. Board of Education v. Barnette*, 319 U.S. 624 (1943). Here, the State requires that teachers accept through their signature a State dictated message contained in the dues authorization agreements required by SEA 251 in place of the voluntary dues authorization agreements that are nullified by SEA 251 and that teachers speak that message when they submit the new dues deduction authorization to their school corporation and union for processing. Under SEA 251, the State is compelling speech in violation of the First Amendment.

Third, the First Amendment right to association protects individuals from state action that curtails the right to associate. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-461 (1958). Only teachers are burdened by the wage assignment restrictions imposed by SEA 251, and they are burdened only when they make dues contributions to their exclusive representative. Teachers are permitted to continue individual wage assignments without these restraints for the other seventeen purposes permitted in Indiana's Wage Assignment statute. Placing a burden on teachers when they band together to financially support their exclusive representative while placing none on all employees who make wage assignments for individual purposes is clearly a restraint on the right of association. *Citizens Against Rent Control/Coalition For Fair Housing v. Berkley*, 454 U.S. 290, 296 (1981)

As set forth in the Complaint and below, Plaintiffs meet the injunctive relief standards because:

1. Plaintiffs are likely to succeed on the merits by establishing that Defendants' enforcement of SEA 251 violates the Contract Impairment Clause, and the First Amendment freedom from compelled speech and freedom of association.

2. Plaintiffs' remedies at law are inadequate, as there is a limited time frame to challenge SEA 251 before it goes into effect July 1, 2021. Plaintiffs will suffer irreparable harm if SEA 251 goes into effect on July 1, 2021, because they will suffer constitutional injury which courts at all levels recognize constitutes irreparable injury.

3. The threatened harm to Plaintiffs outweighs the harm to Defendants. Plaintiffs will suffer irreparable injury caused by the deprivation of their constitutional rights. Conversely, Defendants will only be required to continue the existing procedure for wage assignments for public teachers in Indiana, which is procedurally sound and does not harm Defendants.

4. Public interest is better served by a preliminary injunction, which would allow more time for public schools to address the additional costs of SEA 251. Defendants' desire to serve the public interest by informing teachers of their rights about union membership through SEA 251 is not immediately harmed if a preliminary injunction is granted.

B. SEA 251 IMPERMISSIBLY IMPAIRS OBLIGATIONS OF CONTRACTS

The Contract Clause, under Art. I, § 10, Cl 1 of the United States Constitution, prohibits States from passing laws "impairing the Obligation of Contracts." *Elliott v. Bd. of Sch. Trs. of Madison Consol. Sch.*, 876 F.3d 926, 928 (7th Cir. 2017). The Court must undertake a two-step analysis to determine whether a law violates the Contract Clause: 1) did a change in the law substantially impair a contractual relationship? and 2) was the impairment reasonable and necessary for a public purpose? *Id* at 932.

1. Senate Enrolled Act 251 Substantially Impairs Existing Dues Authorization Agreements.

"Legislation causes a substantial impairment if it alters a 'central undertaking' of the contract that 'substantially induced' a party to enter the bargain." *Elliott v. Bd. of Sch. Trs. of Madison Consol. Schs.*, 876 F.3d 926, 934 (7th Cir. 2017). "An impairment is substantial if it disrupts actual and important reliance interests" and the parties did not anticipate or foresee the change in the law. *Id.* at 935. "[S]evere impairment" will cause "a careful examination of the nature and purpose of the state legislation." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 245 (1978).

SEA 251 causes a "severe impairment" warranting "careful examination" of its terms because the legislation "disrupts actual and important reliance interests" in Plaintiffs' assignment of wages. SEA 251 creates four significant burdens to the wage assignment process for teachers. First, SEA 251 extinguishes all current dues authorization agreements on July 1. No impairment could be more disruptive than nullification of the entire agreement. Current dues authorization agreements authorize the deductions of dues on a continuing basis until revoked by the teacher. Importantly, SEA 251 completely abrogates existing dues authorization agreements that provide for deductions from teacher pay for dues paid to Plaintiffs Avon Federation of Teachers and Martinsville Classroom Teachers' Association for the 2020-2021 school year which does not end until August, 2021. If SEA 251 takes effect on July 1, no dues deductions after that date will be permitted unless teachers execute the new, State-dictated authorization agreements. But execution and processing of the new authorization agreements will be impossible before teachers return to school in August because teachers will not be in contact with their school employers or their unions between July 1 and their return to school in August. And even if teachers execute the new authorization agreement before their return, SEA 251 provides that the authorization will

not be effective until it is submitted to the school corporation and the school corporation then sends an e-mail to the authorizing teacher requiring the teacher to confirm the dues authorization agreement. The teachers themselves have no control over the availability of school corporation staff to perform its obligations under SEA 251. Dues that would otherwise be checked off and remitted to Plaintiff unions between July 1 and the beginning of the new school year will, therefore, not be timely paid.

Second, the dues authorization agreements must be on a form generated by the Indiana Attorney General. This completely abrogates the existing arrangements that are revocable by the teacher at will. And, as described in more detail below, the message prescribed for the authorization agreement by SEA 251 unconstitutionally compels speech.

Third, the provision in SEA 251 which delays the effect of the authorization agreement until after the school corporation sends the executed authorization back to the teacher and then receives confirmation from the teacher has the potential of delaying timely deductions altogether. Plaintiffs rely on wages being appropriately deducted so that the exclusive representative, in return, may provide important services like enforcing the contract, interpreting the contract, negotiating the contract, providing representation as necessary in any grievance procedure, and liability insurance for its members. Such interests are important to all Plaintiffs.

2. The Impairment is Not Reasonable and is, in fact, Contrary to a Public Purpose

There is no important public interest served by adjusting the statutory language in teachers' assignment of wages to impair the current contractual obligations. In fact, the public school system is harmed by such legislation. The fiscal impact statement (Apr. 12, 2021) for SEA 251 provides that "Public schools would experience a workload increase from the bill's

provisions. The workload increase would likely be completed with existing staff and resources." Indiana General Assembly, 2021 Session, SEA 251 (2021).

In addition to the administrative workload in public institutions, SEA 251 imposes additional costs on unions. First, there is the immediate matter of the dues that are remaining to be paid for the balance of the 2020-2021 school year. The law disrupts an existing structure of dues payments by abrogating existing lawful authorizations and requiring unions to create a mechanism to collect all dues owing to them until employees authorize the forthcoming form from the Attorney General, the school corporation processes the form and sends a confirming e-mail to a member, the member responds to the confirming e-mail, and the school corporation processes the authorization.

Second, the language of the dues authorization required by the state is objectionable, and as set out more fully below, violates the signers' First Amendment right by compelling them to express a message they disagree with.[2] This violation of rights is contrary to the public purpose.

3. The Contract Impairment Causes Irreparable Harm

In the absence of injunctive relief, these additional costs will cause "irreparable harm" to Plaintiffs and the general public by immediately abrogating existing dues authorization agreements and forcing teachers to sign new ones. As Plaintiff Shannon Adams indicates in her declaration, the Martinsville Classroom Teachers Association will suffer a $17,000 revenue gap due to SEA 251. (Exhibit 1: Declaration of Shannon Adams, ¶ 8) This disruption is irreparable, because it immediately denies Plaintiffs operational funds, denies the members the benefit of

[2] The dues authorization language established by SEA 251, and required to be on the forthcoming form distributed by the Attorney General, requires teachers to acknowledge that they have the right to not be members of their union. But teachers also have a right to join a union.

their bargain, and then can only be unwound if Plaintiffs seek out and individually collect the remaining dues from the members themselves.[3]

C. VIOLATION OF PLAINTIFFS' RIGHT TO FREEDOM OF ASSOCIATION

The Plaintiffs' argument regarding the infringement of their right to freedom of association is straightforward: only teachers face the annual requirement to reauthorize dues deductions; only teachers are required to jump through the hoops required by the State prior to having their dues withheld. And, it is only the teachers' payment of membership dues that are particularly targeted by the law. Teachers are permitted to continue individual wage assignments without these restraints for the other seventeen purposes permitted in Indiana's Wage Assignment statute.

"The freedom of association is diluted if it does not include the right to pool money through contributions. . . ." *Citizens Against Rent Control/Coalition for Fair Housing v. Berkley*, 454 U.S. 290, 296 (1981) (citing *Buckley v. Valeo*, 424 U.S. 1, 65-66 (1976)). The First Amendment right to association protects individuals from state action that curtails the right to associate. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-461 (1958). This "freedom of association" is protected even if the governmental action is not direct restrictive action and even if the consequent infringement on the right to associate is unintended. *Id.*[4]

Placing a burden on teachers when they band together to financially support their exclusive representative while placing none on all employees who make wage assignments for individual purposes is clearly a restraint on the right of association. *Citizens Against Rent*

[3] Importantly, Plaintiffs could not get ahead of the July 1, 2021 deadline because dues deduction authorizations must be executed on a form provided by the Attorney General and the Attorney General is not required to provide the form until July 1. The Attorney General has not provided the form as of the date of this filing.
[4] Plaintiffs by no means concede that the restriction on freedom of association is unintended here.

Control, 454 U.S. at 296. In *Citizens Against Rent Control*, organizations were capped in the amount of contributions they could collect in connection with opposition to or support of a ballot initiative in Berkley, California. However, individuals were allowed to expend an uncapped amount in support or opposition of such a measure. In other words, organizations were limited in the amount of funds they could collect, while individuals could spend at will.

Applying strict scrutiny, the Court found the differential treatment between organizations and individuals violated individuals' right to associate. "To place a Spartan limit -- or indeed any limit -- on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association. [The challenged limitation] does not seek to mute the voice of one individual, and it cannot be allowed to hobble the collective expressions of a group." *Id.* at 296.

The Court's holding in *Citizens Against Rent Control* applies with equal force to the case here. The State has imposed restrictions on the right to associate on one group, and one group only, the teachers of Indiana. Applying strict scrutiny, the court here should enjoin the enforcement of SEA 251.

D. PLAINTIFFS' FREEDOM FROM COMPELLED SPEECH CLAIM IS LIKELY TO SUCCEED.

Under SEA 251 authorizations executed before July 1, 2021, are extinguished on that date, and to qualify for continued dues deductions, a teacher must submit a new dues authorization agreement. Specifically, a teacher must use a dues deduction authorization agreement prescribed by the Indiana Attorney General to authorize the dues deductions. In addition to whatever language the Attorney General decides to include, SEA 251 requires the new dues deduction authorization agreement to include the following language in bold face 14 point font (like the following): "**I am aware that I have a First Amendment right, as**

recognized by the United States Supreme Court, to refrain from joining and paying dues to a union (school employee organization). I further realize that membership and payment of dues are voluntary and that I may not be discriminated against for my refusal to join or financially support a union." By requiring teachers to sign a dues deduction authorization agreement with this language, SEA 251 violates their First Amendment right to freedom of speech by compelling them to adopt and speak a message dictated by the State.

The line of Supreme Court cases finding that compelled speech violates an individual's First Amendment rights extends back at least to *West Va. Board of Education v. Barnette*, 319 U.S. 624 (1943). There, the Supreme Court struck down a West Virginia Board of Education requirement that required students to participate in recitation of the pledge of allegiance to the flag. The Court observed:

> "To sustain the compulsory flag salute we are required to say that a *Bill of Rights* which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind."

319 U.S. at 634.

The Court noted that although the plaintiff in the case objected to reciting the pledge on religious grounds, the case did not turn on the basis of the individual's objection. *Id*. In closing, the Court described the overarching principle applicable to compelled speech in the following terms:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

319 U.S. at 642.

Next in the line of relevant compelled speech cases is *Wooley v. Maynard*, 430 U.S. 705 (1977). There, the issue was whether New Hampshire owners of automobiles could be compelled to display the state motto "Live free or die" which appears on New Hampshire state license plates. Relying in large part on *Barnette*, *supra*, the Court concluded that the First Amendment prohibited the State of New Hampshire from requiring individuals to display this message. The Court began its analysis:

> We begin with the proposition that the right of freedom of thought protected by the *First Amendment* against state action includes both the right to speak freely and the right to refrain from speaking at all. A system which secures the right to proselytize religious, political, and ideological causes must also guarantee the concomitant right to decline to foster such concepts. The right to speak and the right to refrain from speaking are complementary components of the broader concept of "individual freedom of mind.

430 U.S. at 714. The Court held that New Hampshire citizens have a constitutional right to cover over the state motto on their license plates, and in arriving at that holding made it clear that the popularity of the message that the State sought to convey was not relevant:

> The fact that most individuals agree with the thrust of New Hampshire's motto is not the test; most Americans also find the flag salute acceptable. The *First Amendment* protects the right of individuals to hold a point of view different from the majority and to refuse to foster, in the way New Hampshire commands, an idea they find morally objectionable.

430 U.S. at 715.

Two more recent Supreme Court cases make it clear that a State may not compel speech. In *Riley v. Nat'l Fed'n of Blind*. 487 U.S. 781, 798–801 (1988), the Court held that a North Carolina statute impermissibly compelled speech in violation of the First Amendment by requiring professional fundraisers to disclose to potential donors, before requesting funds, "the average percentage of gross receipts actually turned over to charities by the fundraiser for all charitable solicitations conducted." *Id.* at 786. Significantly, the Court noted that although the

speech required by the North Carolina statute involved compelled statements of fact rather than compelled statements of opinion, that made no difference: "either form of compulsion burdens protected speech." Id., at 797-798

The Court reviewed the statute under strict scrutiny stating "North Carolina's content-based regulation is subject to exacting First Amendment scrutiny." It concluded that "the means chosen to accomplish [the State's interests] are unduly burdensome and not narrowly tailored." *Id.* at 798.

In *Nat'l Institute of Family & Life Advocates v. Becerra*, 585 U.S. ____; 138 S. Ct. 2361, 2371 (2018), a California statute required clinics which provided services primarily to pregnant women to furnish notices drafted by the State to the women seeking services from the clinics. As the Court described the issue: "Licensed clinics must notify women that California provides free or low-cost services, including abortions, and give them a phone number to call. Unlicensed clinics must notify women that California has not licensed the clinics to provide medical services. The question in this case is whether these notice requirements violate the First Amendment."

With respect to the notice to be provided by licensed clinics, the Court began its analysis noting that content-based regulation of speech is presumptively unconstitutional and subject to strict scrutiny, citing *Reed v. Town of Gilbert,* 576 U.S. ___, ___, 135 S. Ct. 2218 (2015). It then reasoned:

> This stringent standard reflects the fundamental principle that governments have "'no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" *Ibid.* (quoting *Police Dep't of Chicago v. Mosley*, 408 U. S. 92, 95 (1972)).
>
> The licensed notice [in the case before the Court] is a content-based regulation of speech. By compelling individuals to speak a particular message,

> such notices "alte[r] the content of [their] speech." *Riley v. National Federation of Blind of N. C., Inc.*, 487 U. S. 781, 795 (1988).

138 S.Ct. at 2371. The Court concluded that the State failed to justify the statutory requirement that the clinics provide the notice because there was a "disconnect between its stated purpose and its actual scope." Id. at 2376. The State justified the notice by contending that the notice provided "low-income women with information about state-sponsored services." But the statute did not require many clinics which treated low income to provide the notice. It required only those "clinics that have a 'primary purpose' of 'providing family planning or pregnancy-related services'" to provide the notice. The Court observed:

> Such "[u]nderinclusiveness raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint. *Entertainment Merchants Assn.*, 564 U. S., at 802.

138 S.Ct. at 2376.

With respect to the notice that unlicensed clinics were required to provide, the Court declined to decide what standard of review applied. It observed, without deciding, that if the notice were treated as a disclosure requirement, the appropriate standard of review would be that applied in *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985). Under *Zauderer*, a disclosure requirement cannot be "unjustified or unduly burdensome." *Becerra*, 138 S.Ct. at 2377 citing *Zauderer*, 471 U.S.. at 651. California claimed that the purpose of the unlicensed notice was "ensuring that 'pregnant women in California know when they are getting medical care from licensed professionals.'" But the Court observed that "California points to nothing suggesting that pregnant women do not already know that the covered facilities are staffed by unlicensed medical professionals." *Becerra*, 138 S.Ct. at 2377.

Under this line of compelled speech cases, SEA 251's requirement that to have their dues deducted teachers must sign the dues deduction agreements described in Section c(3) of SEA 251

clearly violates the teachers' First Amendment right not to be forced to speak a message compelled by the State. If a teacher wishes to have her or his dues deducted from their paychecks, the teacher must sign an agreement that provides, in 14 point type bold face font, that he or she is "aware that I have a First Amendment right, as recognized by the United States Supreme Court, to refrain from joining and paying dues to a union (school employee organization). I further realize that membership and payment of dues are voluntary and that I may not be discriminated against for my refusal to join or financially support a union."

As the Declaration of G. Randall Harrison, submitted herewith, accurately observes, this language carries a one-sided, anti-union message. Teachers have a constitutional right to either join or refrain from joining a union, and they also have a constitutional right to pay union dues or refrain from paying union dues. By including on the dues authorization agreement only the right to refrain from both joining a union and paying dues, the State is clearly sending a message that it hopes will persuade teachers to exercise their right to refrain. But it is also requiring teachers to accept and adopt this language in their dues authorization agreement with their School Corporation and their Union, and it is requiring them to speak this language when they submit the written agreement to their School Corporation and their Union in order to make the dues deduction effective. In fact, under SEA 251, they are required to speak it twice, first when they sign and deliver the agreement to their school corporation, and second when they receive the agreement back from their school corporation and must then confirm that this is their agreement. As the Harrison Declaration establishes, teachers who actively support their unions are highly likely, if not certain, to object to speaking this one-sided, anti-union message.

The First Amendment does not permit the State to require teachers to speak this message. As the Supreme Court has stated, the Bill of Rights does not permit "public authorities to compel

[an individual] to utter what is not in his mind." *West Va. Board of Education v. Barnette*, 319 U.S. 624, 634 (1943). Or, as the Court more recently stated, when a State "compel[s] individuals to speak a particular message" that "alters the content of their speech," this content-based regulation of speech is presumptively unconstitutional. *Nat'l Institute of Family & Life Advocates*,138 S. Ct. at 2371.

As the cases discussed above establish, strict scrutiny of this content-based regulation of teachers' speech is required. And under that standard, the State cannot justify its requirement that teachers speak the message included in the dues deduction authorizations required by SEA 251. As *Becerra* established, even if the less onerous standard of *Zauderer* applied– that the disclosure notice not be "unjustified or unduly burdensome" -- the State still could not justify SEA 251's compelled speech because teachers already know that they have a constitutional right to refrain from joining a union, and the one-sided content of the message makes it clear that rather than seeking to educate teachers concerning their constitutional rights, the State is seeking to "disfavor a particular speaker or viewpoint." .*Entertainment Merchants Assn., 564 U. S., at 802.*

E. PLAINTIFFS WILL SUFFER IRREPARABLE HARM

Plaintiffs will suffer irreparable harm if SEA 251 is permitted to take effect because implementation of SEA 251 will violate their First Amendment rights of free speech and free association and their contractual rights protected by the Constitution. Constitutional violations are routinely recognized by courts at all levels as triggering irreparable injury warranting the issuance of preliminary injunctive relief. *See, e.g., Elrod v.* Burns, 427 U.S. 347, 373 (1976) (loss of constitutional "freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") *Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) ("[t]he

existence of a continuing constitutional violation constitutes proof of an irreparable harm.”); *Does v. City of Indianapolis*, No. 1:06-cv-865-RLY-WTL, 2006 U.S. Dist. LEXIS 84425 (S.D. Ind Oct.5, 2006) (quoting *Cohen v. Coahoma Cnty*., 805 F.Supp. 398, 406 (N.D. Miss. 1992) for the proposition: “[i]t has been repeatedly recognized by federal courts at all levels that violation of constitutional rights constitutes irreparable harm as a matter of law.”)

F. THE BALANCE OF EQUITIES FAVORS THE PLAINTIFFS.

The threatened constitutional injuries to Plaintiffs are tangible and immediate. If SEA 251 is implemented, Plaintiffs rights to freedom of speech and freedom of association will be abridged as will their constitutionally protected contract right to continue paying and collecting union dues. In addition to their constitutional injuries, they will suffer interruptions in timely dues deductions, which affects access to important union-related services under their collective bargaining agreements (“CBAs”). Plaintiffs will incur additional costs relating to implementation of a billing system to collect membership dues.

Defendants, on the other hand, will not experience any significant harm. It is unlikely that Defendants will be harmed at all if a preliminary injunction is granted. Defendants will only be required to continue the existing procedure for wage assignments for public teachers in Indiana, which is procedurally sound and has been in effect for years.

G. THE PUBLIC INTEREST IS SERVED BY AN INJUNCTION.

As discussed at length in section B, there is no “important public interest” served by adjusting the existing statutory language in teachers’ assignment of wages. Although “the government's interest is in large part presumed to be the public's interest,” the legislature missed the mark with SEA 251. *U.S. v. Rural Elec. Convenience Coop. Co.*, 922 F.2d 429, 440 (7th Cir. 1991). Indiana teachers already know that they have a right not to join a union or to pay dues when they sign their authorizations. The public interest is not served by the violations of teacher

First Amendment rights of free speech and association that will be caused by the implementation of SEA 251.

III. CONCLUSION

Plaintiffs respectfully ask this Court to enter a preliminary injunction against Defendants to enjoin implementation of SEA 215 on July 1, 2021, in accordance with this Memorandum of Law and the accompanying Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 15, 2021, a copy of the foregoing has been served on counsel of record by operation of the court's e-filing system. Additionally, copies have been served by hand on the following parties:

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