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

ILLINOIS POLICY INSTITUTE, Plaintiff, v. JANE R. FLANAGAN, *in her official capacity as Director of the Illinois Department of Labor*, Defendants.	Case No. 1:24-cv-06976 Hon. Judge Franklin U. Valderrama **Motion for Preliminary Injunction**

Pursuant to Fed. R. Civ. P. 65, Plaintiffs respectfully move for a preliminary injunction. As set forth in the attached memorandum of law, Plaintiffs ask that this Court enter an order enjoining Defendant from implementing and enforcing Public Act 103-0722.

Dated: October 30, 2024

Respectfully submitted,

Illinois Policy Institute *and* Technology & Manufacturing Association

By: /s/ James McQuaid
One of their Attorneys

Jacob Huebert
Jeffrey M. Schwab
James McQuaid
Liberty Justice Center
7500 Rialto Blvd
Suite 1-250
Austin, TX 78735
512-481-4400
jhuebert@ljc.org
jschwab@ljc.org
jmcquaid@ljc.org

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

ILLINOIS POLICY INSTITUTE and THE TECHNOLOGY & MANUFACTURING ASSOCIATION,

Plaintiffs,

v.

JANE R. FLANAGAN, *in her official capacity as Director of the Illinois Department of Labor*,

Defendant.

Case No. 1:24-cv-06976

Hon. Judge Franklin U. Valderrama

Plaintiffs' Memorandum of Law in Support of their Motion for Preliminary Injunction

Introduction

The First Amendment protects the free-speech rights of both employees and employers—including an employer's right to speak to employees on matters the employer considers important. But the State of Illinois has nonetheless enacted a law—the so-called "Worker Freedom of Speech Act"—that forbids employers from speaking to their employees about "religious or political matters" in settings where the employee is required to be present—even when such matters are relevant to the employer's business.

The Act's ban on discussion of "political matters" is broad. It doesn't just prohibit speech about campaigns and elections; it also bans speech "relating to . . . proposals to change legislation, proposals to change regulations, proposals to change public policy, and the decision to join or support any political party or political, civil, community, fraternal, or labor organization."

Plaintiff Illinois Policy Institute ("Institute") is a 501(c)(3) nonprofit organization that engages in speech on such "political" matters. It engages in research related to public policy from a perspective that favors, among other things, civil and personal liberties; effective, efficient, honest, and transparent government; limited government; free markets; and workers' freedom to choose whether to join a labor union. And it speaks about its views on questions of public policy—both externally and internally at mandatory employee meetings.

Plaintiff the Technology & Manufacturing Association ("TMA") is a 501(c)(6) nonprofit organization that brings this suit on behalf of its members, who wish to hold mandatory meetings where political or religious matters are discussed.

But now the Act has made those meetings illegal, prohibiting the Institute from speaking to its employees about the very subject matter of the organization's mission and preventing TMA's members from communicating their religious and political views to employees if listening to those views is a condition of their employment. This violates Plaintiffs' First Amendment rights to free speech, and Plaintiffs therefore seek a preliminary injunction to prevent Defendant from enforcing the Act.

Facts

A. The Illinois Worker Freedom of Speech Act prohibits certain employer speech based on its content.

On July 31, 2024, Illinois Governor J.B. Pritzker signed Illinois Public Act 103-0722, the "Worker Freedom of Speech Act" ("Act"), into law, to take effect on January 1, 2025. The Act broadly prohibits employers from speaking to their

employees about what it deems to be "religious or political matters" in any mandatory setting. Specifically, the Act prohibits employers from "tak[ing] any adverse employment action" (such as firing, disciplining, or threatening to fire or discipline) against an employee who refuses to attend meetings or receive communications from the employer intended "to communicate the opinion of the employer about religious matters or political matters." Pub. Act 103-0722, § 15(1) (effective Jan. 1, 2025). The Act defines "political matters" broadly to include not only speech about campaigns and elections, but also even speech "relating to . . . proposals to change legislation, proposals to change regulations, proposals to change public policy, and the decision to join or support any political party or political, civil, community, fraternal, or labor organization." *Id.* § 10.

For its enforcement, the Act allows any "aggrieved employee" to bring a civil action to enforce its provisions, including obtaining injunctive relief, reinstatement, back pay, and reestablishment of benefits. *Id.* § 20. A successful employee may also obtain attorney's fees and costs. *Id*.

The Act empowers the Department of Labor to enforce the Act and "institute the actions for penalties" under the Act, including a civil penalty of $1,000 for each violation payable to the Department. Each employee subject to the violation of the Act constitutes a separate violation. § 25.

The Act also allows any "interested party" to file a complaint with the Department of Labor "[u]pon a reasonable belief that an employer covered by this Act is in violation of any part of this Act." *Id.* § 25(b). This "interested party" can be

any "organization that monitors or is attentive to compliance with public or worker safety laws, wage and hour requirements, or other statutory requirements." *Id.* § 10. After the Department of Labor receives a complaint from an "interested party" and either the Department issues a notice of a right to sue or 180 days pass after the service of the complaint, the interested party may initiate a civil action for penalties against the employer.. *Id.* §§ 25(b)(2)–(b)(4). If successful, the interested party may obtain a $1,000 civil penalty and "shall receive 10% of any statutory penalties assessed, plus any attorney's fees and expenses in bringing the action." § 25(a).

The Act includes several exemptions. It exempts "religious organizations" (which it does not define) for speech "communicating the employer's religious beliefs, practices, or tenets." *Id.* § 36(8). It also exempts any political organization, political party organization, candidate political organization with respect to speech "communicating the employer's political tenets or purposes." *Id.* § 35(6). It also exempts nonprofit organizations that are exempt from taxation under Section 501(c)(4), 501(c)(5), or 501(c)(6) of the Internal Revenue Code with respect to such political speech. *Id.* The Act does not, however, create any exemption for tax-exempt 501(c)(3) organizations that advocate for political or policy positions.

B. The Illinois Policy Institute is harmed by the implementation of the Act.

The Illinois Policy Institute is an Illinois-based 501(c)(3) nonprofit organization that is subject to the Act. The Institute engages in, and publishes research related to, public policy from a perspective that favors, among other things, civil and

personal liberties; effective, efficient, honest, and transparent government; limited government; free markets; and workers' freedom to choose whether to join a labor union. Exhibit A, Declaration of Matthew Paprocki ("Paprocki Decl.") ¶¶ 3, 8.

The Institute regularly conducts mandatory staff meetings and twice-yearly retreats where the organization's views on questions of public policy are expressed. Paprocki Decl. ¶¶ 4-7. These meetings are now unlawful under the Act. Although the Act has an exception for communications that are "necessary for employees to perform their required job duties," not all the communications at the Institute's meetings are necessary for *all* employees present to perform their job duties; that is, not every Institute employee's job directly relates to every political matter the Institute discusses. *Id.* ¶¶ 6, 9-11.

Still, it is important for the functioning of the Institute to communicate about political matters with its employees, such as in mandatory meetings. *Id.* ¶ 9. The Institute believes that each of its employees should know what the Institute's various teams and experts are working on, and that the quality of the organization's work is improved when staffers not working on a specific policy-related matter can bring an interesting idea or new perspective on how to approach an issue. *Id.* ¶ 10. Team morale, connection to the organization, and idea generation would all suffer if the Institute were required to conduct staff meetings without providing policy-related information to all staff. *Id.* ¶ 11.

C. TMA's members are harmed by the implementation of the Act.

Many of Plaintiff TMA's members have communicated political and religious matters to their employees in mandatory meetings. Exhibit B, Declaration of Dennis LaComb ("LaComb Decl.") ¶ 7. Some of its members are owned by individuals with deep religious convictions that seek to implement their faith in their work. *Id.* ¶ 8. Many of the TMA's members discuss political matters with employees in mandatory meetings or in communications that their employees must listen to for a variety of reasons, including because such political matters may affect or be relevant to their business or to the employees directly or indirectly. *Id.* ¶ 10. The members of TMA wish to continue to discuss political and religious matters with their employees, including communications in which those employees are required as a condition of their employment to listen, but would be prohibited from doing so by the Act. *Id.* ¶ 11. Thus, the Act injures these members by imposing legal penalties on them for speech in which they have engaged and wish to engage in the future.

Standard of Review

To obtain preliminary relief, a movant must first show that (1) it will otherwise suffer irreparable harm; (2) traditional legal remedies are inadequate; and (3) there is at least some likelihood of success on the merits. *HH-Indianapolis, LLC v. Consol. City of Indianapolis,* 889 F.3d 432, 437 (7th Cir. 2018). If a plaintiff makes that showing, the Court proceeds to a balancing analysis, in which it must weigh the harm the denial of the preliminary injunction would cause the plaintiff against the

harm to the defendant if the court were to grant it. *Mays v. Dart,* 974 F.3d 810, 818 (7th Cir. 2020). This balancing process involves a sliding scale approach: the more likely the plaintiff is to win on the merits, the less the balance of harms needs to weigh in his favor, and vice versa. *Id.*

When a motion for preliminary injunction is premised on an alleged violation of First Amendment rights, however, a court will simply focus on the likelihood of success on the merits, as the other factors are generally presumed. *Korte v. Sebelius*, 735 F.3d 654, 666 (7th Cir. 2013).

Argument

I. Plaintiffs are likely to succeed on the merits of their First Amendment claim.

Plaintiffs are likely to succeed on the merits of their First Amendment challenge to the Act because the Act prohibits political speech at the core of the First Amendment's protection and is not narrowly tailored to serve a compelling governmental interest—or any legitimate interest.

A. The Act is a content-based restriction on speech and therefore subject to strict scrutiny.

The Act prohibits speech based on its content and is therefore "presumptively invalid." *R.A.V. v. City of St. Paul,* 505 U.S. 377, 382 (1992). Content-based restrictions on speech warrant strict scrutiny because they "are especially likely to be improper attempts to value some forms of speech over others, [and] are particularly susceptible to being used by the government to distort public debate." *City of Ladue v. Gilleo,* 512 U.S. 43, 60 (1994) (O'Connor, J., concurring). A law is content based if it "'on its face' draws distinctions based on the message a speaker

conveys"—that is, if it "applies to particular speech because of the topic discussed or the idea or message conveyed." *Reed v. Town of Gilbert,* 576 U.S. 155, 163 (2015).

The Act is a content-based restriction on speech because it prohibits employers from engaging in particular speech based on its topic: it prohibits communications of *political* or *religious* speech—and no other speech—at mandatory meetings. The Act thus draws distinctions based on the message an employer conveys, allowing mandatory meetings on some topics but not on others.

Worse yet, the Act discriminates against speech on a topic—political matters—that is at the core of the First Amendment's protection. *See Citizens United v. FEC,* 558 U.S. 310, 329 (2010) ("political speech . . . is central to the meaning and purpose of the First Amendment"); *Mills v. Alabama,* 384 U.S. 214, 218–19 (1966) (the First Amendment protects "discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes"); *Ill. Republican Party v. Pritzker,* 973 F.3d 760, 764 (7th Cir. 2020) ("all agree" that "political speech . . . lies at the core of the First Amendment"); *Wash. Post v. McManus,* 944 F.3d 506, 513 (4th Cir. 2019) ("While generic content-based regulations strain our commitment to free speech, content-based regulations that target *political* speech are especially suspect.").

The Act also discriminates against certain speakers and in favor of others, which is effectively viewpoint discrimination and just as unconstitutional. The First Amendment prohibits "restrictions distinguishing among different speakers,

allowing speech by some but not others." *Citizens United v. FEC*, 558 U.S. 310, 340 (2010). The Act does this by creating an exemption for, among others, employers that have obtained nonprofit status under Section 501(c)(4), 501(c)(5), or 501(c)(6) of the Internal Revenue Code, who are free to express their political views to their employees. This amounts to viewpoint-based discrimination as well, as different types of entities are likely to speak on different issues and take different views. For example, a 501(c)(5) labor union may require its employees to attend a meeting in which the organization inveighs against right-to-work laws, but a 501(c)(3) organization such as the Institute may not require its employees to attend a meeting in which it expresses reasons to support right-to-work laws.

As a content-based restriction on speech, the Act is subject to strict scrutiny, which means that it can survive only if "the Government [can] prove that [it] furthers a compelling interest and is narrowly tailored to achieve that interest." *Reed,* 576 U.S. at 171 (quotation omitted). "That is a demanding standard," *Brown v. Entm't Merchs. Ass'n,* 564 U.S. 786, 799 (2011), and the state cannot meet it here.

B. The Act cannot survive strict scrutiny.

1. The Act does not serve a compelling government interest.

The Act's legislative findings are, in full:

> The General Assembly finds that it is in the public policy interests of the State for all working Illinoisians to have protections from mandatory participation in employer-sponsored meetings if the meeting is designed to communicate an employer's position on religious or political matters.

> Employees should not be subject to intimidation tactics, acts of retaliation, discipline, or discharge from their employer for choosing not to participate in employer-sponsored meetings.

Pub. Act 103-0722, § 5.

The only interest the Act identifies is protecting employees from attending mandatory meetings at which their employer communicates its positions on religious or political matters. But that is not a compelling government interest, even if some employees might find an employer's speech offensive. Protecting people from hearing things that they don't like has never been held to be a legitimate, let alone compelling, government interest. *See, e.g., Street v. New York,* 394 U.S. 576, 592 (1969) ("It is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas themselves are offensive to some of their hearers."); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n,* 584 U.S. 617, 638 (2018) ("[I]t is not, as the Court has repeatedly held, the role of the State or its officials to prescribe what shall be offensive."); *303 Creative LLC v. Elenis,* 600 U.S. 570, 602-03 ("If liberty means anything at all, it means the right to tell people what they do not want to hear," and "abiding the Constitution's commitment to the freedom of speech means all of us will encounter ideas we consider unattractive, misguided, or even hurtful[.]") (quotes and citations omitted).

2. The Act is not narrowly tailored.

Even if the government could articulate a compelling interest—which it cannot—the Act would still fail strict scrutiny because it is not narrowly tailored to serve the government's supposed interest.

The Act cannot be narrowly tailored to prevent employees from having to hear their employer's religious or political views because the Act contains arbitrary exceptions that subvert that interest. The Act does not prohibit certain employers—namely 501(c)(4), (c)(5), or (c)(6) organizations—from mandating that employees listen to their views on politics, even as it prohibits 501(c)(3) organizations like the Institute from doing the same. Pub. Act 103-0722, § 35(6). The Act offers no justification for this unequal treatment. Thus, instead of being narrowly tailored to address a government interest, the Act appears to it simply pick winners and losers with respect to protected employer speech—"protecting" employees only from speech from sources of which the government has selected for disapproval. *See City of Ladue v. Gilleo*, 512 U.S. 43, 60 (1994) (O'Connor, J., concurring) (explaining that content-based laws "are especially likely to be improper attempts to value some forms of speech over others, [and] are particularly susceptible to being used by the government to distort public debate").

And if the statute is aimed at preventing employees from being pressured to adopt certain views (though it does not say so), it is grossly underinclusive. Although it is "counterintuitive to argue that a law violates the First Amendment by abridging *too little* speech," "underinclusiveness can raise 'doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint.'" *Williams-Yulee v. Fla. Bar,* 575 U.S. 433, 448 (2015) (quoting *Brown,* 564 U.S. at 801). And here it is clear that the government is trying to disfavor particular speakers. Although the purpose of the Act is ostensibly

to "protect[]" "all working Illinoisans . . . from mandatory participation in . . . meetings . . designed to communicate an employer's position on religious or political matters," by exempting whole categories of employers, the Act does not actually do that. Pub. Act 103-0722, § 5(a).

For example, the Act allows an exemption for labor organizations. *Id.* § 35(6). Labor organizations often espouse political positions. Looking at some of the largest unions in the state, one sees that the Illinois Education Association has a "Lobby Day" scheduled for November 13, where its members will bus from all over the state to Springfield to "meet with our lawmakers to discuss equitable retirement for ALL educators"[1]; the Service Employees International Union Local 73 has an entire tab on its website dedicated to the 2024 election[2]; the Illinois Federation of Teachers ran a political phone bank on October 23[3]; and AFSCME Council 31 asks its members to "[g]et involved by participating in voter registration drives, lobbying on specific issues, working on campaigns—from walking precincts to working phone banks – and making voluntary contributions."[4]

Political speech like this is, apparently, no problem for the state. But somehow that the "political" or religious speech of the Institute or TMA's members is beyond the pale. Thus, the Act is underinclusive, which further demonstrates that it is not narrowly tailored and cannot survive strict scrutiny, or even intermediate First

[1] https://ieanea.org/undo-tier-two/
[2] https://seiu73.org/election-2024/
[3] https://archive.ph/YZI6u
[4] https://afscme31.org/political-action

Amendment scrutiny. *See Joelner v. Vill. of Wash. Park*, 508 F.3d 427, 433 (7th Cir. 2007) (finding an underinclusive regulatory scheme failed both strict and intermediate scrutiny); *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 489 (1995) (holding that "exemptions and inconsistencies bring into question the purpose of [a regulation on speech].")

Any argument that the Act is narrowly tailored because it only covers *mandatory* meetings in which politics or religion is discussed, while allowing voluntary meetings on those topics, is unavailing. "[A]nother way of putting it would be that the Act's prohibitions apply only when an employer wants to communicate a message badly enough to make meeting attendance mandatory." *Honeyfund.com, Inc, v. Governor,* 94 F.4th 1272, 1281–82 (11th Cir. 2024). And that argument "ignore[s] that the law bans speech even when no one listening finds it offensive." *Id.* at 1282. For that reason, the Eleventh Circuit rejected such an argument in striking down a Florida law that prohibited employers from subjecting their employees "to training, instruction, or any other required activity that promotes [or] advances . . . a certain set of beliefs." *Id.* at 1275 (quote and citation omitted).

Thus, the Act is not narrowly tailored to address even the government's purported interest, let alone a compelling interest, which means that the Institute is likely to prevail on their First Amendment claim.

II. Without an injunction, Plaintiffs will suffer irreparable harm.

If the Act is allowed to take effect, the Institute will suffer irreparable harm. If the Act takes effect—and subjects the Institute to liability for any violations—it will

chill the Institute's speech[5] and the content of these mandatory meetings. Likewise, TMA's members' political and religious speech will be chilled. The "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" for purposes of the issuance of a preliminary injunction. *Backpage.com, LLC v. Dart,* 807 F.3d 229, 239 (7th Cir. 2015) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

III. Traditional legal remedies are inadequate to resolve this irreparable harm.

A deprivation of First Amendment rights "is presumed to constitute an irreparable injury for which monetary damages are not adequate." *Christian Legal Soc'y v. Walker,* 453 F.3d 853, 859 (7th Cir. 2006). "[T]he quantification of injury is difficult and damages are therefore not an adequate remedy." *ACLU v. Alvarez*, 679 F.3d 583, 589 (7th Cir. 2012) (quotation and citation omitted); *see also Nat'l People's Action v. Wilmette,* 914 F.2d 1008, 1013 (7th Cir. 1990) ("[I]njunctions are especially appropriate in the context of [F]irst [A]mendment violations because of the inadequacy of money damages.").

IV. The balance of harms favors an injunction.

As explained above, the Institute will suffer irreparable harm if an injunction is not issued. On the other hand, the government cannot suffer irreparable harm "when it is prevented from enforcing an unconstitutional statute." *Joelner*, 378 F.3d at 620; *see also Planned Parenthood of Ind. & Ky., Inc. v. Adams*, 937 F.3d 973, 991

[5] The fact that the Institute is a corporation does not impair its First Amendment rights. *See First Nat'l Bank v. Bellotti,* 435 U.S. 765 (1978).

(7th Cir. 2019) (no harm in preventing enforcement of an unconstitutional policy). And "it is always in the public interest to protect First Amendment liberties." *Id.; see also Higher Soc'y of Ind. v. Tippecanoe Cty.*, 858 F.3d 1113, 1116 (7th Cir. 2017) (public benefits from "preliminarily enjoining the enforcement of a statute that is probably unconstitutional"); *Christian Legal Soc'y,* 453 F.3d at 859) ("[I]njunctions protecting First Amendment freedoms are always in the public interest.").

Conclusion

The First Amendment protects speech on "political matters" as strongly as it protects anything, and the First Amendment prohibits content-based restrictions on speech as strongly as it prohibits anything. Illinois cannot justify prohibiting employers from speaking about "political matters," at mandatory meetings or anywhere else, nor can it justify the Act's arbitrary exemptions for select employers. Yet the Act will soon take effect and irreparably harm the free-speech rights of Plaintiffs and countless other Illinois employers—unless this Court intervenes. Plaintiffs therefore respectfully request that the Court enter a preliminarily injunction to prevent Defendant from enforcing the Act's restriction on employer speech.

Dated: October 30, 2024

Respectfully submitted,

Illinois Policy Institute *and* Technology & Manufacturing Association

By: /s/ James McQuaid
One of their Attorneys

Jacob Huebert
Jeffrey M. Schwab
James McQuaid
Liberty Justice Center
7500 Rialto Blvd
Suite 1-250
Austin, TX 78735
512-481-4400
jhuebert@ljc.org
jschwab@ljc.org
jmcquaid@ljc.org