E-FILED
Transaction ID: 4-22-0470
File Date: 7/8/2022 5:07 PM
Carla Bender, Clerk of the Court
APPELLATE COURT 4TH DISTRICT

No. 4-22-0470

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

SARAH SACHEN, IFEOMA NKEMDI, JOSEPH OCOL, and ALBERTO MOLINA, Petitioners-Appellants, v. ILLINOIS STATE BOARD OF ELECTIONS; IAN LINNABARY, *in his official capacity as Chair of the Illinois State Board of Elections*; CASANDRA B. WATSON, WILLIAM J. CADIGAN, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, WILLIAM M. MCGUFFAGE, *AND* RICK S. TERVEN, SR., *in their official capacities as members of the Illinois State Board of Elections*; JESSE WHITE, *in his official capacity as Illinois Secretary of State*; SUSANA MENDOZA, *in her official capacity as Illinois State Comptroller*, Respondents-Appellees.	Appeal from the Circuit Court, Seventh Judicial Circuit, Sangamon County, Illinois No. 22-CH-34 The Honorable Raylene DeWitte Grischow, Judge Presiding **Oral Argument Requested**

APPELLANTS' BRIEF

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NATURE OF CASE

Petitioners are Illinois taxpayers seeking leave under 735 ILCS 5/11-303 to file an action to enjoin the Respondents—the Illinois State Board of Elections and its members, the Illinois Secretary of State, and the Illinois Comptroller—from using state funds to place a proposed constitutional amendment on the November 2022 general election ballot, and to obtain declaratory relief. Petitioners allege that the proposed amendment—which would establish a "fundamental" right to collective bargaining for all employees in Illinois—is preempted by the National Labor Relations Act and thus violates the Supremacy Clause of the United States Constitution. The circuit court denied Petitioners leave to file their proposed complaint because it found that it lacks reasonable ground. Therefore, the only question in this case is raised on the pleadings.

ISSUE PRESENTED

The Illinois General Assembly has proposed an amendment to the state constitution that would give all "employees" in the state a "fundamental right" to collectively bargain. The National Labor Relations Act ("NLRA") preempts any state law that would regulate private-sector collective bargaining, and any such law therefore violates the Supremacy Clause of the United States Constitution. Further, the Illinois Supreme Court has allowed taxpayer lawsuits to enjoin state officials from submitting unconstitutional proposed amendments to voters.

Do Petitioners have reasonable ground for their petition seeking an injunction to prevent Respondents from placing the proposed amendment on the ballot, as well as declaratory relief, based on their allegation that the amendment is preempted by the NLRA and thus violates the Supremacy Clause?

JURISDICTION

This is an appeal under Illinois Supreme Court Rules 301 and 303 from the trial court's order, entered May 26, 2022, which denied Petitioners leave to file their proposed taxpayer action. C 95. Petitioners filed their notice of appeal on June 3, 2022. C 104.

STATUTE AND PROPOSED AMENDMENT INVOLVED

This appeal concerns whether the circuit court should have granted Petitioners leave to file a taxpayer action under 735 ILCS 5/11-303, the text of which is set forth in the appendix.

This appeal also concerns the constitutionality of a proposed amendment, Senate Joint Resolution Constitutional Amendment No. 11, the text of which is set forth in the Statement of Facts below and in the appendix.

STATEMENT OF FACTS

Amendment 1

Senate Joint Resolution Constitutional Amendment No. 11 ("Amendment 1")[1] was introduced into the Illinois General Assembly on May 7, 2021.[2] Amendment 1 would add the following language to Article I of the Illinois Constitution:

> (a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place [sic] safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.
>
> (b) The provisions of this Section are controlling over those of Section 6 of Article VII.

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[1] The proposed amendment has been referred to as "Amendment 1," as it was in the first (ultimately, the only) amendment to be approved for the November 2022 general election ballot. *See, e.g.,* Illinois Amendment 1, Right to Collective Bargaining Measure (2022), Ballotpedia, https://ballotpedia.org/Illinois_Amendment_1,_Right_to_Collective_Bargaining_Measure_(2022).

[2] https://www.ilga.gov/legislation/BillStatus.asp?DocNum=11&GAID=16&DocTypeID=SJRCA&SessionID=110&GA=102.

The Illinois Senate voted 49 to 7 to pass the resolution on May 21, 2021.[3] The Illinois House of Representatives voted 80 to 30 to pass the resolution on May 26, 2021.[4] Because at least 60 percent of legislators in each house approved it, Amendment 1 is scheduled to appear before voters on the November 2022 general election ballot. *See* Ill. Const. art. XIV, § 2(a).

Procedural History

On April 21, 2022, Petitioners, who are Illinois taxpayers, filed a petition under 735 ILCS 5/11-303 for leave to file a taxpayer action challenging Amendment 1 (the "Petition"). C 7. Petitioners' proposed complaint alleges that, because Amendment 1 would establish a "fundamental right" for private-sector workers to bargain collectively, it is preempted by the National Labor Relations Act and thus violates the Supremacy Clause of the United States Constitution.

Two Respondents—Illinois Secretary of State Jesse White and Illinois Comptroller Susana Mendoza—filed an objection the Petition, C 46, to which Petitioners, in turn, replied, C 74. The other Respondents—the Illinois State Board of Elections and its members—have declined to participate in this litigation.

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[3] https://www.ilga.gov/legislation/votehistory/102/senate/10200SC0011_05212021_001000T.pdf.

[4] https://www.ilga.gov/legislation/votehistory/102/house/10200SC0011_05262021_003000A.pdf.

The circuit court held a hearing on the Petition on May 20, 2022, and issued an order denying the petition on May 26, 2022. C 95. The order cited three reasons for denying the Petition: (1) that the Illinois Constitution requires an amendment proposed by the General Assembly to be placed on the ballot C 96–97; (2) that a court cannot enjoin the placement of a proposed amendment on the ballot on the ground that "its enforcement would be unconstitutional," C 97; and (3) that the Amendment "would have valid applications" with respect to public-sector employees, C 101.

Petitioners filed their notice of appeal on June 3, 2022. C 104. Given this case's urgent nature, Petitioners filed an unopposed motion to place this case on this Court's accelerated docket, which the Court granted.

ARGUMENT

I. Petitioners have standing as taxpayers to seek an injunction to keep Amendment 1 off the ballot and to obtain declaratory relief.

Petitioners have standing to seek an injunction to prevent Respondents from using public funds to place Amendment 1 on the ballot—just as Illinois taxpayers have standing to seek to enjoin the use of public funds for any unconstitutional purpose. Moreover, the circuit court's grounds for holding (incorrectly) that Petitioners cannot obtain injunctive relief cannot justify the court's decision not to allow Petitioners to pursue declaratory relief.

A. Illinois Supreme Court precedent allows taxpayers to challenge proposed constitutional amendments before they appear on the ballot.

Under Illinois Supreme Court precedent, taxpayers have standing to seek an injunction to prevent state officials from using public funds for an unconstitutional purpose—including the placement of a proposed constitutional amendment that is itself unconstitutional on the ballot.

"It has long been the rule in Illinois that . . . taxpayers have a right to enjoin the misuse of public funds"—i.e., that "[t]he misuse of [public] funds for illegal or unconstitutional purposes is a damage which entitles [taxpayers] to sue." *Barco Mfg. Co. v. Wright*, 10 Ill. 2d 157, 160 (1956). The use of public funds for an unconstitutional purpose injures taxpayers because they are the funds' "equitable owners" and will, by definition, be "liab[le] to replenish" State treasury funds after they are spent. *Id.* Under these principles, a taxpayer has standing to challenge the use of public funds for an illegal or unconstitutional purpose "whether the amount [of funds] be great or small," *Krebs v. Thompson*, 387 Ill. 471, 475-76 (1944), and even if the taxpayer is not personally subject to the law he or she is challenging, *Snow v. Dixon*, 66 Ill. 2d 443, 451 (1977). *See also, e.g., Crusius v. Ill. Gaming Bd.*, 348 Ill. App. 3d 44, 48-53 (1st Dist. 2004) (applying these principles to recognize taxpayer standing to challenge riverboat gambling licensing statute).

State law provides a procedure by which taxpayers may seek to enjoin the misuse of public funds. Under 735 ILCS 5/11-303, a taxpayer may file a petition in the circuit court seeking leave to file a complaint requesting that relief. The court must then hold a hearing and may grant the petition "if the court is satisfied that there is reasonable ground for the filing of such action." *Id.*

Accordingly, the Illinois Supreme Court has repeatedly recognized that taxpayers may file an action under 735 ILCS 5/11-303 to prevent state officials from using public funds to present voters with a proposed constitutional amendment that is itself unconstitutional. *See Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077 (affirming injunction barring proposed redistricting amendment from appearing on the ballot); *Chi. Bar Ass'n v. Ill. State Bd. of Elections*, 161 Ill. 2d 502 (1994) ("*Chicago Bar*") (affirming injunction barring proposed term-limits amendment from appearing on the ballot). In *Chicago Bar*, 161 Ill. 2d at 506, the Court stated that the "appropriate proceeding" by which to challenge a proposed constitutional amendment is "a taxpayer action for injunctive relief." The Court endorsed, *id.* at 506, an otherwise-dissenting opinion's view that courts may issue "injunctive relief . . . to prevent the waste of public funds on a ballot proposition that is alleged to be in violation of the constitution," *id.* at 516 (Harrison, J., dissenting).

Under these precedents, Petitioners have standing to seek an injunction to prevent Amendment 1 from appearing on the November 2022 general election ballot because Amendment 1 would violate the Supremacy Clause of the United States Constitution. If Amendment 1 is unconstitutional, as Petitioners allege, then placing it on the ballot would be a "waste of public funds," *id*., just as allowing the proposed amendments blocked in *Chicago Bar* and *Hooker* to go before voters would have been a waste of public funds. Therefore, Petitioners have standing as taxpayers to bring their proposed claim, just as the plaintiffs in *Chicago Bar* and *Hooker* had standing to bring their claims.

Thus, the circuit court erred in concluding that Petitioners "impermissibly seek an advisory opinion." C 96. Because the use of public funds for an unconstitutional purpose causes taxpayers injury, a taxpayer lawsuit to prevent such misuse does not seek an advisory opinion. *See Crusius*, 348 Ill. App. 3d at 48-53 (noting that courts will not "render an advisory opinion" but concluding that taxpayers have standing to challenge the use of state resources for an unconstitutional purpose because that would injure them). And *Chicago Bar* and *Hooker* show that the placement of an unconstitutional proposed amendment on the ballot, in particular, is a misuse that injures taxpayers, which they may seek to enjoin.

B. **The circuit court's order relied on outdated, inapplicable case law.**

The circuit court erred in concluding that it lacked the power to grant injunctive relief "on the grounds that, if the proposed law were enacted, its enforcement would be unconstitutional." C 97. That conclusion rested on *Fletcher v. Paris*, 377 Ill. 89 (1941) and a short decision applying *Fletcher* in like circumstances, *Slack v. Salem*, 3 Ill. 2d 174 (1964).[5] But *Fletcher* does not control here because it was based on premises that are no longer correct statements of Illinois law—at least with respect to constitutional challenges to proposed constitutional amendments.

Fletcher rejected a lawsuit seeking to prevent a proposed municipal ordinance from appearing on the ballot on the basis that the ordinance "was not legally passed" by the city council. 377 Ill. at 91. *Fletcher* cited several grounds for affirming the suit's dismissal—none of which warrant denial of the Petition here.

First, *Fletcher* concluded that "the courts have no jurisdiction to enjoin the holding of an election." *Id.* at 92. To support that view, *Fletcher* quoted (among similar sources) an 1868 decision's statement: "We are aware of no

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[5] The circuit court also quoted *Ziller v. Rossi*, 395 Ill.App.3d 130, 138 (2d Dist. 2009) for the same premises. C 97. That decision, however, only briefly dicussed why the circumstances that case presented were unlike those of *Fletcher* and a similar 1893 case, *Stevens v. St. Mary's Training School*, 144 Ill. 336 (1893). The language from *Ziller* that the circuit court quoted merely summarized the earlier cases' holdings. *Ziller* did not apply *Fletcher*'s rule to bar a taxpayer lawsuit, nor did it consider whether *Fletcher* bars taxpayer challenges to proposed constitutional amendments.

well considered case which has enjoined the holding of an election, or prevented an officer of the law from giving the required notice for, or the certificate of election." *Id.* (quoting *People v. City of Galesburg*, 48 Ill. 485 (1868)). *Fletcher* also quoted a 1919 decision for the proposition that "an injunction will not issue out of a court of equity for the purpose of restraining the holding of an election or in any manner directing or controlling the mode in which the same shall be conducted." *Id.* at 93 (quoting *Payne v. Emmerson*, 290 Ill. 490, 495 (1919)).

The cases on which *Fletcher* relied are no longer correct. Now there *are* Illinois Supreme Court decisions that have enjoined officials from placing unconstitutional proposed amendments on the ballot: *Chicago Bar* and *Hooker*. Indeed, *Chicago* Bar endorsed, 161 Ill. 2d at 506, a dissenting opinion's view that *Fletcher* did not bar the plaintiffs' claims because the Court had "recognized an exception to [*Fletcher*'s] rule where, as here, injunctive relief is sought to prevent the waste of public funds on a ballot proposition that is alleged to be in violation of the constitution," *id.* at 516 (Harrison, J., dissenting).

Second, *Fletcher* concluded that "the mere fact that the cost [of an election] will have to be borne by the State, and indirectly by the taxpayers, is no ground for an injunction at the relation of a taxpayer, because the injury is too trifling." 377 Ill. at 93. That runs contrary to subsequent case law, reviewed above, that has recognized taxpayers' standing to enjoin the misuse

of public funds, "whether the amount be great or small." *Snow*, 66 Ill. 2d 443, 450; *see also, e.g., Crusius*, 348 Ill. App. 3d at 49-50. Moreover, a 1966 decision, *Droste v. Kerner*, 34 Ill. 2d 495, 505 (1966), cited *Fletcher*'s narrow view of taxpayer standing to reject a taxpayer lawsuit—and was overruled on that point several years later in *Paepcke v. Public Bldg. Comm'n*, 46 Ill. 2d 330, 340 (1970). And if there were ever any doubt on this point with respect to taxpayers' standing to enjoin the placement of unconstitutional proposed amendments on the ballot, *Chicago Bar* and *Hooker* eliminated it.

Third, *Fletcher* stated that "courts have no more right to interfere with or prevent the holding of an election which is one step in the legislative process for the enactment or bringing into existence a city ordinance, than they would have to enjoin the city council from adopting the ordinance in the first instance." 37 Ill. at 98. Of course, it is true that courts cannot enjoin legislators from voting for legislation. But courts can and do intervene where, as here, an unconstitutional amendment has been proposed, "[n]o additional matters appear to stand in the way of the proposal being placed in the ballot," and "[t]he only steps remaining for the Board of Elections are solely administrative." *Hooker*, 2016 IL 121077 ¶ 8 n.2. Again, *Chicago Bar* expressly recognized an exception to *Fletcher*'s rule for precisely this situation. 161 Ill. 2d at 506; *id.* at 516 (Harrison, J., dissenting). As discussed further below, it makes no difference whether an amendment has been proposed by the General Assembly, as in this case, or by a citizen initiative,

as in *Chicago Bar* and *Hooker*. Both types of proposal are made through a legislative process prescribed by the Illinois Constitution. In both situations, a court could not intervene before the measure is ready to be placed on the ballot: just as it could not enjoin legislators from voting for an improper proposed amendment, it could not enjoin individuals from preparing and submitting petitions for an improper proposed amendment. And in both situations, taxpayers stand to be injured if an unconstitutional proposal is placed on the ballot.

Fourth, *Fletcher* concluded that a pre-election challenge to a proposed ballot measure is premature because "the restraining power of the courts should be directed against the enforcement rather than the passage of unauthorized orders and resolutions, or orders, by municipal corporations." 377 Ill. at 97. But *Fletcher* based that conclusion on its incorrect views, addressed above, on the separation of powers and taxpayer standing. *Fletcher* supported its conclusion by stating that "legislative discretion, whether rightfully or wrongfully exercised, is not subject to interference by the judiciary." *Id.* at 97. Again, modern case law shows that, once a constitutional amendment has been proposed, an injunction against its placement on the ballot does not improperly interfere with the legislative process. *Fletcher* also supported its conclusion by stating that "the expense of preparing and submitting the ballots on [a] public policy question" is "too trifling to amount

to an injury to a taxpayer." *Id.* at 98 (quoting *Ryan v. City of Chicago*, 369 Ill. 59, 63 (1938)). Again, that is contrary to modern taxpayer-standing doctrine.

There is no reason why a pre-election challenge to an amendment proposed by the General Assembly would be premature but a challenge to an amendment proposed by a citizen initiative, like those blocked in *Chicago Bar* and *Hooker*, would not. Article XIV, Section 3 of the Illinois Constitution prescribes rules for citizen-initiated proposed amendments. Regarding the subject matter of such amendments, it states: "Amendments shall be limited to structural and procedural subjects contained in Article IV." It does *not* say that proposed amendments that stray outside of those topics may not appear on the ballot; it only states one ground (in addition to all of the others that exist) on which such an amendment would be unconstitutional. And there is no reason why a proposed amendment that runs afoul of Section 3 could only be challenged before an election; like any other type of constitutional defect, it could also be challenged after it becomes effective. *Cf. Jones v. City of Calumet City*, 2017 IL App (1st) 170236 ¶¶ 34-38 (considering post-election challenge to ballot referendum on the ground that it violated the "free and equal clause" of Article III, § 3 of the Illinois Constitution by combining "separate and unrelated questions in a single proposition"). But the taxpayer plaintiffs in *Chicago Bar* and *Hooker* did not have to wait to see whether voters would moot their challenge, as *Fletcher* would have it. They had a right to prevent their tax money from being used to submit an

unconstitutional measure to voters in the first place. So do Petitioners here. The injury they seek to prevent is imminent and could not be remedied after the election, even if Amendment 1 were passed and then challenged and struck down. Once the state uses public funds for an unconstitutional purpose, taxpayers have no means of recovering the money—the treasury can only be replenished by taking more money from taxpayers. That is why taxpayers have an "equitable interest" in public funds and may seek injunctive relief to prevent public funds' misuse *before* it can occur. *See Crusius*, 348 Ill. App. 3d at 49. "To tell [taxpayers] that they must wait" would be "an effectual denial of [their] right for all time." *Paepcke*, 46 Ill. 2d at 341.

C. It is irrelevant that the Amendment here was proposed by the General Assembly rather than by a citizen initiative.

Contrary to the circuit court's analysis, it is irrelevant that the Amendment here was proposed by the Illinois General Assembly rather than by a citizen initiative. The placement of an unconstitutional proposed amendment on the ballot is a "waste of public funds," *Chicago Bar*, 161 Ill. 2d at 516 (Harrison, J., dissenting), and taxpayers therefore have standing to challenge it, regardless of the means by which the amendment was proposed.

In denying the Petition, the circuit court relied in part on the Illinois Constitution's statement that "[a]mendments approved by the vote of three-fifths of the members elected to the house shall be submitted to the electors at the general election next occurring at least six months after such

legislative approval." C 96–97 (quoting Ill. Const. art. XIV § 2(a)). But that language does not mean that state officials may use public funds to present voters with a proposed amendment that is contrary to the U.S. Constitution. Taxpayer standing doctrine allows taxpayers to prevent public funds from being used for an unconstitutional purpose, regardless of whether the officials they seek to enjoin are carrying out mandatory duties prescribed by law.

The circuit court relied heavily on the idea that Petitioners seek to challenge the "substantive validity" of the Amendment, contrasting them with the *Chicago Bar* and *Hooker* plaintiffs, who supposedly only alleged that "the proposed *manner of amendment* violated the Illinois constitution." C 98. But that is a false distinction.

The plaintiffs in *Chicago Bar* and *Hooker* challenged amendments proposed by citizen initiatives on the ground that the amendments' subject matter was not limited to "structural and procedural subjects contained in Article IV" of the Illinois Constitution, as the Illinois Constitution (Article XIV, Section 3) requires of citizen-initiated amendments. *Hooker*, 2016 IL 121077 ¶ 22; *Chicago Bar*, 161 Ill. 2d at 507-08. In resolving those cases, the Court had to construe the proposed amendment at issue, including its anticipated enforcement, to determine whether it was constitutional. The cases were not about a procedural issue, such as whether petitions had enough valid signatures or were in the proper form; they were about whether

the proposed amendments violated constitutional limits based on their *substance*. *See Hooker*, 2016 IL 121077 ¶ 42; *Chicago Bar*, 161 Ill. 2d at 509.

Those decisions do not suggest that straying outside the limits of Article XIV, Section 3 is the *only* constitutional defect in a proposed amendment that taxpayers may challenge. Again, the taxpayer standing doctrine that underlies these decisions allows taxpayers to enjoin *any* waste of taxpayer funds for an unconstitutional purpose.

Under the circuit court's view, taxpayers would suffer no cognizable injury from the state's use of public funds to place a flagrantly unconstitutional proposal—such as an amendment prohibiting criticism of the Governor—on the ballot, as long as the proposal was approved by the General Assembly. Yet, under the circuit court's view, taxpayers do suffer an actionably injury (only) if an amendment proposed by ballot initiative strays outside the boundaries of "structural and procedural" topics pertaining to the legislative branch. That makes no sense: in either event, the proposal is unconstitutional, and the use of public funds to place it before voters is a waste.

Thus, there is no reason why the court in this case could not likewise examine Amendment 1's substance to determine whether it is constitutionally permissible, just as the *Chicago Bar* and *Hooker* decisions examined proposed amendments' substance to determine their constitutionality.

D. Even if the circuit court were correct that Petitioners could not obtain injunctive relief, they still would have standing to obtain declaratory relief.

Even if the circuit court were correct that it could not grant Petitioners injunctive relief, it still should have granted the Petition to allow them to pursue the declaratory relief they seek. *See* proposed Verified Complaint for Declaratory and Injunctive Relief, C 19–33.[6]

Again, the circuit court concluded that Petitioners cannot obtain injunctive relief based on its conclusions that Article XIV, Section 2(a), of the Illinois Constitution supposedly requires any amendment proposed by the General Assembly to be placed on the ballot—regardless of whether the proposal is unconstitutional—and that *Fletcher* supposedly bars injunctions against elections. C 96–97.

Even if those premises were correct, they would not be grounds to deny Petitioners an opportunity to pursue declaratory relief. If Illinois law

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[6] Although Petitioners raised this argument below, C 19, 32, 88, the circuit court did not address it. In fact, Petitioners should not have needed the circuit court's permission to pursue a claim for declaratory relief. Under 735 ILCS 5/11-303, taxpayers must "petition for leave to file an action to restrain or enjoin the defendant or defendants from disbursing the public funds of the state." That provision is part of Article XI of the Code of Civil Procedure, which governs actions for injunctive relief, and therefore does not affect taxpayers' right to seek declaratory relief. Article II, Part 7, of the Code of Civil Procedure governs actions for declaratory relief and does not require taxpayers to petition for leave to file a declaratory judgment action. *See* 735 ILCS 5/2-701. Therefore, even if this Court were to accept the circuit court's view that taxpayers cannot obtain injunctive relief against an amendment proposed by the General Assembly, it should nonetheless remand the case with instructions to allow Petitioners to file their complaint to pursue their claim for declaratory relief—the merits of which would be properly addressed in the first instance on a dispositive motion or at trial.

demands that any amendment proposed by the General Assembly appear on the ballot—regardless of its unconstitutionality—declaratory relief alone would not interfere with that (supposed) requirement. *Cf. Kluk v. Lang*, 125 Ill. 2d 306, 323 (1988) (declaratory judgment action proper where "[i]ts judicial resolution need not intrude on the powers of the legislative branch but may merely declare plaintiffs' rights in accordance with the judiciary's proper function"). As for *Fletcher*, its holding applied only to equitable proceedings—and the Illinois Supreme Court held several years after *Fletcher* that an election-related declaratory judgment action is not an equitable proceeding and therefore is not barred by *Fletcher*. *Progressive Party v. Flynn*, 400 Ill. 102, 106 (1948). The Court concluded that a declaratory judgment action regarding a political party's right to have its candidates appear on the ballot is not "equivalent to a proceeding restraining and election" because "[a]n order declaring rights . . . is not compelling in itself, but is merely a declaration of rights." *Id.*

Petitioners' claim satisfies the requirements of Illinois's declaratory judgment statute, which provides:

> A court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, . . . and a declaration of the parties interested.

735 ILCS 5/2-701(a). The Illinois Supreme Court has held that the statute "should be liberally applied and not restricted by unduly technical interpretations." *Kluk*, 125 Ill. 2d at 315.

Here, there is an "actual controversy," and Petitioners are "interested" parties, because Petitioners are taxpayers and allege that Respondents will use public funds for an unconstitutional purpose if they place Amendment 1 on the general election ballot. *See Crusius*, 348 Ill. App. 3d at 48-50 (taxpayer plaintiff alleging misuse of public funds satisfied "actual controversy" and "interested in the controversy" requirements for standing). Ordinarily, such taxpayer plaintiffs would seek injunctive relief to prevent the misuse of public funds. But if one accepts the circuit court's view that injunctive relief is unavailable here, due to special considerations pertaining to elections and amendments proposed by the General Assembly, then Petitioners could nonetheless seek declaratory relief, which is available regardless of "whether or not any consequential relief . . . could be claimed." 735 ILCS 5/2-701(a).

Therefore, even if this Court were to agree with the circuit court's analysis of Petitioners' entitlement to injunctive relief, it should nonetheless remand this case so Petitioners can seek declaratory relief.

II. Petitioners' proposed constitutional challenge has merit because Amendment 1 is preempted by the NLRA and therefore violates the Supremacy Clause.

Petitioners' proposed complaint is supported by reasonable ground because its constitutional claim has merit: Amendment 1 is preempted by the NLRA and therefore violates the Supremacy Clause. Contrary to the circuit

court's analysis, the fact that Amendment 1 would be constitutional if it only applied to public-sector employees does not render it constitutional.

A. The NLRA preempts state laws that would regulate private-sector collective bargaining.

The NLRA grants private-sector employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining." 29 U.S.C. § 157. But the NLRA also limits employees' right to engage in collective bargaining by prescribing, among other rules, the conditions under which it may occur, and the subjects over which an employer may be compelled to bargain. *See, e.g.,* 29 U.S.C. § 158(a)(5) (limiting the mandatory subjects of collective bargaining); 29 U.S.C. § 159(a) (requiring an employer participate in collective bargaining only where certain conditions have been met).

Congress enacted the NLRA as a "comprehensive code" to regulate labor relations nationwide and "create a uniform, national body of labor law interpreted and administered by a centralized agency, the National Labor Relations Board." *Cannon v. Edgar*, 33 F.3d 880, 883 (7th Cir. 1994). The NLRA thus preempts state laws that would "regulate any activity that the NLRA protects, prohibits, or arguably protects or prohibits." *Wis. Dep't of Indus., Labor & Human Relations v. Gould Inc.*, 475 U.S. 282, 286 (1986). A state law that is preempted by the NLRA violates the Supremacy Clause of the United States Constitution. *Cannon*, 33 F.3d at 883.

B. The NLRA preempts Amendment 1 because Amendment 1 would regulate conduct that the NLRA protects and regulates.

Amendment 1 makes no distinction between private-sector and public-sector employees and therefore would establish a state-law right to collective bargaining for both. But the NLRA establishes a right to collective bargaining for private-sector employees. *Cf.* 29 U.S.C. § 152(3) (excluding public-sector employees from the NLRA's coverage). Amendment 1 therefore does exactly what the NLRA preemption doctrine prohibits: it "regulate[s] activity that the NLRA protects." *Gould*, 475 U.S. at 286. For that reason alone, Amendment 1 is preempted by the NLRA and violates the Supremacy Clause.

That would be true even if Amendment 1's right to collective bargaining were identical in substance to the NLRA's right to collective bargaining. A right created by the state constitution could only be enforced by state courts, not by the National Labor Relations Board ("NLRB"). That is impermissible: the NLRA preempts state tribunals for the enforcement of labor rights because "Congress has entrusted administration of labor policy for the Nation to a centralized administrative agency [i.e., the NLRB], armed with its own procedures, and equipped with its specialized knowledge and cumulative experience." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242 (1959). The U.S. Supreme Court has stated that to allow "a multiplicity of tribunals and a diversity of procedures" for the protection of labor rights—even the same rights the NLRA protects—would be "quite as apt to produce

incompatible or conflicting adjudications as [would] different rules of substantive law." *Id.* at 243 (quoting *Garner v. Teamsters Union*, 346 U.S. 485, 490-91 (1953)). Thus, NLRA preemption "prevents States not only from setting forth standards of conduct inconsistent with the substantive requirements of the NLRA, but also from providing their own regulatory or judicial remedies for conduct prohibited or arguably prohibited by the Act." *Gould*, 475 U.S. at 286.

Moreover, Amendment 1's substance conflicts with the NLRA in multiple ways.

First, Amendment 1 would give employees a "fundamental" right to engage in collective bargaining—unlike the NLRA, which gives employees only a *limited* right to engage in collective bargaining.

Under the NLRA, employees are not entitled to engage in collective bargaining at all unless a majority of employees in the relevant "bargaining unit" has voted to be represented by a union, or an employer has voluntarily recognized that a union represents the majority of employees in a unit. 29 U.S.C. § 159(a); *Lincoln Park Zoological Soc'y v. NLRB*, 116 F.3d 216, 219 (7th Cir. 1997). The NLRB determines what constitutes an appropriate "unit" for this purpose. 29 U.S.C. § 159(b). A bargaining unit could be an "employer unit, craft unit, plant unit, or [some] subdivision thereof." *Id.* Unlike the NLRA, Amendment 1 has no provision for determining appropriate bargaining units.

Also, under the NLRA, some small employers cannot be compelled to engage in collective bargaining—and their employees therefore have no right to collectively bargain. An employer is potentially subject to mandatory collective bargaining under the NLRA only if it meets a revenue threshold established by the NLRB, which varies depending on the nature of the employer's business. For example, the NLRB only has jurisdiction over retailers whose annual volume of business is at least $500,000. *See* National Labor Relations Board, *An Outline of Law and Procedure in Representation Cases* (2017) (collecting NLRB decisions establishing revenue thresholds).[7] Amendment 1 includes no such limitation.

The NLRA imposes other restrictions on who may engage in collective bargaining. The NLRB may not certify a bargaining unit that consists of both "professional" and non-professional employees "unless a majority of such professional employees vote for inclusion in such unit." 29 U.S.C. § 159(b). The NLRB also may not decide that a craft unit is inappropriate "on the ground that a different unit has been established by a prior [NLRB] determination, unless a majority of the employees in the proposed craft unit vote against separate representation." *Id.* The NLRB also may not certify a bargaining unit that includes both "guards"—that is, people "employed . . . to enforce against employees and other persons rules to protect the property of

[7] https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-1727/OutlineofLawandProcedureinRepresentationCases_2017Update.pdf.

the employer or to protect the safety of persons on the employer's premises"—and non-guards. *Id.* Amendment 1 lacks these limits.

Thus, the NLRA restricts which employees, and groups of employees, are entitled to engage in collective bargaining in various ways, while Amendment 1 contains no such restrictions.

Second, the NLRB is more limited than Amendment 1 with respect to the subjects over which employees are entitled to collectively bargain with an employer.

Amendment 1 would create a right "to bargain collectively . . . for the purpose of negotiating wages, hours, and working conditions, *and to protect economic welfare* and safety at work" (emphasis added). But where the NLRA requires employers to engage in collective bargaining, it only obligates them to do so with respect to "wages, hours, and other terms and conditions of employment." 29 U.S.C. § 158(a)(5), (d); *see also NLRB v. Wooster Div. of Borg-Warner Corp.* ("*Borg-Warner*"), 356 U.S. 342, 348 (1958). "As to other matters . . . each party is free to bargain *or not bargain* . . . ." *Borg-Warner*, 336 U.S. at 349 (emphasis added).

The "terms and conditions" of employment referenced in the NLRA do *not* encompass everything involving an employer's business that could affect employees' "economic welfare." Generally, "conditions of employment" over which employers must bargain under the NLRA include such things as "the various physical dimensions of [an employee's] working environment,"

"[w]hat one's hours are to be, what amount of work is expected during those hours, what periods of relief are available, what safety practices are observed," and potentially "other less tangible . . . characteristics of a person's employment," such as "the security of one's employment." *Fibreboard Paper Prods. Corp. v. NLRB*, 379 U.S. 203, 222 (1964) (Stewart, J., concurring). But an employer's use of labor-saving machinery and decisions about "the commitment of investment capital and the basic scope of the enterprise are not in themselves primarily about conditions of employment." *Id.* at 223 (Stewart, J., concurring). For example, an employer's economic decision to shut down part of a business is not subject to mandatory collective bargaining. *First Nat'l Maint. Corp. v. NLRB,* 452 U.S. 666, 680-86 *(*1981).

Thus, by giving employees a right to bargain "to protect their economic welfare," Amendment 1 would give Illinois private-sector employees broader collective-bargaining rights than the NLRA.

Third, Amendment 1 conflicts with the NLRA because it does not require, or provide conditions for, exclusive representation. Under the NLRA, when a majority of employees in a bargaining unit votes for a union to represent them, that union becomes the exclusive representative of all employees in the unit, and employees who would prefer to collectively bargain through a different union may not do so. 29 U.S.C. § 159(a). Amendment 1, in contrast, does not provide for exclusive representation.

Again, even without these conflicts, the NLRA would preempt Amendment 1 because Amendment 1 creates a state-law right to collective bargaining—itself inherently impermissible. *See Gould*, 475 U.S. at 286. And because the NLRA preempts it, Amendment 1 violates the Supremacy Clause.

C. Amendment 1 cannot survive simply because it would be constitutional if it were limited to public-sector employees.

The circuit court erred in concluding that Amendment 1 is not unconstitutional because it "would have valid applications, specifically to public employees." C 101. Amendment 1 is not limited to public-sector employees, and a court cannot rewrite the amendment to make it constitutional.

It is true that the NLRA would not preempt Amendment 1 if the proposal's right to collective bargaining applied only to public-sector employees. *See* 29 U.S.C. § 152(3) (excluding public-sector employees from the NLRA's coverage). But Amendment 1 is not so limited: by its terms, it applies to *all* employees. By including private-sector employees, Amendment 1 seeks to protect and regulate an activity protected and regulated by the NLRA.

Amendment 1 cannot survive a constitutional challenge based on the assumption that the state could apply it only to public-sector employees—in other words, that the state might not implement Amendment 1 as written. "An unconstitutional statute does not 'become constitutional' simply because

it [could be] applied to a particular [narrower] category of persons who could have been regulated, had the legislature seen fit to do so [specifically]." *People v. Burns*, 2015 IL 117387 ¶ 29. To narrow Amendment 1 by construing it to apply only to public-sector employees—a small minority of the population it purports to cover[8]—"would be rewriting state law to conform it to constitutional requirements and substitution the judicial for the legislative department of the government." *Id.* ¶ 30. Further, Amendment 1 does not require state officials to do anything for it to become effective; it does not call for the General Assembly to pass legislation, or for a state agency to adopt rules, to implement it, but instead simply grants *all* employees a right to collectively bargain, which they could immediately seek to enforce in state courts. Thus, Amendment 1's unconstitutional application to private-sector employees is inescapable. The establishment of that right for private-sector employees, by itself, violates the Supremacy Clause.

Thus, the general rule for "facial" challenges to state laws—that "an enactment is facially invalid only if no set of circumstances exist under which it would be valid," *Napleton v. Vill. Of Hinsdale*, 229 Ill. 2d 296, 306 (2008)—

[8] Public-sector employees constitute only 13.8% of the Illinois workforce. Samuel Stebbins, *This Is How Many People Work for the Government in Illinois*, The Center Square, June 5, 2021, https://www.thecentersquare.com/illinois/this-is-how-many-people-work-for-the-government-in-illinois/article_017f1773-4a80-5f88-bff0-2e83c5d9fe47.html (citing Bureau of Labor Statistics data).

cannot save Amendment 1. There are no circumstances under which the NLRA would not preempt Amendment 1.

The circuit court erred in suggesting that Amendment 1 is not unconstitutional because federal preemption is just a "rule of decision," under which a preempted state law is "merely suspended, or 'displaced,' while the federal law exists" and is subject to being "revived upon 'repeal of the preempting statute.'" C 102 (quoting *Lily Lake Road Defenders v. County of McHenry*, 156 Ill. 2d 1, 8 (1993)). According to the circuit court, "[a]t most, federal preemption would merely render the Amendment dormant, not invalid, because it would . . . become enforceable even as to preempted [private-sector] applications in the event the NLRA were ever repealed." *Id.* (citing *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474, 476-78 (1996)).

The U.S. Supreme Court has spoken clearly: "There can be no dispute that the Supremacy Clause *invalidates* all state laws that conflict or interfere with an Act of Congress." *Rose v. Ark. State Police*, 479 U.S. 1, 3 (1986) (emphasis added). That is as true for preemption arising out of the NLRA as it is for preemption arising out of any other federal statute: "the NLRA is the 'supreme Law of the Land,' and any state statute that the NLRA preempts necessarily violates the Constitution." *Cannon*, 33 F.3d at 883; *see also, e.g., Caterpillar Inc. v. Lyons*, 318 F. Supp. 2d 703, 707 (C.D. Ill. 2004) (holding Illinois statute "preempted by the NLRA and therefore in violation of the

Supremacy Clause"). Thus, where the NLRA preempts a state law, a court may enter a *permanent* injunction against its enforcement. *See Int'l Ass'n of Machinists Dist. Ten v. Allen*, 904 F.3d 490, 495, 507 (7th Cir. 2018) (affirming permanent injunction against NLRA-preempted state law).

Dalton does not support the circuit court's more limited view of preemption. In that case, the U.S. Supreme Court affirmed an injunction against a section of a state law that restricted public funding for abortions, but only to the extent that the restriction applied to federally funded programs, for which federal law prescribed a different rule, and only for a limited time period. 516 U.S. at 474-77. In limiting its injunction, the Court cited the rule "that a federal court should not extend its invalidation of a statute further than necessary to dispose of the case before it." *Id.* at 476. That rule about the scope of relief federal courts should provide when considering unconstitutional state laws has nothing to do with the issue here: whether Illinois officials may use public funds to present voters with a ballot measure that would be unconstitutional in the overwhelming majority of its applications. Further, *Dalton* limited its injunction's time period because the preempting federal statute had an expiration date: by its terms, it would only be operative for one fiscal year, so an injunction had to be limited to that time period. *Id.* at 477-78. That does not imply that courts should never grant permanent relief against a state law that violates the Supremacy Clause—particularly where, as here, the preemption arises out of a federal statute

that provides the foundation for American labor law, has been in effect for nearly a century, and has no apparent prospect of ever being repealed.

The circuit court also erred in relying on the Illinois Supreme Court's *Lily Lake* decision for its view that federally preempted state laws are not really invalid but just temporarily "suspended" or "displaced." C 102. *Lily Lake* contrasted *state-law* preemption with "repeal by implication," which arises "when two enactments of the *same* legislative body are irreconcilable" and the earlier-enacted legislation is thereby deemed repealed. 156 Ill. 2d at 8. It did not address federal preemption or the Supremacy Clause at all and is wholly irrelevant here.

There is nothing special about Supremacy Clause violations arising out of federal preemption that makes them different from any other constitutional violation. The circuit court's analysis suggests that preempted state laws stay on the books, waiting to be revived, but laws declared invalid for violating other constitutional provisions do not. But that is not true: a declaration that a law is unconstitutional—for any reason—does not actually strike the law from the books. Rather, such a law remains in place unless and until the legislature repeals it. *See Wis. Right to Life v. Schober*, 366 F.3d 485, 490 (7th Cir. 2004) (federal court's declaration that statute was unconstitutional did not repeal it because "only the Wisconsin legislature [could] repeal the statute"); *Winsess v. Yocom*, 433 F.3d 727, 728 (10th Cir. 2006) ("There is no procedure in American law for courts or other agencies of government—other

than the legislature itself—to purge from the statute books, laws that conflict with the Constitution as interpreted by the courts."); *Pidgeon v. Turner*, 538 S.W.3d 73, 88 n.20 (Tex. 2017) ("When a court declares a law unconstitutional, the law remains in place unless and until the body that enacted it repeals it . . . ."). And if a statute held to be unconstitutional is not repealed, it could be rendered operative again if a later controlling court decision deems it to be permissible. *Cf. Wis. Right to Life*, 366 F.3d at 490 ("[A] district court's declaration that [a] statute is unconstitutional does not automatically stop state officials from trying to enforce the statute."); *see also, e.g., State v. Douglas*, 278 So.2d 485, 491 n.6 (La. 1973) (law invalidated by an overruled court decision "can be reinstated" by the court); *Jawish v. Morlet*, 86 A.2d 96, 97 (D.C. App. 1952) (statute declared unconstitutional was "dormant but not dead"); *Pierce v. Pierce*, 46 Ind. 86, 95-96 (1874) (after decision declaring statute unconstitutional is overruled, "the statute must be regarded for all purposes as having been constitutional and in force from the beginning").

Thus, the remote possibility that Amendment 1's preemption problem might be eliminated in the future—in the unlikely event that Congress someday repeals the NLRA—does not render Amendment 1 any less unconstitutional, or its submission to voters any less improper, *now*. Any law currently considered unconstitutional might someday be deemed

constitutional and revived—but that is no reason for courts to abstain from issuing judgments or injunctions based on the *current* law.

The circuit court further erred in concluding that Amendment 1 is permissible—even if it is preempted—as a "backup" that "would be become enforceable even as to preempted applications in the event that the NLRA were ever repealed." C 102. Amendment 1 is *not* a "backup" that would only become effective if the NLRA were repealed; it purports to establish a private-sector right to collective bargaining *immediately*. If the General Assembly wanted to propose a "backup" protection that would become effective only upon the NLRA's repeal, it could do so and avoid any constitutional problem, just as Illinois and other states have enacted laws to restrict abortions expressly conditioned on a change in federal constitutional law. *See Wynn v. Scott,* 449 F. Supp. 1302, 1307 (N.D. Ill. 1978) (upholding provision of since-repealed Illinois statute establishing policy that a fetus is a human being from the moment of conception because it was conditioned on U.S. Supreme Court decisions to the contrary being "reversed or modified" or the U.S. Constitution being amended), *aff'd sub nom. Wynn v. Carey*, 599 F.2d 193 (7th Cir. 1979); Idaho Code § 18-622 (abortion prohibition would only become effective after a U.S. Supreme Court decision or adoption of a federal constitutional amendment allowing states to prohibit abortion); Ky. Rev. Stat. § 311.722 (same); Mo. Stat. § 188.017 (same); Tenn. Code § 39-15-213 (same); Tex. Health & Safety Code § 170A.003 (same); Wyo. Stat. § 35-6-

102 (same); *see also* Heidi S. Alexander, *The Theoretic and Democratic Implications of Anti-Abortion Trigger Laws*, 61 Rutgers L. Rev. 381 (2009) (discussing other examples). The General Assembly did not include any such "trigger" language in Amendment 1, and Illinois voters will have no reason to infer such a condition if it appears on their ballots.

Indeed, if the circuit court's view were to prevail, Amendment 1's appearance on the ballot would grossly mislead voters, who would not know that they were voting on a measure that would do something much more limited than what it purports to do. Voters would not be advised that Amendment 1 is unconstitutional to the extent that it creates a state-law right to private-sector collective bargaining—even though many voters, unaware of Supremacy Clause doctrine, would reasonably assume that the amendment would *primarily* affect the private-sector workers who constitute the majority of Illinois "employees." [9] Voters would be especially likely to

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[9] As a result, the circuit court's view that the Amendment may go on the ballot even if it is unconstitutional in most of its applications creates another constitutional problem: a violation of the Illinois Constitution's "free and equal clause" (Article III, § 3), which requires that any ballot proposition be presented "in such a manner that the voter has a clear opportunity to express his choice either for or against it." *Hoogasian v. Regional Transp. Auth.*, 58 Ill. 2d 117, 124 (1974). In analyzing whether a proposition violates the free and equal clause in this way, courts "consider the likelihood of confusion on the voters and the impact it would have on voters' ability to case their vote." *Chi. Bar Ass'n v. White*, 386 Ill. App. 3d 955, 964 (1st Dist. 2008). Because voters would not be informed that Amendment 1 could have no effect on private-sector workers, the proposal will inevitably confuse them and not allow them to make a choice on the *actual* issue the measure presents: whether public-sector employees *alone* should have greater collective-bargaining rights.

make that assumption given the General Assembly's official explanation of Amendment 1, which says that the amendment would guarantee "workers"—without limitation—the right to collectively bargain. *See* Ill. Sen. Joint Res. 55 (2022).[10] The official "Arguments in Favor of Amendment 1" that will be presented to voters strongly imply that Amendment 1 would apply to the private-sector, stating that the amendment would "protect workers' and others' safety" by, for example, "guaranteeing nurses' right to put patient care ahead of profit," "making sure construction workers can speak up when there's a safety issue," and "protect[ing] workers from being silenced when they call attention to food safety threats, shoddy construction, and other problems that could harm Illinoisans." *Id.* The official "Arguments Against Amendment 1" say nothing that would disabuse voters of that notion. *Id.* Further, Amendment 1's prominent supporters are promoting the measure by asserting that it would protect private-sector workers. *See, e.g.,* @chicagolabor, Twitter (Jul. 7, 2022 10:05 AM)[11] (Chicago Federation of Labor tweet stating that Amendment 1 "guarantees every Illinoisan" collective bargaining rights); @ChicagoReader, Twitter (May 30, 2022 4:47 PM)[12] (campaign ad stating Amendment 1 "guarantees all workers in our

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[10] https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=110&GA=102&DocTypeId=SJR&DocNum=55&GAID=16&LegID=140923&SpecSess=&Session=.

[11] https://twitter.com/chicagolabor/status/1545061326912835586

[12] https://twitter.com/Chicago_Reader/status/1531391764271140865.

state" collective bargaining rights); @ILWorkersRights, Twitter (May 26, 2022, 11:45 AM)[13] (campaign tweet celebrating unionization of Starbucks stores and stating "Let's make sure we protect the right of every worker to #organize & bargain collectively with their employer. Vote YES on [Amendment 1] this November!"); Randy Harris, *Madison County Democrats Approve Resolution to Endorse Passage of Workers' Rights Amendment*, RiverBender.com (May 2, 2022)[14] (Madison County Democratic Party chair stating that Amendment 1 "will guarantee that workers in the public *and private* sectors have the fundamental right to organize and bargain collectively) (emphasis added); Tim Drea & Bob Reiter, *Workers Should Have the Right to Raise Workplace Safety Concerns*, Chi. Sun-Times, Apr. 30, 2022[15] (presidents of the Illinois AFL-CIO and the Chicago Federation of Labor stating that Amendment 1 would "ensure that every Illinoisan has access to a safe workplace"); Democratic Party of Illinois, *Democratic Party of Illinois Unanimously Endorses Workers' Rights Amendment*, Mar. 23, 2022[16] (stating that "[a]ll workers will benefit from [Amendment 1's] protections").

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[13] https://twitter.com/ILWorkersRights/status/1529866427976536065.
[14] https://www.riverbender.com/articles/details/letter-to-the-editor-madison-county- democrats-approve-resolution-to-endorse-passage-of-workers-rights-amendment- 58460.cfm.
[15] https://chicago.suntimes.com/2022/4/30/23046394/illinois-constitution-workplace- safety-chicago-public-schools-accountability-speed-cameras-letters.
[16] https://ildems.com/democratic-party-of-illinois-unanimously-endorses-workers- rights-amendment/.

A narrowing construction cannot justify submitting Amendment 1 to the voters. Such a construction would rewrite Amendment 1 to mean something other than what it says and present voters with a false choice. If the Illinois General Assembly wishes to present voters with a non-preempted proposal that expands the rights of public-sector employees and their unions, it could do so. It has not done so but has instead proposed an amendment that is deceptive and unconstitutional. Petitioners have a right to prevent their tax money from being used to pay to present that unconstitutional measure to voters.

CONCLUSION

In determining whether a ballot measure is unconstitutional, courts do not rule on "the wisdom or desirability of the proposed amendment." *Chicago Bar*, 161 Ill. 2d at 508. And "[i]n labor preemption cases, as in others under the Supremacy Clause, [a court's] task is not to pass judgment on the reasonableness of state policy," but "is instead to decide if a state rule conflicts with or otherwise stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the federal law." *Livadas v. Bradshaw*, 512 U.S. 107, 120 (1994).

Thus, this case is not about the degree of legal protection that collective bargaining should receive, but about whether Amendment 1 would regulate a matter that Congress has determined should be governed by federal law alone. It is beyond dispute that the NLRA protects and regulates private-

sector collective bargaining, and that Amendment 1 would protect and regulate the same activity. Amendment 1 therefore is preempted by the NLRA and violates the Supremacy Clause.

As taxpayers, Petitioners would be injured by the use of public funds to place this unconstitutional measure on the ballot. Therefore, they have reasonable ground for their proposed complaint seeking to prevent that injury, and this Court should reverse the circuit court's order denying them leave to file their complaint.

Dated: July 8, 2022

Respectfully submitted,

SARAH SACHEN, IFEOMA NKEMDI, JOSEPH OCOL, and ALBERTO MOLINA,

By: /s/ Jacob Huebert
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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 37 pages.

Jacob Huebert

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

I, Jacob Huebert, an attorney, certify that on July 8, 2022, I electronically filed the foregoing Appellants' Brief and Appendix with the Clerk of the Court for the Illinois Appellate Court, Fourth Judicial District. I further certify that I served a copy of this Brief on Defendants' counsel of record by the Court's Electronic Filing System and electronic mail to Alex.Hemmer@ilag.gov and CivilAppeals@ilag.gov.

Jacob Huebert

No. 4-22-0470

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

SARAH SACHEN, IFEOMA NKEMDI, JOSEPH OCOL, and ALBERTO MOLINA, Petitioners-Appellants, v. ILLINOIS STATE BOARD OF ELECTIONS; IAN LINNABARY, *in his official capacity as Chair of the Illinois State Board of Elections*; CASANDRA B. WATSON, WILLIAM J. CADIGAN, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, WILLIAM M. MCGUFFAGE, *AND* RICK S. TERVEN, SR., *in their official capacities as members of the Illinois State Board of Elections*; JESSE WHITE, *in his official capacity as Illinois Secretary of State*; SUSANA MENDOZA, *in her official capacity as Illinois State Comptroller*, Respondents-Appellees.	Appeal from the Circuit Court, Seventh Judicial Circuit, Sangamon County, Illinois No. 22-CH-34 The Honorable Raylene DeWitte Grischow, Judge Presiding

APPENDIX TO APPELLANTS' BRIEF

TABLE OF CONTENTS TO THE APPENDIX

(735 ILCS 5/11-303) (from Ch. 110, par. 11-303)

Sec. 11-303. Action by private citizen. Such action, when prosecuted by a citizen and taxpayer of the State, shall be commenced by petition for leave to file an action to restrain and enjoin the defendant or defendants from disbursing the public funds of the State. Such petition shall have attached thereto a copy of the complaint, leave to file which is petitioned for. Upon the filing of such petition, it shall be presented to the court, and the court shall enter an order stating the date of the presentation of the petition and fixing a day, which shall not be less than 5 nor more than 10 days thereafter, when such petition for leave to file the action will be heard. The court shall also order the petitioner to give notice in writing to each defendant named therein and to the Attorney General, specifying in such notice the fact of the presentation of such petition and the date and time when the same will be heard. Such notice shall be served upon the defendants and upon the Attorney General, as the case may be, at least 5 days before the hearing of such petition.

Upon such hearing, if the court is satisfied that there is reasonable ground for the filing of such action, the court may grant the petition and order the complaint to be filed and process to issue. The court may, in its discretion, grant leave to file the complaint as to certain items, parts or portions of any appropriation Act sought to be enjoined and mentioned in such complaint, and may deny leave as to the rest.
(Source: P.A. 82-280.)

SENATE JOINT RESOLUTION

CONSTITUTIONAL AMENDMENT NO. 11

RESOLVED, BY THE SENATE OF THE ONE HUNDRED SECOND GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that there shall be submitted to the electors of the State for adoption or rejection at the general election next occurring at least 6 months after the adoption of this resolution a proposition to amend the Illinois Constitution in Article I by adding Section 25 as follows:

ARTICLE I

BILL OF RIGHTS

(ILCON Art. I, Sec. 25 new)

SECTION 25. WORKERS' RIGHTS

(a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety, including any law or ordinance that prohibits the execution or

application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.

(b) The provisions of this Section are controlling over those of Section 6 of Article VII.

SCHEDULE

This Constitutional Amendment takes effect upon being declared adopted in accordance with Section 7 of the Illinois Constitutional Amendment Act.

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

SARAH SACHEN, IFEOMA NKEMDI, JOSEPH OCOL, and ALBERTO MOLINA,

Petitioners,

v.

THE ILLINOIS STATE BOARD OF ELECTIONS, *et al.*,

Respondents.

Case No.: 22-CH-34

ORDER DENYING LEAVE TO FILE TAXPAYER ACTION

Matter comes on for hearing on the petition seeking leave under 735 ILCS 5/11-303 to "file an action to restrain and enjoin the . . . [respondents] from disbursing the public funds of the State" in connection with the placement of the proposed Workers' Rights Amendment on the general election ballot for consideration by the voters this November. Attorney Jacob Huebert is present on behalf of the petitioner. AAG Joshua Ratz is present on behalf of the defendants. Arguments heard. The court took the matter under advisement. Because the court is not "satisfied that there is reasonable ground for the filing of such action," the Petition is denied.

There is no dispute that the Illinois House and Senate passed, by a three-fifths margin, Senate Joint Resolution Constitutional Amendment No. 11 (the "Workers' Rights Amendment"), which proposes to amend Article I of the Illinois constitution by adding a Section 25:

> SECTION 25. WORKERS' RIGHTS
>
> (a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.

(b) The provisions of this Section are controlling over those of Section 6 of Article VII [Powers of Home Rule Units].

102d Gen. Assem., Senate Joint Resolution Constitutional Amendment No. 11, (May 26, 2021).

Petitioners assert that if the Workers' Rights Amendment is enacted, it would be preempted by the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151 to 169, as applied to private-sector employees. From this assertion, Petitioners conclude the proposed amendment is unconstitutional under the Supremacy Clause and that the State may be enjoined from spending public funds to place an unconstitutional amendment on the ballot.

The question before the Court is whether Petitioners have presented "reasonable ground for the filing of" their proposed action. 735 ILCS 5/11-301. Reasonable grounds are lacking where a suit is brought for ulterior, frivolous, or malicious purposes, where it is an "unjustified interference[]" in the application of public funds, *Strat-O-Seal Mfg. Co.*, 27 Ill. 2d 563, 565–66 (1963), or where the claims sought to be asserted fail as a matter of law, *Tillman v. Pritzker*, 2021 IL 126387, ¶ 22; *Wirtz v. Quinn*, 2011 IL 111903, ¶¶ 6, 9; *Kaider v. Hamos*, 2012 IL App (1st) 111109, ¶¶ 6, 20, 24, 28, 33, 35. In evaluating whether reasonable grounds exist, well-pleaded nonconclusory allegations of fact must be taken as true, *Hamer v. Dixon*, 61 Ill. App. 3d 30, 31–32 (2d Dist. 1978), but conclusions or unjustified allegations should be disregarded, *Barco Mfg. Co. v. Wright*, 10 Ill. 2d 157, 162 (1956).

Even accepting as true all of Petitioners' allegations, there are no reasonable grounds to permit suit. Petitioner's claims fail as a matter of law, and impermissibly seek an advisory opinion as to "constitutional issues . . . [which] may never progress beyond the realm of the hypothetical." *Slack v. Salem*, 31 Ill. 2d 174, 178 (1964).

First, under Article XIV, section 2 of the Illinois Constitution, "[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, unless withdrawn by a vote of a majority of the members elected to each house." Ill. Const. art. XIV, § 2(a) (emphasis added). The requirements of section 2 are plainly met, and the constitutional command is clear. The proposal *must* be submitted to the voters for adoption or rejection. *Id.* "The constitution is the supreme law . . . and every court is bound to enforce its provisions." *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, ¶ 38.

Second, the Court has no power to restrain a referendum on the grounds that, if the proposed law were enacted, its enforcement would be unconstitutional. *Slack*, 31 Ill. 2d at 175–76 (no power to restrain referendum to approve issuance of revenue bonds alleged to be unconstitutional as a use of public credit in aid of a private corporation); *Fletcher v. Paris*, 377 Ill. 89, 90–94 (1941) (no power to restrain referendum to approve an ordinance to build a light and power plant or to declare the ordinance "invalid before it became effective or in force"). "[C]ourts should *restrain the enforcement, rather than the passage of*, unauthorized [laws]. Indeed, there is a distinction between enjoining legislative action and enjoining action taken in accordance with unauthorized legislative action." *Ziller v. Rossi*, 395 Ill. App. 3d 130, 138 (2nd Dist. 2009). To borrow from *Fletcher* and *Slack*, "the obvious and predominate purpose of [the proposed] suit [is] to have [the Workers' Rights Amendment], at the suit of the taxpayers, declared invalid prior to the time it ha[s] passed through all the legislative processes necessary to give it life." *Fletcher*, 377 Ill. at 98–99. "The validity of [the Amendment] cannot be thus prematurely and circuitously attacked in the courts." *Id.* at 99. "The courts have no more right to interfere with or prevent the holding of an election which is one step in the legislative process for the enactment or bringing into existence a [constitutional amendment], than they would have to enjoin the [General Assembly] from adopting the [amendment proposal] in the first instance." *Id.* at 96. "The holding

of an election is the exercise of a political right," with which the courts will not interfere. *Id.* at 98. "This court has no power to render advisory opinions, and until the legislative process has been concluded, there is no controversy that is ripe . . . . Indeed, the constitutional issues upon which the opinion of this court is sought may never progress beyond the realm of the hypothetical." *Slack*, 31 Ill. 2d at 178.

Petitioners' reliance on *Hooker* and *Chicago Bar Association v. Illinois State Board of Elections*, 161 Ill. 2d 502 (1994), is misplaced. Those cases concerned the requirements of citizen ballot initiatives, which are governed by Article XIV, *section 3*, not legislative initiatives—such as the Workers' Rights Amendment—, which are governed by section 2. Citizen ballot initiatives "may only be used for amendments directed at 'structural and procedural subjects contained in Article IV' of the constitution, pertaining to Illinois's legislative branch." *Hooker*, 2016 IL 121077, ¶ 3. In *Hooker*, the proposal would have "greatly expand[ed] the duties" of the Auditor General, which are subjects of Article VIII, not the Legislative Article (Article IV). *Hooker*, 2016 IL 121077, ¶ 27. In *Chicago Bar Association*, the proposed amendment would have instituted term limits, which the Illinois Supreme Court held was neither a "structural" nor "procedural" subject of the Legislative Article because eligibility or qualifications of individual legislators "does not involve the structure of the legislature *as an institution*." *Chi. Bar Ass'n*, 161 Ill. 2d at 504, 509–10. Thus, in both cases, the *proposal* did not comply with Article XIV, section 3; that is, the proposed *manner of amendment* violated the Illinois constitution. However, neither case involved, as here, a challenge to enforcement of the amendment or its substantive validity assuming a successful referendum. Neither case turned on whether term limits are unconstitutional, or whether changes to the duties of the Auditor General conflicted with any other law. Instead, the cases addressed solely whether such amendments could be the subject of *citizen ballot initiatives*. *See*

Hooker, 2016 IL 121077, ¶ 34 (the Court's "role does not require us to read between the lines of every proposal in an attempt to discern the propriety of the proponent's underlying intentions; *our role is solely* to determine whether the proposal comports with the strict limitations set out in article XIV, section 3" (emphasis added)).

In sum, *Hooker* and *Chicago Bar Association* merely stand for the unremarkable principle that ballot *proposals* must comply with the requirements for such proposals. They set forth an exception to the general prohibition against enjoining elections where the challenge is not to the anticipated enforcement of the end product of the election—the ordinance, law, or constitutional amendment—, but rather to the election *itself.* As Justice Harrison put it in his *dissent* in *Chicago Bar Association* (and upon which Petitioners rely):

> While it is true, as a general rule, that a court may not enjoin an election we have recognized an *exception* to this rule where . . . injunctive relief is sought to prevent the waste of public funds on a *ballot proposition that is alleged to be in violation of the constitution.*

Chi. Bar Ass'n, 161 Ill. 2d at 516 (Harrison, J., dissenting) (emphasis added) (citing *Coalition for Political Honesty v. State Bd. of Elections*, 65 Ill. 2d 453, 460 (1976) and *Jordan v. Officer*, 155 Ill. App. 3d 874, 877 (5th Dist. 1987)). *Coalition for Political Honesty*, of course, merely held that if the election *itself* is "called in violation of the constitution," the election may be restrained. 65 Ill. 2d at 460–61. And *Jordan* succinctly recounts that "[t]he general rule is subject to exception, where injunctive relief is necessary to prevent a waste of public funds by the holding of an election *under an unconstitutional election statute* or any *election called in violation of the constitution.*" *Jordan*, 155 Ill. App. 3d at 877 (emphasis added).

In this case, the "ballot proposition" described by Justice Harrison or the "election statute" referenced in *Jordan* is not the anticipated Workers' Rights Amendment, but rather Senate Joint Resolution Constitutional Amendment No. 11. The question for the Court is whether that

Resolution comports with the Illinois constitution. In *Hooker* and *Chicago Bar Association*, the citizen ballot initiative elections violated the Illinois constitution because they did comply with the requirements for such initiatives. They were improper *methods of amendment*. Petitioners do not allege the "ballot proposition" at issue in this case or the *holding of the upcoming referendum* violates the constitution. The referendum is plainly proper because the requirements for holding the referendum under XIV, section 2 are met. And the *proposition* cannot conflict with federal law because it has no operation; it has not "passed through all the legislative processes necessary to give it life." *Fletcher*, 377 Ill. at 99. Petitioners cite *Krebs v. Thompson*, 387 Ill. 471, 473 (1944), which holds that "[i]t has long been the settled rule in Illinois that the expenditure of public funds by an officer of the State, for the purpose of *administering an unconstitutional act*, constitutes a misapplication of such funds." (emphasis added). While this may be true, Petitioners do not seek by this lawsuit to prevent the expenditure of funds administering the Workers' Rights Amendment. They cannot because it does not exist, and may not exist. Instead, they seek to prevent the expenditure of funds to administer the *Senate Joint Resolution Constitutional Amendment No. 11*, which requires *only* that the language that may *become* the Workers' Rights Amendment be put to the People for a vote. But Senate Joint Resolution Constitutional Amendment No. 11 is not unconstitutional. It was validly passed. Ergo, spending money to effect its purposes does not constitute "administering an unconstitutional act." Petitioners true attack is not to the *referendum itself* as in *Hooker* and *Chicago Bar Association.* Instead, they look *beyond* the election, objecting to the anticipated *enforcement* of the *end product* of a *successful* election—an enacted Workers' Rights Amendment. Nevertheless, as noted, "[t]he validity of [the Amendment] cannot be thus prematurely and circuitously attacked in the courts." *Id.* at 99.

Third, even if the Court had power to offer an opinion as to the prospective validity of an enacted Workers' Rights Amendment, and even if Petitioners are correct that application of an enacted Workers' Rights Amendment to private employees would be preempted by the NLRA, Petitioners plainly concede the Amendment would have valid applications, specifically application to public employees. Pet. ¶ 12 (the Workers' Rights Amendment "makes no distinction between private-sector and public sector employees and therefore *would establish a right to collective bargaining for both.*" (emphasis added)); *see also* Proposed Compl. ¶ 56. The Amendment would also prohibit the passage of laws restricting union security agreements, a subject about which "Congress . . . . left the states free to legislate." *Retail Clerks Int'l Ass'n, Local 1625 v. Schermerhorn*, 375 U.S. 96, 102, 104–05 (1963). These are plainly substantial applications of the Amendment. Petitioners offer no basis for preventing the Amendment's submission to the voters merely because *some* anticipated applications *may* be preempted by federal law. The rule is exactly the opposite. "An enactment is facially invalid only if no set of circumstances exist under which it would be valid," and "[t]he fact that [an] enactment could be found unconstitutional under some set of circumstances does not establish its facial invalidity." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306 (2008). Indeed, "[i]n a pre-emption case . . . , state law is *displaced*," and "only to the extent that it actually conflicts with federal law." *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474, 476 (1996) (per curiam) (emphasis added). The fact that a state law may conflict with federal law in some applications is not sufficient to preempt the state law as to all applications. *Id.*

Moreover, under the Supremacy Clause, "[i]f federal law imposes restrictions or confers rights on private actors and a state law confers rights or imposes restrictions that conflict with the federal law, the federal law *takes precedence* and the state law is preempted." *Kansas v. Garcia*,

140 S. Ct. 791, 801 (2020) (emphasis added) (internal quotation marks omitted). Preemption is *merely a "rule of decision,"* "instruct[ing] courts what to do *when* state and federal law clash." *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324-25 (2015) (emphasis added). Thus, even assuming Petitioners are correct that the Workers' Rights Amendment would be preempted by the NLRA as to private employees, the Amendment would merely be suspended, or "displaced," *while the federal law exists. See Lily Lake Road Defenders v. County of McHenry*, 156 Ill. 2d 1, 8 (1993) ("[T]he subordinate legislative body's enactment is *suspended and rendered unenforceable by the existence* of the superior legislative body's enactment," and is revived upon "repeal of the preempting statute." (emphasis added)); *see also Kinsey Distilling Sales Co. v. Foremost Liquor Stores, Inc.*, 15 Ill. 2d 182, 193 (1958) ("[T]he State statute is, in effect, merely unenforceable or suspended by the existence of the Federal legislation."). Thus, there is no basis for denying the voters the opportunity to decide whether to enact a state right to collective bargaining as a supplement or backup to federal rights secured by the NLRA. At most, federal preemption would merely render the Workers' Rights Amendment dormant, not invalid, because it would still apply to situations not covered by the NLRA and would become enforceable even as to preempted applications in the event the NLRA were ever repealed. *See Dalton*, 516 U.S. at 476–78 (state constitutional ban on public funding of abortion preempted only to the extent it conflicted with Hyde Amendment's requirement that federal funds could be used in instances of rape and incest, ban remained valid as to situations involving only state funds, and ban as to federal funds was capable of being enforced in the future in the event the Hyde Amendment was repealed or modified).

Thus, the proposed Amendment would serve *at least* three permissible purposes. First, it would create rights for public employees, which Petitioners concede is *not* preempted by the

NLRA. Second, it would restrain the power of the General Assembly to pass laws restricting union security agreements, a subject left open to the states. Third, it would act as a state-law failsafe to preserve rights for private-sector employees in the event the federal government ever decided to abandon the NLRA. There are no grounds for denying the voters the opportunity to decide whether to add the Workers' Rights Amendment to the Illinois constitution.

Accordingly, the Petition states no reasonable grounds for filing suit. The Illinois constitution requires the amendment to be put to the voters because it complies with the requirements in Article XIV, section 2 of the Illinois constitution. The Court has no power to pass on the validity of the proposed Amendment unless and until it is adopted by the voters. To do so would constitute an improper advisory opinion. "Although it is possible that specific future applications . . . may engender concrete problems of constitutional dimension, it will be time enough to consider any such problems when they arise." *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 504 (1982). Moreover, even if the Court could entertain Petitioners' challenges to the anticipated enforcement of the proposed Amendment, Petitioners plainly concede it has substantial applications unaffected by any federal preemption. Petitioners are therefore not entitled to an order prohibiting the placement of the proposed Amendment on the ballot. The Petition is denied.

SO ORDERED.

Date: 5/26/2022

Raylene DeWitte Grischow, *Circuit Court Judge*

EFILED
4/21/2022 8:43 AM
Paul Palazzolo
7th Judicial Circuit
Sangamon County, IL
2022CH000034

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

SARAH SACHEN, IFEOMA NKEMDI, JOSEPH OCOL, *and* ALBERTO MOLINA,

Petitioners,

v.

THE ILLINOIS STATE BOARD OF ELECTIONS; IAN LINNABARY, *in his official capacity as Chair of the Illinois State Board of Elections*; CASANDRA B. WATSON, WILLIAM J. CADIGAN, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, WILLIAM M. MCGUFFAGE, *and* RICK S. TERVEN, SR., *in their official capacities as members of the Illinois State Board of Elections*; JESSE WHITE, *in his official capacity as Illinois Secretary of State*; SUSANA MENDOZA, *in her official capacity as Illinois State Comptroller*,

Respondents.

Case No. 2022CH000034

Petition for Leave to File a Taxpayer Action to Restrain and Enjoin the Disbursement of State Funds

Petitioners, who are Illinois taxpayers, respectfully seek leave to file their attached complaint under 735 ILCS 5/11-303. Petitioners' complaint seeks to prevent Respondents—the Illinois State Board of Elections and its members, the Illinois Secretary of State, and the Illinois Comptroller—from using public funds to place the "Illinois Right to Collective Bargaining Amendment" on the November 2022 general election ballot because the proposed Amendment is preempted by the National Labor Relations Act and therefore violates the Supremacy Clause of the United States Constitution.

INTRODUCTION

1. Petitioners' taxpayer complaint seeks to prevent Respondents from placing the "Illinois Right to Collective Bargaining Amendment" ("Amendment 1") on the November 2022 general election ballot because the proposed Amendment is preempted by federal law and therefore violates the Supremacy Clause of the United States Constitution.

2. The National Labor Relations Act ("NLRA") governs private-sector collective bargaining nationwide and preempts state laws that would regulate activities that the NLRA protects or prohibits. State laws that regulate private-sector collective bargaining therefore violate the Supremacy Clause of the United States Constitution.

3. The NLRA protects and regulates private-sector collective bargaining and therefore preempts Amendment 1's attempt to provide a state-law right to collective bargaining.

4. Moreover, Amendment 1 conflicts with the NLRA. The NLRA does not give private-sector workers a "fundamental" right to collectively bargain; it only gives them a *limited* right to do so under certain circumstances, subject to various rules. Also, the NLRA does not give employees any right to collectively bargain over matters that "protect their economic welfare" in general, but rather limits the subjects of mandatory collective bargaining to "wages, hours, and other terms and conditions of employment." And the NLRA imposes various other rules for collective bargaining that are absent from Amendment 1.

5. Amendment 1 therefore violates the Supremacy Clause of the United States Constitution. Petitioners respectfully ask this Court to grant their petition for leave to file their proposed complaint, which challenges Amendment 1 on that basis.

BACKGROUND

6. Amendment 1 is currently scheduled to be placed on the November 2022 general election ballot because at least 60 percent of legislators in each house of the Illinois General Assembly voted to present it to the voters. *See* 5 ILCS 20/1-2. Amendment 1 was introduced into the Illinois General Assembly as Senate Joint Resolution 11 on May 7, 2021. The Illinois Senate voted 49 to 7 to pass the Resolution on May 21, 2021. The Illinois House of Representatives voted 80 to 30 to pass the Resolution on May 26, 2021.

7. Amendment 1 would add the following language to Article I of the Illinois Constitution:

> (a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.

(b) The provisions of this Section are controlling over those of Section 6 of Article VII.

8. In their attached complaint, Petitioners seek to have Amendment 1 removed from the ballot because, as explained below, it is preempted by the NLRA and therefore violates the Supremacy Clause of the United States Constitution.

ARGUMENT

I. Amendment 1 is preempted by the NLRA and therefore violates the Supremacy Clause.

9. The NLRA preempts Amendment 1 because the proposed Amendment would establish a state-law right to collective bargaining in the private sector, and collective bargaining in the private sector is an activity the NLRA protects.

A. The NLRA preempts state laws that would regulate private-sector collective bargaining.

10. The NLRA grants private-sector employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining." 29 U.S.C. § 157. But the NLRA also limits employees' right to engage in collective bargaining by prescribing, among other rules, the conditions under which it may occur, and the subjects over which an employer may be compelled to bargain. *See, e.g.,* 29 U.S.C. § 158(a)(5) (limiting the mandatory subjects of collective bargaining); 29 U.S.C. § 159(a) (requiring an employer participate in collective bargaining only where certain conditions have been met).

11. Congress enacted the NLRA as a "comprehensive code" to regulate labor relations nationwide and "create a uniform, national body of labor law interpreted and administered by a centralized agency, the National Labor Relations Board." *Cannon v. Edgar*, 33 F.3d 880, 883 (7th Cir. 1994). The NLRA thus preempts state laws that would "regulate any activity that the NLRA protects, prohibits, or arguably protects or prohibits." *Wis. Dep't of Indus., Labor & Human Relations v. Gould Inc.*, 475 U.S. 282, 286 (1986). A state law that is preempted by the NLRA violates the Supremacy Clause of the United States Constitution. *Cannon*, 33 F.3d at 883.

B. The NLRA preempts Amendment 1 because Amendment 1 would regulate conduct that the NLRA protects and regulates.

12. Amendment 1 makes no distinction between private-sector and public-sector employees and therefore would establish a right to collective bargaining for both. But the NLRA establishes a right to collective bargaining for private-sector employees. *Cf.* 29 U.S.C. § 152(3) (excluding public-sector employees from the NLRA's coverage). Amendment 1 therefore does exactly what the NLRA preemption doctrine prohibits: "regulate[s] activity that the NLRA protects." *Gould*, 475 U.S. at 286. For that reason alone, Amendment 1 is preempted by the NLRA and violates the Supremacy Clause.

13. That would be true even if Amendment 1's right to collective bargaining were identical in substance to the NLRA's right to collective bargaining. A right created by the state constitution could only be enforced by state courts, not by the National Labor Relations Board ("NLRB"). That is impermissible: the NLRA

preempts state tribunals for the enforcement of labor rights because "Congress has entrusted administration of labor policy for the National to a centralized administrative agency [i.e., the NLRB], armed with its own procedures, and equipped with its specialized knowledge and cumulative experience." *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242 (1959). The U.S. Supreme Court has stated that to allow "a multiplicity of tribunals and a diversity of procedures" for the protection of labor rights—even the same rights that the NLRA protects—would be "quite as apt to produce incompatible or conflicting adjudications as [would] different rules of substantive law." *Id.* at 243 (quoting *Garner v. Teamsters Union*, 346 U.S. 485, 490–91). Thus, NLRA preemption "prevents States not only from setting forth standards of conduct inconsistent with the substantive requirements of the NLRA, but also from providing their own regulatory or judicial remedies for conduct prohibited or arguably prohibited by the Act." *Gould*, 475 U.S. at 286.

14. Moreover, the substance of Amendment 1 conflicts with the NLRA in multiple ways.

15. *First*, Amendment 1 would give employees a "fundamental" right to engage in collective bargaining—unlike the NLRA, which gives employees only a *limited* right to engage in collective bargaining.

16. Under the NLRA, employees are not entitled to engage in collective bargaining at all unless a majority of employees in the relevant "bargaining unit" has voted to be represented by a union, or an employer has voluntarily recognized a

union as representing the majority of employees. 29 U.S.C. § 159(a); *Lincoln Park Zoological Soc'y v. NLRB*, 116 F.3d 216, 219 (7th Cir. 1997). The question of what constitutes an appropriate "unit" for this purpose is determined by the NLRB. 29 U.S.C. § 159(b). A bargaining unit could be an "employer unit, craft unit, plant unit, or [some] subdivision thereof." 29 U.S.C. § 159(b).

17. Also, under the NLRA, some small employers cannot be compelled to engage in collective bargaining—and their employees therefore have no right to collectively bargain. An employer is potentially subject to mandatory collective bargaining under the NLRA only if it meets a revenue threshold established by the NLRB, which varies depending on the nature of the employer's business. For example, the NLRB only has jurisdiction over retailers whose annual volume of business is at least $500,000. *See* National Labor Relations Board, *An Outline of Law and Procedure in Representation Cases* (2017) (collecting NLRB decisions establishing revenue thresholds).[1] Amendment 1 includes no such limitation.

18. The NLRA imposes other restrictions on who may engage in collective bargaining. The NLRB may not certify a bargaining unit that consists of "both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit." 29 U.S.C. § 159(b). It also may not decide that a craft unit is inappropriate "on the ground that a different unit has been established by a prior [NLRB] determination,

[1] https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-1727/OutlineofLawandProcedureinRepresentationCases_2017Update.pdf.

unless a majority of the employees in the proposed craft unit vote against separate representation." *Id.* It also may not certify a bargaining unit that includes, together with other employees, any guards—that is, anyone "employed . . . to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." *Id.* Amendment 1 lacks these limits.

19. Thus, the collective-bargaining right that the NLRA provides to employees is much more limited and qualified than the "fundamental" right that Amendment 1 would establish.

20. *Second*, Amendment 1 would establish a right to bargain over matters that are *not* mandatory subjects of bargaining under the NLRA.

21. Amendment 1 would create a right to "to bargain collectively . . . for the purpose of negotiating wages, hours, and working conditions, *and to protect economic welfare* and safety at work" (emphasis added). But where the NLRA requires employers to engage in collective bargaining, it only obligates them to do so with respect to "wages, hours, and other terms and conditions of employment." 29 U.S.C. § 158(a)(5), (d); *see also NLRB v. Wooster Div. of Borg-Warner Corp.* (*Borg-Warner*), 356 U.S. 342, 348 (1958). "As to other matters . . . each party is free to bargain *or not bargain* . . . ." *Borg-Warner*, 336 U.S. at 349 (emphasis added).

22. The "terms and conditions of employment" referenced in the NLRA do *not* encompass everything involving an employer's business that could affect employees' "economic welfare." Generally, "conditions of employment" over which employers

must bargain under the NLRA include such things as "the various physical dimensions of [an employee's] working environment," "[w]hat one's hours are to be, what amount of work is expected during those hours, what periods of relief are available, what safety practices are observed," and potentially "other less tangible . . . characteristics of a person's employment," such as "the security of one's employment." *Fibreboard Paper Prods. Corp. v. NLRB*, 379 U.S. 203, 222 (1964) (Stewart, J., concurring). But an employer's use of labor-saving machinery and decisions about "the commitment of investment capital and the basic scope of the enterprise are not in themselves primarily about conditions of employment." *Id.* at 223 (Stewart, J., concurring). For example, an employer's economic decision to shut down part of a business is not subject to mandatory collective bargaining. *First Nat'l Maint. Corp .v. NLRB,* 452 U.S. 666, 680–86 *(*1981).

23. Thus, by giving employees a right to bargain "to protect their economic welfare," Amendment 1 would give Illinois private-sector employees greater collective-bargaining rights than the NLRA.

24. *Third*, Amendment 1 conflicts with the NLRA because it does not require, or provide conditions for, exclusive representation. Under the NLRA, when a majority of employees in a bargaining unit votes for a union to represent them, that union becomes the exclusive representative of all employees in the unit, and employees who would prefer to collectively bargain through a different union may not do so. 29 U.S.C. § 159(a). Amendment 1, in contrast, does not provide for exclusive representation.

25. Again, even without these conflicts, the NLRA would preempt Amendment 1 because Amendment 1 creates a state-law right to collective bargaining—itself inherently impermissible. *See Gould*, 475 U.S. at 286. And because the NLRA preempts it, Amendment 1 violates the Supremacy Clause.

II. Petitioners seek appropriate relief and have standing to bring their claim.

26. Petitioners' proposed complaint seeks appropriate relief for Amendment 1's unconstitutionality. Where a proposed constitutional amendment scheduled to go before voters is itself unconstitutional, the proper remedy is an injunction to prevent state officials from placing it on the ballot. *Hooker v. Ill. State Bd. of Elections*, 2016 IL 12077 ¶¶ 8 & n.2, 48; *Chi. Bar Ass'n v. Ill. State Bd. of Elections*, 161 Ill.2d 502, 508, 515–16 (1994). That is therefore the relief Petitioners seek against Respondents here.

27. Petitioners have standing to bring their claim as taxpayers. Taxpayers are injured when the state uses its general revenue funds for an unconstitutional purpose because they are liable to replenish improperly used funds. *See Barco Mfg. Co. v. Wright*, 10 Ill.2d 157, 160 (1956). Thus, the Illinois Supreme Court has repeatedly recognized that taxpayers have standing to seek an injunction to prevent the state from using public funds to place an unconstitutional proposal on the ballot. *Hooker*, 2016 IL 12077 ¶ 8 & n.2; *Chi. Bar Ass'n*, 161 Ill.2d at 507.

CONCLUSION

"In labor pre-emption cases, as in others under the Supremacy Clause, [a court's] task is not to pass judgment on the reasonableness of state policy," but "is instead to

decide if a state rule conflicts with or otherwise stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the federal law." *Livadas v. Bradshaw*, 512 U.S. 107, 120 (1994). This case therefore is not about the degree of legal protection collective bargaining should receive, but about whether Amendment 1 would regulate a matter that Congress has determined should be governed by federal law alone. It is beyond dispute that the NLRA protects and regulates private-sector collective bargaining, and that Amendment 1 would protect and regulate the same activity. The NLRA therefore preempts Amendment 1 and violates the Supremacy Clause, and Petitioners have reasonable ground for their proposed complaint challenging Amendment 1 on that basis.

Petitioners respectfully ask this Court to enter an order (1) setting a date for a hearing on this Petition, not less than five days nor more than 10 days thereafter and (2) directing Petitioners to give notice in writing to each of the Respondents and the Illinois Attorney General, including the fact of the presentation of the petition and the date and time when it will be heard. 735 ILCS 5/11-303. Petitioners further request that, at the hearing on this petition, the Court find there is reasonable ground for filing it and order the complaint to be filed and process to issue, directing a date not more than 10 days thereafter for the Respondents to appear and respond to the complaint. 735 ILCS 5/11-303, 11-304.

Dated: April 21, 2022

Respectfully submitted,

SARAH SACHEN, IFEOMA NKEMDI, JOSEPH OCOL, and ALBERTO MOLINA

By: /s/ Jacob Huebert
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IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

SARAH SACHEN, IFEOMA NKEMDI, JOSEPH OCOL, *and* ALBERTO MOLINA, Plaintiffs, v. THE ILLINOIS STATE BOARD OF ELECTIONS; IAN LINNABARY, *in his official capacity as Chair of the Illinois State Board of Elections*; CASANDRA B. WATSON, WILLIAM J. CADIGAN, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, WILLIAM M. MCGUFFAGE, *and* RICK S. TERVEN, SR., *in their official capacities as members of the Illinois State Board of Elections*; JESSE WHITE, *in his official capacity as Illinois Secretary of State*; and SUSANA MENDOZA, *in her official capacity as Illinois State Comptroller*, Defendants.	Case No. **Verified Complaint for Declaratory and Injunctive Relief**

INTRODUCTION

1. This taxpayer lawsuit seeks to prevent state officials from placing the "Illinois Right to Collective Bargaining Amendment" ("Amendment 1") on the November 2022 general election ballot because the proposed Amendment is preempted by federal law and therefore violates the Supremacy Clause of the United States Constitution.

2. Amendment 1 purports to give employees a "fundamental right" to engage in collective bargaining—making no distinction between private-sector and public-sector workers—for various purposes, including "to protect their economic welfare."

3. In fact, the state cannot lawfully give private-sector workers a "fundamental right" to collectively bargain because the National Labor Relations Act, 29 U.S.C. § 151 et seq., ("NLRA") exclusively governs private-sector collective bargaining nationwide and preempts state laws that would regulate activities that the NLRA protects or prohibits. The NLRA therefore preempts state laws that regulate private-sector collective bargaining.

4. Further, Amendment 1 conflicts with the NLRA. The NLRA does not give private-sector workers a "fundamental" right to collectively bargain; it only gives them a *limited* right to do so under certain circumstances, subject to various rules. And the NLRA does not give employees any right to collectively bargain over matters that "protect their economic welfare" in general, but rather limits the subjects of mandatory collective bargaining to "wages, hours, and other terms and conditions of employment."

5. Amendment 1 therefore conflicts with and is preempted by federal law and violates the Supremacy Clause of the United States Constitution.

6. Plaintiffs therefore ask this Court to declare Amendment 1 unconstitutional and enjoin state officials from placing it on the ballot.

PARTIES

7. Plaintiff Sarah Sachen pays income taxes to the State of Illinois and is a resident of Cook County, Illinois.

8. Plaintiff Ifeoma Nkemdi pays income taxes to the State of Illinois and is a resident of Cook County, Illinois.

9. Plaintiff Joseph Ocol pays income taxes to the State of Illinois and is a resident of Cook County, Illinois.

10. Plaintiff Alberto Molina pays income taxes to the State of Illinois and is a resident of Cook County, Illinois.

11. Defendant Illinois State Board of Elections (the "Board") is the unit of Illinois state government responsible for certifying any proposal to amend the Illinois Constitution to county clerks so that it can be placed on the ballot. 5 ILCS 20/2a.

12. Defendant Ian K. Linnabary is Chair of the Board.

13. Defendant Casandra B. Watson is Vice Chair of the Board.

14. Defendants William J. Cadigan, Laura K. Donahue, Tonya L. Genovese, Catherine S. McCrory, William M. McGuffage, and Rick S. Terven, Sr., are members of the Board.

15. Defendant Jesse White is the Illinois Secretary of State and is responsible for publishing proposed constitutional amendments before they are presented to voters on the ballot. 5 ILCS 20/2.

16. Defendant Susana Mendoza is the Illinois State Comptroller and is responsible for disbursing public funds held by the Illinois State Treasurer. Ill. Const. art. V, § 17.

JURISDICTION AND VENUE

17. This Court has subject-matter jurisdiction over this matter, which challenges an Illinois ballot measure for violating the Supremacy Clause of the United States Constitution.

18. This Court has personal jurisdiction over Defendants because this lawsuit arises from their activity in the State of Illinois.

19. Venue is proper in Sangamon County because Defendants maintain their principal offices in Sangamon County, and because the transaction giving rise to this action occurred, in whole or in part, in Sangamon County.

STATEMENT OF FACTS

The NLRA governs private-sector collective bargaining nationwide.

20. Congress enacted the NLRA as a "comprehensive code" to regulate labor relations nationwide. *Cannon v. Edgar*, 33 F.3d 880, 883 (7th Cir. 1994). The NLRA "reflects a congressional intent to create a uniform, national body of labor law interpreted and administered by a centralized agency, the National Labor Relations Board." *Id.*

21. The NLRA grants employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining." 29 U.S.C. § 157.

The NLRA does not allow collective bargaining unless certain conditions have been met.

22. The NLRA does not, however, establish a "fundamental" right to engage in collective bargaining, nor does it establish a right to engage in collective bargaining over just any subject.

23. The NLRA protects a "fundamental" right of employees to *organize* for the *purpose* of collective bargaining—but it does not give them a right to actually engage in collective bargaining with an employer.

24. Under the NLRA, employees may engage in collective bargaining—and an employer is required to engage in collective bargaining—only if a majority of employees in the relevant "bargaining unit" has voted to be represented by a union, or if an employer has voluntarily recognized a union as representing the majority of employees. 29 U.S.C. § 159(a); *Lincoln Park Zoological Soc'y v. NLRB*, 116 F.3d 216, 219 (7th Cir. 1997).

25. The National Labor Relations Board ("NLRB") must determine "the unit appropriate for the purposes of collective bargaining"—i.e., the group of employees to (potentially) be represented by a union, a majority of which must vote for union representation for collective bargaining to occur. 29 U.S.C. § 159(b).

26. A bargaining unit could be an "employer unit, craft unit, plant unit, or [some] subdivision thereof." 29 U.S.C. § 159(b).

27. When a majority of employees in a bargaining unit vote for union representation, the union becomes the exclusive representative of all employees in the bargaining unit. 29 U.S.C. § 159(a).

28. The NLRA restricts the NLRB's ability to recognize (or not recognize) a bargaining unit in certain circumstances. The NLRB may not certify a unit that consists of "both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in

such unit." 29 U.S.C. § 159(b). It also may not decide that a craft unit is inappropriate "on the ground that a different unit has been established by a prior [NLRB] determination, unless a majority of the employees in the proposed craft unit vote against separate representation." *Id.* It also may not certify a bargaining unit that includes, together with other employees, any guards—that is, anyone "employed . . . to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." *Id.*

29. An employer is only subject to mandatory collective bargaining under the NLRA if it meets a revenue threshold established by the NLRB, which varies depending on the type of business in which the employer engages. For example, the NLRB only has jurisdiction over retailers whose annual volume of business is at least $500,000. *See* National Labor Relations Board, *An Outline of Law and Procedure in Representation Cases* (2017) (collecting NLRB decisions establishing revenue thresholds).

30. Once a union has been certified, another election cannot be held for 12 months. 29 U.S.C. § 159(c)(3).

The NLRA limits the mandatory subjects of collective bargaining.

31. Where the NLRA requires employers to engage in collective bargaining, it only obligates them to do so with respect to certain subjects—namely "wages, hours, and other terms and conditions of employment." 29 U.S.C. § 158(a)(5), (d); *see also*

NLRB v. Wooster Div. of Borg-Warner Corp. (*Borg-Warner*), 356 U.S. 342, 348 (1958).

32. An employer who refuses to bargain over the NLRA's mandatory subjects commits an unfair labor practice and is subject to penalties. 29 U.S.C. § 158(a)(5).

33. "As to other matters, however, each party is free to bargain *or not bargain* . . . ." *Borg-Warner*, 336 U.S. at 349 (emphasis added). The U.S. Supreme Court has deemed such subjects to be "permissive" subjects of bargaining. *Borg-Warner*, 356 U.S. at 348.

34. The NLRA also makes some subjects *impermissible*, including subjects whose inclusion would be unlawful or inconsistent with the policies of the NLRA.

35. The NLRA does not define the "terms and conditions of employment" over which an employer must bargain, so the NLRB must determine whether a subject falls within that category on a case-by-case basis, and courts give those determinations "considerable deference." *Ford Motor Co. (Chi. Stamping Plant) v. NLRB*, 441 U.S. 488, 494–95 (1979). "Congress deliberately left the words 'wages, hours, and other terms and conditions of employment' without further definition, for it did not intend to deprive the Board of the power to further define those terms in light of specific industrial practices." *First Nat'l Maint. Corp. v. NLRB*, 452 U.S. 666, 675 (1981).

36. Generally, "conditions of employment" over which employers must bargain include such things as "the various physical dimensions of [an employee's working environment," "[w]hat one's hours are to be, what amount of work is expected

during those hours, what periods of relief are available, what safety practices are observed," and potentially "other less tangible . . . characteristics of a person's employment," such as "the security of one's employment." *Fibreboard Paper Prods. Corp. v. NLRB*, 379 U.S. 203, 222 (1964) (Stewart, J., concurring).

37. "Conditions of employment" do not encompass everything involving an employer's business that could affect employees' economic welfare.

38. For example, an employer's use of labor-saving machinery and decisions about "the commitment of investment capital and the basic scope of the enterprise are not in themselves primarily about conditions of employment, though the effect of the decision may be necessarily to terminate employment." *Fibreboard Paper Products Corp*., 379 U.S. at 223 (Stewart, J., concurring); *see also First Nat'l Maint. Corp.,* 452 U.S. 666 *(*1981) (employer's economic decision to shut down part of a business is not subject to mandatory bargaining).

39. A significant body of federal case law has established what subjects are encompassed by "conditions of employment" and therefore subject to mandatory collective bargaining under the NLRA.

The NLRA imposes certain requirements on the bargaining process.

40. An employer and a union must bargain in good faith over mandatory subjects, but need not reach an agreement; they need only bargain until they reach either an agreement or an impasse. *See Naperville Ready Mix v. NLRB*, 242 F.3d 744, 755 (7th Cir. 2001).

41. To determine whether the parties have negotiated in good faith to an impasse, the NLRB and courts consider such factors as "(a) the parties' bargaining history, (b) the parties' good faith in negotiations, (c) the length of the negotiations, (d) the importance of the issues over which there is disagreement, and (e) the contemporaneous understanding of the parties as to the state of regulations on the crucial date." *La Porte Transit Co. v. NLRB*, 888 F.2d 1182, 1186 (7th Cir. 1989).

42. The NLRA also requires bargaining parties to provide certain relevant information to each other. *See NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

The NLRB and federal courts enforce the NLRA's requirements.

43. If a union believes an employer has committed an unfair labor practice under the NLRA (or vice versa), the union (or the employer) may only seek redress by filing a complaint with the NLRB. 29 U.S.C. § 160(b).

44. After the NLRB determines whether an unfair labor practice has occurred, the losing party may appeal the decision to the U.S. Court of Appeals for the circuit in which the alleged unfair labor practice occurred, the circuit in which the aggrieved party resides or transacts business, or the District of Columbia Circuit. 29 U.S.C. § 160(f).

45. The jurisdiction the NLRA gives to the NLRB and the Court of Appeals is exclusive; no other court may hear a union or employer's claim for a violation of the NLRA. *See Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 48 (1938).

The NLRA preempts state laws purporting to govern private-sector unions.

46. The NLRA preempts state laws that would "regulate any activity that the NLRA protects, prohibits, or arguably protects or prohibits." *Wis. Dep't of Indus., Labor & Human Relations v. Gould Inc.*, 475 U.S. 282, 286 (1986).

47. A state law that is preempted by the NLRA violates the Supremacy Clause of the United States Constitution. *Cannon*, 33 F.3d at 883.

48. The NLRA protects a right of private-sector employees to engage in collective bargaining and dictates the subjects and other conditions of mandatory private-sector collective bargaining.

49. The NLRA therefore preempts any state law that would regulate private-sector collective bargaining.

50. The NLRA not only preempts state labor laws that conflict with the NLRA but also state tribunals for the enforcement of labor rights protected by the NLRA. *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 242 (1959).

Amendment 1 conflicts with the NLRA.

51. Amendment 1 conflicts with the NLRA.

52. Illinois law allows the Illinois General Assembly to place a constitutional amendment on the ballot through a 60 percent vote in each chamber of the legislature. 5 ILCS 20/1.

53. Once the General Assembly approves an amendment, the amendment appears before the voters at the next election of members of the General Assembly, on a separate ballot. 5 ILCS 20/2.

54. Amendment 1 was introduced into the Illinois General Assembly as Senate Joint Resolution 11 on May 7, 2021. The Illinois Senate voted 49 to 7 to pass the Resolution on May 21, 2021. The Illinois House of Representatives voted 80 to 30 to pass the Resolution on May 26, 2021. As a result, Amendment 1 is currently scheduled to appear on the November 8, 2022 general election ballot.

55. Amendment 1 would add the following language to Article I of the Illinois Constitution:

> (a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.
>
> (b) The provisions of this Section are controlling over those of Section 6 of Article VII.

56. Amendment 1 does not define "employees." It makes no distinction between private-sector and public-sector employees and therefore encompasses both.

57. Unlike the NLRA, Amendment 1 purports to give employees a "fundamental" right to bargain collectively.

58. Amendment 1 purports to give employees a right to collectively bargain "to protect their economic welfare," which is not a mandatory subject of collective bargaining under the NLRA.

59. Unlike the NLRA, Amendment 1 does not provide for exclusive representation by a union that has received a vote by a majority of employees, nor does it identify how collective bargaining units are determined.

60. Unlike the NLRA, Amendment 1 has no revenue threshold for businesses subject to mandatory collective bargaining.

61. Amendment 1 would create a right that would be enforceable in state courts rather than before the NLRB and the U.S. Court of Appeals.

Placing Amendment 1 on the ballot would injure Plaintiffs as Illinois taxpayers.

62. Plaintiffs are Illinois residents who pay income taxes to the state.

63. Plaintiffs are injured when the state uses its general revenue funds—i.e., Plaintiffs' tax money—for an unconstitutional purpose.

64. As set forth below, Plaintiffs allege that Amendment 1 is preempted by the NLRA and therefore violates the Supremacy Clause of the U.S. Constitution.

65. Thus, Plaintiffs will suffer injury if the state uses their tax money to place Amendment 1 on the ballot.

COUNT I

Amendment 1 violates the Supremacy Clause of the United States Constitution.

66. Plaintiffs repeat and reallege the allegations of the foregoing paragraphs as if fully set forth herein.

67. The NLRA preempts Amendment 1 because Amendment 1 would regulate private-sector collective bargaining, an activity protected and regulated by the NLRA.

68. Amendment 1 conflicts with the NLRA because it creates a state-law right that could be enforced in state court, rather than the federal forums the NLRA has established for enforcement of the right to collectively bargain.

69. Amendment 1 conflicts with the NLRA because it would give private-sector employees a "fundamental" right to engage in collective bargaining—a right the NLRA does not give to employees, as set forth above.

70. Amendment 1 conflicts with the NLRA because it would give employees the right to collectively bargain over not only "wages, hours, and working conditions" but also measures "to protect their economic welfare," which are not a mandatory subject of collective bargaining under the NLRA, as set forth above.

71. Amendment 1 conflicts with the NLRA because it does not define how collective bargaining units are to be determined, lacks any requirement of a majority vote for union representation, and does not provide for exclusive representation by a union that receives a majority of votes by a bargaining unit.

72. Amendment 1 conflicts with the NLRA because it has no revenue threshold for businesses subject to mandatory collective bargaining.

73. Amendment 1 conflicts with the NLRA because it does not otherwise limit and regulate its right to collective bargaining in the manner of the NLRA.

74. Amendment 1 therefore violates the Supremacy Clause of the United States Constitution.

75. Where a proposed amendment to the Illinois Constitution is itself unconstitutional, the remedy is for the Illinois courts to enjoin state officials from placing the measure on the ballot. *See Hooker v. Ill. State Bd. of Elections*, 2016 IL 12077 ¶¶ 8 & n.2, 48; *Chi. Bar Ass'n v. Ill. State Bd. of Elections*, 161 Ill.2d 502, 508, 515–16 (1994).

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

A. Enter a judgment declaring that the NLRA preempts Amendment 1 and therefore violates the Supremacy Clause of the United States Constitution;

B. Preliminarily and permanently enjoin Defendants from disbursing or using public funds to place Amendment 1 on the November 2022 general election ballot;

C. Award Plaintiffs their reasonable costs, expenses, and attorneys' fees pursuant to any applicable law; and

D. Award Plaintiffs any additional relief the Court deems just and proper.

Dated: April 21, 2022

Respectfully submitted,

SARAH SACHEN, IFEOMA NKEMDI, JOSEPH OCOL, and ALBERTO MOLINA

By: /s/ Jacob Huebert
One of their Attorneys

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Sangamon County, IL
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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

SARAH SACHEN, IFEOMA NKEMDI, JOSEPH OCOL, *and* ALBERTO MOLINA, Petitioners, v. THE ILLINOIS STATE BOARD OF ELECTIONS; IAN LINNABARY, *in his official capacity as Chair of the Illinois State Board of Elections*; CASANDRA B. WATSON, WILLIAM J. CADIGAN, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, WILLIAM M. MCGUFFAGE, *and* RICK S. TERVEN, SR., *in their official capacities as members of the Illinois State Board of Elections*; JESSE WHITE, *in his official capacity as Illinois Secretary of State*; SUSANA MENDOZA, *in her official capacity as Illinois State Comptroller*, Respondents.	Case No. 2022-CH-34 Hon. Raylene DeWitte Grischow **Notice of Appeal**

Petitioners-Appellants Sarah Sachen, Ifeoma Nkemdi, Joseph Ocol, and Alberto Molina appeal to the Illinois Appellate Court, Fourth Judicial District, from the Order Denying Leave to File Taxpayer Action by Judge Raylene DeWitte Grischow of the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois, issued May 26, 2022. That order denied Petitioners leave to file a taxpayer action under 735 ILCS 5/11-303 to challenge the use of public funds to place the "Illinois Right to Collective Bargaining Amendment" on the November 2022 election ballot

because the proposed Amendment is preempted by the National Labor Relations Act and therefore violates the Supremacy Clause of the United States Constitution. A true and correct copy of that order is attached hereto.

By this appeal, Petitioners ask this Court to reverse the circuit court's order denying their petition for leave to file a complaint, remand the case to the circuit court, and grant any other appropriate relief.

Dated: June 3, 2022

Respectfully submitted,

SARAH SACHEN, IFEOMA NKEMDI, JOSEPH OCOL, and ALBERTO MOLINA

By: /s/ Jeffrey M. Schwab
One of their Attorneys

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CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

I, Jeffrey Schwab, an attorney, certify that on June 3, 2022, I served copies of the Notice of Appeal on Respondents' counsel of record by the Court's Electronic Filing System and via email to Joshua.Ratz@ilag.gov.

/s/ Jeffrey M. Schwab
Jeffrey M. Schwab

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

SARAH SACHEN, IFEOMA NKEMDI, JOSEPH OCOL, and ALBERTO MOLINA,

Petitioners,

v.

THE ILLINOIS STATE BOARD OF ELECTIONS, *et al.*,

Respondents.

Case No.: 22-CH-34

ORDER DENYING LEAVE TO FILE TAXPAYER ACTION

Matter comes on for hearing on the petition seeking leave under 735 ILCS 5/11-303 to "file an action to restrain and enjoin the . . . [respondents] from disbursing the public funds of the State" in connection with the placement of the proposed Workers' Rights Amendment on the general election ballot for consideration by the voters this November. Attorney Jacob Huebert is present on behalf of the petitioner. AAG Joshua Ratz is present on behalf of the defendants. Arguments heard. The court took the matter under advisement. Because the court is not "satisfied that there is reasonable ground for the filing of such action," the Petition is denied.

There is no dispute that the Illinois House and Senate passed, by a three-fifths margin, Senate Joint Resolution Constitutional Amendment No. 11 (the "Workers' Rights Amendment"), which proposes to amend Article I of the Illinois constitution by adding a Section 25:

> SECTION 25. WORKERS' RIGHTS
>
> (a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.

(b) The provisions of this Section are controlling over those of Section 6 of Article VII [Powers of Home Rule Units].

102d Gen. Assem., Senate Joint Resolution Constitutional Amendment No. 11, (May 26, 2021).

Petitioners assert that if the Workers' Rights Amendment is enacted, it would be preempted by the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151 to 169, as applied to private-sector employees. From this assertion, Petitioners conclude the proposed amendment is unconstitutional under the Supremacy Clause and that the State may be enjoined from spending public funds to place an unconstitutional amendment on the ballot.

The question before the Court is whether Petitioners have presented "reasonable ground for the filing of" their proposed action. 735 ILCS 5/11-301. Reasonable grounds are lacking where a suit is brought for ulterior, frivolous, or malicious purposes, where it is an "unjustified interference[]" in the application of public funds, *Strat-O-Seal Mfg. Co.*, 27 Ill. 2d 563, 565–66 (1963), or where the claims sought to be asserted fail as a matter of law, *Tillman v. Pritzker*, 2021 IL 126387, ¶ 22; *Wirtz v. Quinn*, 2011 IL 111903, ¶¶ 6, 9; *Kaider v. Hamos*, 2012 IL App (1st) 111109, ¶¶ 6, 20, 24, 28, 33, 35. In evaluating whether reasonable grounds exist, well-pleaded nonconclusory allegations of fact must be taken as true, *Hamer v. Dixon*, 61 Ill. App. 3d 30, 31–32 (2d Dist. 1978), but conclusions or unjustified allegations should be disregarded, *Barco Mfg. Co. v. Wright*, 10 Ill. 2d 157, 162 (1956).

Even accepting as true all of Petitioners' allegations, there are no reasonable grounds to permit suit. Petitioner's claims fail as a matter of law, and impermissibly seek an advisory opinion as to "constitutional issues . . . [which] may never progress beyond the realm of the hypothetical." *Slack v. Salem*, 31 Ill. 2d 174, 178 (1964).

First, under Article XIV, section 2 of the Illinois Constitution, "[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, unless withdrawn by a vote of a majority of the members elected to each house." Ill. Const. art. XIV, § 2(a) (emphasis added). The requirements of section 2 are plainly met, and the constitutional command is clear. The proposal *must* be submitted to the voters for adoption or rejection. *Id.* "The constitution is the supreme law . . . and every court is bound to enforce its provisions." *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, ¶ 38.

Second, the Court has no power to restrain a referendum on the grounds that, if the proposed law were enacted, its enforcement would be unconstitutional. *Slack*, 31 Ill. 2d at 175–76 (no power to restrain referendum to approve issuance of revenue bonds alleged to be unconstitutional as a use of public credit in aid of a private corporation); *Fletcher v. Paris*, 377 Ill. 89, 90–94 (1941) (no power to restrain referendum to approve an ordinance to build a light and power plant or to declare the ordinance "invalid before it became effective or in force"). "[C]ourts should *restrain the enforcement, rather than the passage of*, unauthorized [laws]. Indeed, there is a distinction between enjoining legislative action and enjoining action taken in accordance with unauthorized legislative action." *Ziller v. Rossi*, 395 Ill. App. 3d 130, 138 (2nd Dist. 2009). To borrow from *Fletcher* and *Slack*, "the obvious and predominate purpose of [the proposed] suit [is] to have [the Workers' Rights Amendment], at the suit of the taxpayers, declared invalid prior to the time it ha[s] passed through all the legislative processes necessary to give it life." *Fletcher*, 377 Ill. at 98–99. "The validity of [the Amendment] cannot be thus prematurely and circuitously attacked in the courts." *Id.* at 99. "The courts have no more right to interfere with or prevent the holding of an election which is one step in the legislative process for the enactment or bringing into existence a [constitutional amendment], than they would have to enjoin the [General Assembly] from adopting the [amendment proposal] in the first instance." *Id.* at 96. "The holding

of an election is the exercise of a political right," with which the courts will not interfere. *Id.* at 98. "This court has no power to render advisory opinions, and until the legislative process has been concluded, there is no controversy that is ripe . . . . Indeed, the constitutional issues upon which the opinion of this court is sought may never progress beyond the realm of the hypothetical." *Slack*, 31 Ill. 2d at 178.

Petitioners' reliance on *Hooker* and *Chicago Bar Association v. Illinois State Board of Elections*, 161 Ill. 2d 502 (1994), is misplaced. Those cases concerned the requirements of citizen ballot initiatives, which are governed by Article XIV, *section 3*, not legislative initiatives—such as the Workers' Rights Amendment—, which are governed by section 2. Citizen ballot initiatives "may only be used for amendments directed at 'structural and procedural subjects contained in Article IV' of the constitution, pertaining to Illinois's legislative branch." *Hooker*, 2016 IL 121077, ¶ 3. In *Hooker*, the proposal would have "greatly expand[ed] the duties" of the Auditor General, which are subjects of Article VIII, not the Legislative Article (Article IV). *Hooker*, 2016 IL 121077, ¶ 27. In *Chicago Bar Association*, the proposed amendment would have instituted term limits, which the Illinois Supreme Court held was neither a "structural" nor "procedural" subject of the Legislative Article because eligibility or qualifications of individual legislators "does not involve the structure of the legislature *as an institution*." *Chi. Bar Ass'n*, 161 Ill. 2d at 504, 509–10. Thus, in both cases, the *proposal* did not comply with Article XIV, section 3; that is, the proposed *manner of amendment* violated the Illinois constitution. However, neither case involved, as here, a challenge to enforcement of the amendment or its substantive validity assuming a successful referendum. Neither case turned on whether term limits are unconstitutional, or whether changes to the duties of the Auditor General conflicted with any other law. Instead, the cases addressed solely whether such amendments could be the subject of *citizen ballot initiatives*. *See*

Hooker, 2016 IL 121077, ¶ 34 (the Court's "role does not require us to read between the lines of every proposal in an attempt to discern the propriety of the proponent's underlying intentions; *our role is solely* to determine whether the proposal comports with the strict limitations set out in article XIV, section 3" (emphasis added)).

In sum, *Hooker* and *Chicago Bar Association* merely stand for the unremarkable principle that ballot *proposals* must comply with the requirements for such proposals. They set forth an exception to the general prohibition against enjoining elections where the challenge is not to the anticipated enforcement of the end product of the election—the ordinance, law, or constitutional amendment—, but rather to the election *itself.* As Justice Harrison put it in his *dissent* in *Chicago Bar Association* (and upon which Petitioners rely):

> While it is true, as a general rule, that a court may not enjoin an election we have recognized an *exception* to this rule where . . . injunctive relief is sought to prevent the waste of public funds on a *ballot proposition that is alleged to be in violation of the constitution.*

Chi. Bar Ass'n, 161 Ill. 2d at 516 (Harrison, J., dissenting) (emphasis added) (citing *Coalition for Political Honesty v. State Bd. of Elections*, 65 Ill. 2d 453, 460 (1976) and *Jordan v. Officer*, 155 Ill. App. 3d 874, 877 (5th Dist. 1987)). *Coalition for Political Honesty*, of course, merely held that if the election *itself* is "called in violation of the constitution," the election may be restrained. 65 Ill. 2d at 460–61. And *Jordan* succinctly recounts that "[t]he general rule is subject to exception, where injunctive relief is necessary to prevent a waste of public funds by the holding of an election *under an unconstitutional election statute* or any *election called in violation of the constitution.*" *Jordan*, 155 Ill. App. 3d at 877 (emphasis added).

In this case, the "ballot proposition" described by Justice Harrison or the "election statute" referenced in *Jordan* is not the anticipated Workers' Rights Amendment, but rather Senate Joint Resolution Constitutional Amendment No. 11. The question for the Court is whether that

Resolution comports with the Illinois constitution. In *Hooker* and *Chicago Bar Association*, the citizen ballot initiative elections violated the Illinois constitution because they did comply with the requirements for such initiatives. They were improper *methods of amendment*. Petitioners do not allege the "ballot proposition" at issue in this case or the *holding of the upcoming referendum* violates the constitution. The referendum is plainly proper because the requirements for holding the referendum under XIV, section 2 are met. And the *proposition* cannot conflict with federal law because it has no operation; it has not "passed through all the legislative processes necessary to give it life." *Fletcher*, 377 Ill. at 99. Petitioners cite *Krebs v. Thompson*, 387 Ill. 471, 473 (1944), which holds that "[i]t has long been the settled rule in Illinois that the expenditure of public funds by an officer of the State, for the purpose of *administering an unconstitutional act*, constitutes a misapplication of such funds." (emphasis added). While this may be true, Petitioners do not seek by this lawsuit to prevent the expenditure of funds administering the Workers' Rights Amendment. They cannot because it does not exist, and may not exist. Instead, they seek to prevent the expenditure of funds to administer the *Senate Joint Resolution Constitutional Amendment No. 11*, which requires *only* that the language that may *become* the Workers' Rights Amendment be put to the People for a vote. But Senate Joint Resolution Constitutional Amendment No. 11 is not unconstitutional. It was validly passed. Ergo, spending money to effect its purposes does not constitute "administering an unconstitutional act." Petitioners true attack is not to the *referendum itself* as in *Hooker* and *Chicago Bar Association.* Instead, they look *beyond* the election, objecting to the anticipated *enforcement* of the *end product* of a *successful* election—an enacted Workers' Rights Amendment. Nevertheless, as noted, "[t]he validity of [the Amendment] cannot be thus prematurely and circuitously attacked in the courts." *Id.* at 99.

Third, even if the Court had power to offer an opinion as to the prospective validity of an enacted Workers' Rights Amendment, and even if Petitioners are correct that application of an enacted Workers' Rights Amendment to private employees would be preempted by the NLRA, Petitioners plainly concede the Amendment would have valid applications, specifically application to public employees. Pet. ¶ 12 (the Workers' Rights Amendment "makes no distinction between private-sector and public sector employees and therefore *would establish a right to collective bargaining for both.*" (emphasis added)); *see also* Proposed Compl. ¶ 56. The Amendment would also prohibit the passage of laws restricting union security agreements, a subject about which "Congress . . . . left the states free to legislate." *Retail Clerks Int'l Ass'n, Local 1625 v. Schermerhorn*, 375 U.S. 96, 102, 104–05 (1963). These are plainly substantial applications of the Amendment. Petitioners offer no basis for preventing the Amendment's submission to the voters merely because *some* anticipated applications *may* be preempted by federal law. The rule is exactly the opposite. "An enactment is facially invalid only if no set of circumstances exist under which it would be valid," and "[t]he fact that [an] enactment could be found unconstitutional under some set of circumstances does not establish its facial invalidity." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306 (2008). Indeed, "[i]n a pre-emption case . . . , state law is *displaced*," and "only to the extent that it actually conflicts with federal law." *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474, 476 (1996) (per curiam) (emphasis added). The fact that a state law may conflict with federal law in some applications is not sufficient to preempt the state law as to all applications. *Id.*

Moreover, under the Supremacy Clause, "[i]f federal law imposes restrictions or confers rights on private actors and a state law confers rights or imposes restrictions that conflict with the federal law, the federal law *takes precedence* and the state law is preempted." *Kansas v. Garcia*,

140 S. Ct. 791, 801 (2020) (emphasis added) (internal quotation marks omitted). Preemption is *merely a "rule of decision,"* "instruct[ing] courts what to do *when* state and federal law clash." *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324-25 (2015) (emphasis added). Thus, even assuming Petitioners are correct that the Workers' Rights Amendment would be preempted by the NLRA as to private employees, the Amendment would merely be suspended, or "displaced," *while the federal law exists. See Lily Lake Road Defenders v. County of McHenry*, 156 Ill. 2d 1, 8 (1993) ("[T]he subordinate legislative body's enactment is *suspended and rendered unenforceable by the existence* of the superior legislative body's enactment," and is revived upon "repeal of the preempting statute." (emphasis added)); *see also Kinsey Distilling Sales Co. v. Foremost Liquor Stores, Inc.*, 15 Ill. 2d 182, 193 (1958) ("[T]he State statute is, in effect, merely unenforceable or suspended by the existence of the Federal legislation."). Thus, there is no basis for denying the voters the opportunity to decide whether to enact a state right to collective bargaining as a supplement or backup to federal rights secured by the NLRA. At most, federal preemption would merely render the Workers' Rights Amendment dormant, not invalid, because it would still apply to situations not covered by the NLRA and would become enforceable even as to preempted applications in the event the NLRA were ever repealed. *See Dalton*, 516 U.S. at 476–78 (state constitutional ban on public funding of abortion preempted only to the extent it conflicted with Hyde Amendment's requirement that federal funds could be used in instances of rape and incest, ban remained valid as to situations involving only state funds, and ban as to federal funds was capable of being enforced in the future in the event the Hyde Amendment was repealed or modified).

Thus, the proposed Amendment would serve *at least* three permissible purposes. First, it would create rights for public employees, which Petitioners concede is *not* preempted by the

NLRA. Second, it would restrain the power of the General Assembly to pass laws restricting union security agreements, a subject left open to the states. Third, it would act as a state-law failsafe to preserve rights for private-sector employees in the event the federal government ever decided to abandon the NLRA. There are no grounds for denying the voters the opportunity to decide whether to add the Workers' Rights Amendment to the Illinois constitution.

Accordingly, the Petition states no reasonable grounds for filing suit. The Illinois constitution requires the amendment to be put to the voters because it complies with the requirements in Article XIV, section 2 of the Illinois constitution. The Court has no power to pass on the validity of the proposed Amendment unless and until it is adopted by the voters. To do so would constitute an improper advisory opinion. "Although it is possible that specific future applications . . . may engender concrete problems of constitutional dimension, it will be time enough to consider any such problems when they arise." *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 504 (1982). Moreover, even if the Court could entertain Petitioners' challenges to the anticipated enforcement of the proposed Amendment, Petitioners plainly concede it has substantial applications unaffected by any federal preemption. Petitioners are therefore not entitled to an order prohibiting the placement of the proposed Amendment on the ballot. The Petition is denied.

SO ORDERED.

Date: 5/26/2022

Raylene DeWitte Grischow, *Circuit Court Judge*

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

SARAH SACHEN
Plaintiff/Petitioner

v.

ILLINOIS STATE BOARD OF ELECTIONS
Defendant/Respondent

Reviewing Court No: 4-22-0470
Circuit Court/Agency No: 2022CH000034
Trial Judge/Hearing Officer: GRISCHOW

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