FILED
11-30-2023
CIRCUIT COURT
DANE COUNTY, WI
2023CV003152
Honorable Jacob Frost
Branch 9

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
BRANCH ____

ABBOTSFORD EDUCATION ASSOCIATION
c/o WEAC Region 2
370 Orbiting Drive
Mosinee, WI 54455,

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, LOCAL 47
3427 W. St. Paul Ave.
Milwaukee, WI 53208,

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, LOCAL 1215
33 Nob Hill Road
P.O. Box 8003
Madison, WI 53708-8003,

BEN GRUBER
33 Nob Hill Road
P.O. Box 8003
Madison, WI 53708-8003,

Case No. ________________
Case Code:
Declaratory Judgment 30701

BEAVER DAM EDUCATION ASSOCIATION
c/o WEAC Region 5
33 Nob Hill Road
Madison, WI 53713,

MATTHEW ZIEBARTH
c/o WEAC Region 5
33 Nob Hill Road
Madison, WI 53713,

SEIU WISCONSIN
633 S. Hawley Road, Suite 106
Milwaukee, WI 53214,

WAYNE RASMUSSEN
633 S. Hawley Road, Suite 106
Milwaukee, WI 53214,

TEACHING ASSISTANTS' ASSOCIATION,
LOCAL 3220, AMERICAN FEDERATION OF TEACHERS
520 University Avenue, Suite 220
Madison, WI 53703,

and

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS LOCAL NO. 695
1314 N. Stoughton Road
Madison, WI 53714,

Plaintiffs,

v.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
2418 Crossroads Drive, #1000
Madison, WI 53718,

JAMES J. DALEY
Chair and Sole Commissioner
Wisconsin Employment Relations Commission
2418 Crossroads Drive, #1000
Madison, WI 53718,

DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, 10th Floor
Madison, WI 53703,

KATHY BLUMENFELD
Secretary, Department of Administration
101 East Wilson Street, 10th Floor
Madison, WI 53703,

DIVISION OF PERSONNEL MANAGEMENT
101 East Wilson Street
Madison, WI 53703,

and

JEN FLOGEL
Administrator, Division of Personnel Management
101 East Wilson Street
Madison, WI 53703,

Defendants.

COMPLAINT

I. NATURE OF THE ACTION

1. In 2011, the Wisconsin Legislature enacted, and then-Governor Scott Walker signed into law, 2011 Wisconsin Act 10 (the "Act" or "Act 10").

2. Although the stated purpose of the Act was to address the state's projected budget deficit during a temporary economic downturn, the vast majority of the Act's provisions targeted Wisconsin public servants who had decided to join together and form labor unions. The Act fundamentally changed the landscape of Wisconsin's decades-old system of public-sector labor relations.

3. Act 10 achieved this fundamental change by first dividing public employees into two groups—a disfavored class of "general" employees and a favored class of "public safety" employees—and then imposing severe burdens on employees in the disfavored group while allowing employees in the favored group to proceed as though Act 10 were never passed.

4. The favored "public safety" class consists of certain fire fighters, certain law enforcement officers, and state motor vehicle inspectors, whereas the disfavored "general" employee class consists of all other public workers who had been covered by Wisconsin's collective bargaining laws before Act 10. Significantly, however, the so-called "public safety" class excludes many public servants who perform public-safety functions, like conservation wardens, Capitol Police, and University of Wisconsin Police, among others.

5. Act 10's sea change to Wisconsin's collective bargaining system contains three main components:

a. *First*, Act 10 virtually eliminates the collective bargaining rights of the disfavored "general" employees while maintaining robust bargaining rights for favored "public safety" employees. Specifically, Act 10 limits the subjects of bargaining for "general" employees to the single subject of base wages, capped by the consumer price index. Even as to that single subject, the statute restricts any agreement reached to a duration of one year.

b. *Second*, Act 10 makes it prohibitively difficult for the disfavored class of "general" employees—and only that disfavored class—to engage in collective bargaining. Act 10 does so by subjecting unions representing "general" employees to an annual recertification election. In such an election, 51 percent of all employees in the bargaining unit—not simply a majority of those voting—must vote in favor of union representation in order for the union to retain its certification that permits it to represent the employees.

c. *Third*, Act 10 substantially burdens the ability of employees in the disfavored "general" employee class—and only that disfavored class—to provide financial support for their union's activities. It does so by prohibiting dues deduction, *i.e.*, the ability for employers to directly deduct union dues from union members' paychecks and send that money directly to the union.

6. The distinctions that the Legislature drew between "general" employees and "public safety" employees bear no rational relationship to the stated budgetary objectives of the Act or to any other legitimate State purpose. These classifications instead bear the hallmarks of unconstitutional distinctions that violate the equal protection guarantee enshrined in Article I, Section 1 of the Wisconsin Constitution. Indeed, Act 10's irrational classifications:

a. Are not based upon substantial distinctions which make one class different from another;

b. Are not germane to the purpose of the law;

c. Are based upon circumstances that existed only at the time of enactment;

d. Are not applied equally or consistently among employees who carry out traditional public safety functions; and

e. Do not provide reasonable support for the vastly different treatment accorded to "general" employees and "public safety" employees under the law.

7. Instead, Act 10's irrational classifications closely track the different political endorsements made by public-sector unions in the election immediately preceding Act 10's passage.

8. Indeed, during the 2010 campaign that led to the election of Scott Walker as Governor, only five public employee unions and associations publicly endorsed him, and each of those unions represented workers who are classified in Act 10 as favored "public safety" employees—a classification never before known in Wisconsin law.

9. In contrast, employees whose unions and associations did not endorse Governor Walker, including employees in public safety roles, are categorized as disfavored "general" employees.

10. Because Act 10's classifications between favored "public safety" employees and disfavored "general" employees lack a discernible connection to any legitimate governmental objective, and because they reflect the illegitimate objective of punishing the political opponents and rewarding the political supporters of the former Governor, the Act's labor relations provisions

violate the equal protection guarantee in Article I, Section 1 of the Wisconsin Constitution, and must be enjoined and declared invalid.

11. The fact that Act 10 violates equal protection is further supported by two other provisions enshrined within the Declaration of Rights enumerated in Article I of the Wisconsin Constitution: Section 9 and Section 22.

12. Specifically, Article I, Section 9 ensures citizens of Wisconsin their day in court when other procedures and remedies are inadequate. In guaranteeing Wisconsinites that every legal wrong they suffer will have a legal remedy, Article I, Section 9 conveys on the judiciary the role of protecting Wisconsinites' legal rights. This provision ensures that a citizen's recourse against political punishment is not limited to the cold comfort of seeking redress from the very political branches responsible for inflicting that punishment.

13. Likewise, Article I, Section 22 of the Wisconsin Constitution guarantees that Wisconsin will maintain a free government that works for the people. It accomplishes this guarantee by requiring "firm adherence to justice, moderation, frugality and virtue" and "frequent recurrence to fundamental principles." To ensure this constitutional guarantee is enforced, the Court must review the political retribution imposed by Act 10 and conclude that such action was contrary to these fundamental principles.

14. Act 10's fundamental changes to Wisconsin's decades-old collective bargaining law have made it much more difficult for public servants in the state to exercise their rights to organize into unions and bargain collectively to achieve better terms and conditions of employment. Indeed, Act 10 has completely altered the landscape for public-sector unions in Wisconsin—the birthplace of public-sector collective bargaining. For example, 983 public-sector unions have sought recertification under Act 10's anti-democratic regime. Of those 983 public-

sector unions, only 318 (32.3%) remained certified and able to bargain collectively by the end of 2021. As a result, and as explained in greater detail below, public servants in Wisconsin have lost union representation and the ability to bargain collectively under Act 10 even where a union receives overwhelming support of all voters in a certification election.

15. This action is brought by labor organization plaintiffs who were, are, and aspire to be collective bargaining representatives of state and municipal employees, suing on their own behalf and on behalf of their members. It is also brought by individual public servants who have labored under Act 10's unconstitutional regime for far too long.

II. JURISDICTION AND VENUE

16. This Court has original jurisdiction over this action under Article VII, Section 8 of the Wisconsin Constitution and Wis. Stat. § 801.05.

17. Venue is proper in this Court under Wis. Stat. § 801.50.

III. PARTIES

18. **Plaintiff Abbotsford Education Association** is a local union that previously served as the certified collective bargaining representative for teachers in the Abbotsford School District. Its members are classified as "general" employees under Act 10. From 2013 to 2021, Abbotsford Education Association won nine consecutive annual recertification elections—winning "yes" votes from more than 51% of all teachers in the bargaining unit each year. In the annual recertification election in 2022, every single voter voted in favor of the union (30-0 vote count). Under Act 10's anti-democratic regime, however, Abbotsford Education Association "lost" this recertification election because 29 bargaining-unit members did not vote in the election, and therefore the union received "yes" votes from only 50.8% of all eligible voters (rather than 51% of all eligible voters). But for Act 10, plaintiff Abbotsford Education Association would

continue to represent teachers in the Abbotsford School District as their certified collective bargaining representative.

19. **Plaintiff American Federation of State, County, and Municipal Employees, Local 47 ("AFSCME Local 47")** advocates for employees of the City of Milwaukee Department of Public Works and Department of Neighborhood Services, including inspectors who monitor and ensure compliance with City rules and regulations. These public servants are classified as "general" employees under Act 10. AFSCME Local 47 is continuously working with City of Milwaukee employees to raise issues with their employer, including by advocating for a fair grievance procedure, fighting outsourcing of city services to unaccountable corporations, advocating for fair wage increases, addressing unsafe working conditions in city employment (including preventable deaths of inspectors on the job), protecting employee retirement security, and investing in public services. But the inability to collectively bargain over these and other subjects under Act 10 has hindered these employees' ability to improve their working conditions and resolve unfair treatment. It has also hindered the growth of AFSCME Local 47. Nevertheless, these employees continue to actively organize themselves through AFSCME Local 47, which currently has 29 dues-paying members, representing more than 50% growth over the last two years. In addition, but for Act 10, AFSCME Local 47 would spend substantial resources working with City of Milwaukee Department of Public Works and Department of Neighborhood Services employees to secure certification for purposes of enabling it to engage in meaningful collective bargaining.

20. **Plaintiff AFSCME Local 1215** advocates for conservation wardens employed by the Wisconsin State Department of Natural Resources ("DNR"). Its members are classified as "general" employees under Act 10. These DNR conservation wardens are public safety employees

in every sense of the word but are not considered "public safety" employees under Act 10. As stated on the DNR website: "Conservation wardens are credentialed law enforcement officers who work throughout the state, enforcing all natural resource and recreation safety laws, educating the public on conservation topics and providing law enforcement services on state parks, forests and trails."[1] Since the start of 2023, conservation wardens have been more actively organizing themselves through AFSCME Local 1215, which has experienced a significant increase in its membership—from approximately 8 members at the start of this year, to 60 as of November 17, 2023. These workers have joined together to engage in lawful concerted activity for mutual protection as specified under state law, raising issues with their employer that include the following: sexual harassment and gender discrimination; excessive and retaliatory discipline against employees; lack of accountability for managers who engage in unwarranted adverse employment actions; and other toxic work environment issues. Nevertheless, their inability under Act 10 to collectively bargain over these and other subjects has greatly hindered these public servants' ability to address management's mistreatment of employees, as well as the growth of AFSCME Local 1215. In addition, but for Act 10, AFSCME Local 1215 would spend substantial resources working with conservation wardens to secure certification for purposes of collective bargaining.

21. **Plaintiff Ben Gruber** is the president of AFSCME Local 1215. He has worked as a conservation warden for the DNR since 2017, and he has served as president of AFSCME Local 1215 since March 2023. Notwithstanding that Mr. Gruber is credentialed as a law-enforcement officer by the Wisconsin Department of Justice (just as members of the Wisconsin State Patrol are) and has been involved in or initiated many arrests since becoming a conservation warden, Mr.

[1] *Warden Recruitment*, Wisconsin Dep't of Natural Resources, https://dnr.wisconsin.gov/topic/WardenRecruitment (last visited Nov. 29, 2023).

Gruber is classified as a "general" employee—not a "public safety" employee—under Act 10. As president of AFSCME Local 1215, Mr. Gruber has attempted to raise numerous concerns about management's mistreatment of employees with DNR, but he has been frustrated in his efforts to do so. But for Act 10's limitations on the subjects of collective bargaining, Mr. Gruber, on behalf of AFSCME Local 1215, would work tirelessly to ensure that AFSCME was certified as the collective-bargaining representative of the unit of employees that includes conservation wardens. And if that effort were successful, Mr. Gruber would negotiate over many economic and non-economic terms and conditions of employment with DNR, including a grievance procedure to ensure that DNR is held accountable for its mistreatment of employees (including employee terminations).

22. **Plaintiff Beaver Dam Education Association** is a labor organization. It is currently a certified collective bargaining representative of teachers in the Beaver Dam Unified School District, who are classified as "general" employees under Act 10. Plaintiff Beaver Dam Education Association has won recertification elections every year since Act 10 took effect, having won its last recertification election in November 2023 with the support of almost 75% of all eligible voters in the bargaining unit. Act 10 nevertheless has continued to limit Beaver Dam Education Association's ability to negotiate over terms and conditions of employment with the Beaver Dam Unified School District. Despite winning eleven consecutive recertification elections with little-to-no opposition, Act 10 has limited Beaver Dam Education Association to bargaining over employees' base wages for over the past decade, and its collective bargaining agreements with the Beaver Dam Unified School District reflect that limitation. But for Act 10's limitations on the subjects of collective bargaining, Beaver Dam Education Association would negotiate over many other economic and non-economic terms and conditions of employment with the school district.

23. **Plaintiff Matthew Ziebarth** has been a high school teacher for 25 years. He is currently employed by the Beaver Dam Unified School District, where he teaches classes on Global Studies and U.S. Government. He is also the Chief Negotiator and Past President of the Beaver Dam Education Association, having served as President-Elect from 2020–2021 and as President from 2021–2023. From 1998 to 2014, he was a high school teacher at Hartford Union High School in Washington County, Wisconsin, where he also served as a building representative and on the collective bargaining team for the Hartford Education Association. Given his experience as a negotiator on behalf of himself and his fellow teachers both before and after Act 10, Mr. Ziebarth has witnessed firsthand the effect of Act 10's limitations on the ability of public sector employees to collectively organize and advocate for themselves. In addition, due to Act 10's annual recertification requirement, Mr. Ziebarth has devoted considerable time and effort towards contacting employees and organizing get-out-the-vote campaigns for more than 260 employees across six different schools in the Beaver Dam Unified School District every single year. But for Act 10's anti-democratic requirements, Mr. Ziebarth's efforts could be channeled towards joining together with his co-workers and demanding improvements to other economic and non-economic terms and conditions of employment with the school district.

24. **Plaintiff SEIU Wisconsin** advocates for approximately 7,000 healthcare, property services, and public-school workers across Wisconsin. SEIU Wisconsin is the certified exclusive collective bargaining representative of municipal maintenance employees in the Racine Unified School District, having most recently won a recertification election in November 2023. Because of Act 10's limitations, however, SEIU Wisconsin's collective bargaining negotiations with the Racine Unified School District are limited to the subject of employees' base wages. But for Act 10, SEIU Wisconsin would negotiate over many other economic and non-economic terms and

conditions of employment with the Racine Unified School District. In addition, but for Act 10, SEIU Wisconsin would spend substantial resources working with other healthcare, property services, and public-school workers to secure certifications for purposes of collective bargaining.

25. **Plaintiff Wayne Rasmussen** is the Vice President of SEIU Wisconsin. As an Electronic Service Technician for the Racine Unified School District, Mr. Rasmussen is a "general" employee under Act 10. He became President of the former SEIU Local 152 (which has since merged into SEIU-Wisconsin) around 2010, shortly before Act 10's passage. SEIU Wisconsin is the certified collective bargaining representative for the approximately 170 maintenance support employees in the Racine Unified School District, including plumbers, electricians, custodians, engineers, grounds maintenance workers, and asbestos control inspectors—who together are responsible for maintaining 30 facilities across the school district. In every year since Act 10, Mr. Rasmussen has devoted considerable time and effort to attempting to navigate the roadblocks erected by Act 10. Each year, he organizes employees to vote during the annual recertification election—which the former Local 152 won every year since 2013 (though by only two votes in 2021 when Local 152 won all 90 of the votes cast but narrowly escaped decertification because those 90 votes represented 52 percent of the total bargaining unit). He also spends considerable time and effort invoicing and collecting members' dues, a task that Act 10 made significantly more challenging by prohibiting "general" employees from paying dues through dues deduction. Finally, the negotiations between SEIU Wisconsin and the Racine Unified School District have been limited to base wages under Act 10, directly impacting the terms and conditions of Mr. Rasmussen's employment. But for Act 10's anti-democratic restrictions, Mr. Rasmussen's efforts could be channeled towards joining together with his co-workers and

demanding improvements to other economic and non-economic terms and conditions of employment.

26. **Plaintiff Teaching Assistants' Association, Local 3220, American Federation of Teachers ("TAA")** is a labor organization under Act 10. It advocates for all graduate student workers at the University of Wisconsin-Madison, including teaching assistants, research assistants, graduate assistants, and fellows. But for Act 10's limitations, TAA would seek to represent one or more units of these graduate-student workers, who are classified as "general" employees under Act 10 for purposes of collective bargaining. TAA has determined that, due to Act 10's severe restrictions on the subjects of collective bargaining and its anti-democratic recertification elections, it does not make sense to attempt to obtain certified status with respect to a unit of "general" employees.

27. **Plaintiff International Brotherhood of Teamsters Local No. 695 ("Teamsters Local 695")** represents employees who work in several Wisconsin counties, including Dane County, and including four bargaining units of municipal employees affected by Act 10 in southwestern Wisconsin, including the public-school support staff in the La Crosse School District. Because of Act 10's limitations on the subjects of collective bargaining, however, Teamsters Local 695's collective bargaining negotiations with municipal employers are limited to the subject of employees' base wages. But for Act 10's limitations on the scope of collective bargaining, Teamsters Local 695 would negotiate over many other economic and non-economic terms and conditions of employment with municipal employers. In addition, before Act 10, Teamsters Local 695 also represented at least 45 other bargaining units of municipal employees in various job classifications, such as public works, custodial/maintenance, clerical, food services, and administrative assistants. But for Act 10, Teamsters Local 695 would spend substantial

resources working with those employees to secure, once again, certification for purposes of collective bargaining.

28. **Defendant Wisconsin Employment Relations Commission ("WERC")** is responsible for interpreting and implementing the election, dues-deduction, and collective bargaining provisions and prohibitions of Act 10, including the provisions that require differential treatment of "general" versus "public safety" employees. Wis. Stat. §§ 111.07-.14, 111.70(4), 111.825(4)-(6), 111.83, 111.84(4), 111.86-.88.

29. **Defendant James J. Daley is the chair and sole commissioner of WERC**, and in that role, is responsible for implementing, enforcing, administering, and resolving disputes arising under Wisconsin statutes governing municipal and state employment. Specifically, Defendant Daley is responsible for preventing unfair labor practices by employers; resolving labor disputes by declaratory ruling, mediation, arbitration, and fact-finding; conducting the annual recertification elections; and certifying duly-elected collective bargaining representatives. Defendant Daley is sued in his official capacity. Defendant Daley has his office at the WERC, 2418 Crossroads Drive, Suite 1000, Madison, Wisconsin 53718, within this District.

30. **Defendant Department of Administration ("DOA")** is responsible for, among other things, administering payroll deduction of union dues for state employees, and for implementing and administering the provisions of Act 10 that affect that subject.

31. **Defendant Kathy Blumenfeld is the Secretary of DOA**, and in that role, is responsible for carrying out DOA's duties with regard to payroll deduction of union dues and for implementing and administering the provisions of Act 10 that affect that subject. Defendant Blumenfeld is sued in her official capacity. Defendant Blumenfeld has her office at the DOA, 101 East Wilson Street, Madison, Wisconsin 53703, within this District.

32. **Defendant Division of Personnel Management ("DPM")** is responsible for: the negotiation and administration of collective bargaining agreements with all collective bargaining units of state employees, except for employees of the University of Wisconsin System; the employer functions of the executive branch and coordination of collective bargaining activities with operating state agencies on matters of agency concern; and representation of the state as an employer with regard to certain collective bargaining units.

33. **Defendant Jen Flogel is the administrator of DPM** and has the statutory responsibility to "establish and maintain, wherever practicable, consistent employment relations policies and practices throughout the state service." Wis. Stat. § 111.815(2). Defendants DPM and Flogel are responsible for implementing and administering the collective bargaining provisions of Act 10 as they relate to state employees, both "general" employees and "public safety" employees. Defendant Flogel is sued in her official capacity. Defendant Flogel has her office at the DMP, 101 East Wilson Street, 4th Floor, Madison, Wisconsin 53703, within this District.

IV. FACTS

34. On February 11, 2011, just a few weeks after his inauguration, then-Governor Scott Walker issued Executive Order #14 ordering the Legislature, already convened in a special session pursuant to his Executive Order #1, to "consider and act upon legislation relating to the Budget Repair Bill."

35. Shortly after that, the Governor's so-called "Budget Repair Bill," Act 10, was introduced by the Senate and Assembly Committees on Organization as companion (identical) bills at the request of the Governor and without sponsorship by any legislator.

36. Prior to and during the week following introduction of Act 10, then-Governor Walker issued several press releases and made public addresses claiming that the bill was needed to balance the state budget and to give government the tools to manage during economic crisis.

37. The General Assembly passed Act 10 on March 10, 2011, and Governor Walker signed the legislation into law the next day.

38. Act 10 took effect on June 29, 2011. It significantly amended and repealed portions of Wisconsin Stat. ch. 111, which governs Wisconsin employment relations law.

39. Wisconsin Stat. §§ 111.70 *et seq*., is titled the Municipal Employment Relations Act ("MERA") and governs employment relations and collective bargaining between municipal employers and representatives of municipal employees. MERA's provisions were first enacted in 1959.

40. Municipal employers under MERA are cities, counties, villages, towns, metropolitan sewerage districts, school districts, long-term care districts, and other political subdivisions of the State. Wis. Stat. § 111.70(1)(j).

41. Wisconsin Stat. §§ 111.81 *et seq*., is titled the State Employment Labor Relations Act ("SELRA") and governs employment relations and collective bargaining between state employers and representatives of certain state employees. SELRA was first enacted in 1965.

42. To effectuate its provisions regarding collective bargaining and other aspects of labor relations, the Legislature, in enacting Act 10, drew a novel distinction among public employees—a distinction previously unknown to Wisconsin law.

43. In particular, Act 10 creates a class of so-called "public safety" employees who are covered by either MERA or SELRA and for whom full collective bargaining and union associational rights are preserved. Act 10 also creates a class of so-called "general" employees for whom collective bargaining and associational rights are severely impaired. Wis. Stat. §§ 111.70(1)(fm), (mm); 111.81(9g), (15r) (2011 Wis. Act 10, §§ 214, 216, 268, 272).

44. To create its unprecedented category of "public safety" employees, the Legislature selected from a list of protective service occupations, which had been statutorily designated as "protective occupation participants" for purposes of the Wisconsin Retirement System ("WRS"). Certain of these protective service occupations were cherry-picked to create Act 10's unprecedented "public safety" category, while other occupations that nonetheless are classified as protective occupation participants under the WRS were excluded. Wis. Stat. §§ 111.70(1)(mm); 111.81(15r) (2011 Wis. Act 10, §§ 216, 272).

45. Act 10 identifies as "public safety" employees only the following protective service occupations: municipal police officers, municipal fire fighters, deputy sheriffs, county traffic police officers, and village police officer-fire fighters, state troopers, and state motor vehicle inspectors in the State Patrol. *Id.* (citing Wis. Stat. §§ 40.02(48)(am)7.-10., 13., 15., 22.).

46. At the same time, Act 10 excludes from the "public safety" category University of Wisconsin Police, Wisconsin Capitol Police, conservation wardens, state probation and parole officers, and special criminal investigation agents of the Wisconsin Department of Justice—all of whom perform traditional public safety functions, who are designated as protective occupation participants under the WRS, and whose principal duties "involve active law enforcement or active fire suppression or prevention" exposing the employee "to a high degree of danger or peril" and "requir[ing] a high degree of physical conditioning." Wis. Stat. §§ 40.02(48)(a), (am).

47. Act 10 classifies as "general" employees all public employees who are not "public safety" employees and who formerly had full collective bargaining rights under MERA and SELRA. Wis. Stat. §§ 111.70(1)(fm); 111.81(9g) (2011 Wis. Act 10, §§ 214, 268).

Act 10's "General" and "Public Safety" Employee Classifications Closely Track the Labor Organizations that Respectively Opposed or Endorsed Scott Walker in his 2010 Gubernatorial Campaign

48. Act 10's unprecedented distinction between "general" employees and "public safety" employees closely tracks political endorsements made during the 2010 gubernatorial election, which shortly preceded Act 10's passage.

49. Specifically, the Milwaukee police officers, represented by the Milwaukee Police Association ("MPA"), and the Milwaukee fire fighters, represented by Milwaukee Professional Fire Fighters, Local 215 ("Local 215"), both endorsed Scott Walker's candidacy for Governor in 2010, and they funded a television advertisement supporting him. Those officers and fire fighters were classified as "public safety" employees under Act 10.

50. Another union of police officers, the West Allis Professional Police Association, also endorsed Scott Walker, and those officers were also classified as "public safety" employees under Act 10.

51. State troopers and inspectors in the Wisconsin State Patrol were represented at the time of the campaign by the Wisconsin Law Enforcement Association ("WLEA"). WLEA did not endorse a candidate in the governor's race. Within WLEA, however, there was a separate lobbying group for state troopers called the Wisconsin Troopers Association ("WTA"). The WTA endorsed Scott Walker.

52. Act 10's treatment of state troopers tracks this distinction between the WLEA and WTA's endorsements exactly. Police constituencies in WLEA who were not represented by WTA are classified as disfavored "general" employees under Act 10. In contrast, police constituencies in WLEA who *were* represented by WTA are classified as favored "public employees" under Act 10.

53. Notably, the Act's official drafting records, maintained by the Legislative Reference Bureau, include a note entitled, "Alternative Approach to Collective Bargaining," which states in relevant part: "Carve out a new bargaining unit from WLEA for the State Troopers."

54. The Wisconsin Sheriffs and Deputy Sheriffs Association PAC also endorsed Scott Walker in the 2010 election. The employees represented by these organizations are classified as favored "public safety" employees under Act 10.

55. In sum, employees in all of the labor organizations that endorsed Scott Walker are classified under the Act as "public safety" employees and are therefore exempt from the provisions that eliminate or restrict collective bargaining rights.

Act 10 Eliminates Virtually All Collective Bargaining Rights for "General" Employees While Preserving Collective Bargaining Rights for "Public Safety" Employees

56. Before Act 10, municipal and state employers had a duty to bargain in good faith, with the intention of reaching an agreement, regarding wages, hours, and conditions of employment. Wis. Stat. §§ 111.70(1)(a), 111.70(3)(a)4., 111.81(1), 111.84(1)(d) (2009-10). The breadth of subjects within this scope of bargaining included hours of work, safety conditions and other conditions of employment, vacation, holidays, health insurance, retirement, subcontracting, standards for discipline, layoff procedures, and grievance and arbitration procedures.

57. With respect to "general" employees, but not "public safety" employees, Act 10 eliminates the ability for state and municipal employees to bargain over virtually all of these subjects. Post-Act 10, state and municipal employers can bargain with unions representing "general" employees only over "total base wages," which even excludes overtime, premium pay, merit pay, performance pay, supplemental pay, pay schedules, and pay progressions. Wis. Stat. §§ 111.70(1)(a); 111.70(4)(mb); 111.81(1); 111.91(3) (2011 Wis. Act 10, §§ 169, 186, 188-189, 194-

199, 210, 222, 229, 233, 236, 238-239, 245, 262, 265, 269, 279, 281-283, 287, 291-292, 303-310, 313, 314, 323, 359, 367-368).

58. The Act further limits any change in total base wages to the amount of any increase or decrease in the consumer price index, unless voters approve a higher increase in a referendum. Wis. Stat. §§ 66.0506; 111.70(4)(mb); 111.91(3); 118.245 (2011 Wis. Act 10, §§ 168, 245, 314, 327).

59. Collective bargaining over any other "factor or condition of employment" is prohibited in the case of "general" employees, but not "public safety" employees. Wis. Stat. §§ 111.70(1)(a); 111.70(4)(mb); 111.81(1); 111.91(3) (2011 Wis. Act 10, §§ 210, 245, 262, 314).

60. Act 10 also eliminates interest arbitration for "general" employees but not for "public safety" employees. Interest arbitration is a process by which a neutral third party resolves any deadlock in negotiations as a means to resolve bargaining impasses. Act 10 allows municipal employers to unilaterally implement their proposals without agreement by the union and, therefore, the employer retains ultimate control over the single subject Act 10 permits unions to bargain over, "total base wages." But not so for "public safety" employees who may still invoke interest arbitration as to any employment terms when impasse is reached. Wis. Stat. §§ 111.70(4)(cm), 111.77 (2011 Wis. Act 10, §§ 237, 259).

Act 10 Limits Terms of Contracts to One Year for "General" Employees but Not for "Public Safety" Employees

61. Prior to Act 10, collective bargaining agreements between municipal employers and the unions representing their employees typically had two-year durations by default, though most unions could negotiate for up to a three-year contract, and unions of school-district employees specifically could negotiate for up to a four-year contract. Wis. Stat. §§ 111.70(3)(a)4., 111.70(4)(cm)8m. (2009-10). State employees were permitted to negotiate contracts of one- or

two-year durations. *See* Wis. Stat. § 111.92(3) (2009-10). These longer terms provide economic stability and predictability to both public employers and their employees.

62. Act 10 limits all collective bargaining agreements for state and municipal "general" employees to a one-year duration, even if the parties would prefer a longer term for the sake of predictability or any other reason. No similar one-year durational limit applies to collective bargaining agreements for "public safety" employees. Wis. Stat. §§ 111.70(4)(cm)8m.; 111.92(3) (2011 Wis. Act 10, §§ 221, 238, 319, 320).

Act 10 Imposes Annual Recertification Elections for Labor Organizations Representing "General" Employees but Not for Labor Organizations Representing "Public Safety" Employees

63. Before Act 10, a union certified as bargaining representative for a group of public employees could be decertified when (i) the employer, one or more bargaining unit employees, or another labor organization petitioned for a WERC-certified election; (ii) the petition was supported by at least 30 percent of the represented employees or, in the case of an employer petition, "objective considerations" providing reasonable cause to believe that the bargaining representative no longer enjoyed majority support; and (iii) the union failed to secure the votes of a majority of those *voting* in a subsequent decertification election. Wis. Stat. §§ 111.70(3)(a)4., 111.70(4)(d), 111.83 (2009-10); Wis. Admin. Code §§ ERC 11.02(3), 21.02.

64. Under Act 10, unions representing "general" employees, but not those representing "public safety" employees, must undergo annual WERC-supervised recertification elections to retain their status as certified bargaining representatives, regardless of whether any represented employee actually seeks a vote or whether there is any evidence that the employees have changed their mind as to collective bargaining representation. Wis. Stat. § 111.70(4)(d)3.b.; 111.83(3)(b) (2011 Wis. Act 10, §§ 242, 289).

65. Moreover, a "general" employee union subject to a recertification election under the Act must receive the support of 51 percent of all those *eligible* to vote in order to retain certification. *Id.* This 51-percent-of-all-eligible-voters requirement not only violates American democratic norms, it also starkly differs from elections for "public safety" employee unions, where the union must receive the support of only a majority of *votes cast*. Wis. Stat. §§ 111.70(4)(d)1.; 111.83(1).

66. Absent 100 percent voter participation, then, a union representing "general" employees can retain its certified bargaining status only by winning a supermajority vote, whereas a union representing "public safety" employees is not subject to any similar requirement. For example, with 70 percent voter turnout and a 70 percent vote in favor of the union, a union representing "general" employees would be decertified because it captured "only" 49 percent of the eligible vote.

67. The consequences of Act 10's anti-democratic recertification requirement are not hypothetical. Many unions with very strong support have nonetheless been unable to survive the Act's annual recertification requirements. For example, Plaintiff Abbotsford Education Association—after winning nine consecutive recertification elections under Act 10— "lost" a recertification election in November 2022 despite winning the votes of 50.8 percent of the bargaining unit, with no votes cast against recertification. Because Act 10 requires a union to win the votes of 51 percent of all entire eligible voters, Abbotsford Education Association was decertified as the collective bargaining representative for teachers in the Abbotsford School District even though the majority of those teachers continued to want Abbotsford Education Association's representation.

Act 10 Prohibits Public Employers from Deducting Labor Organization Dues for "General" Employees but Not for "Public Safety" Employees

68. For decades before Act 10, state and municipal employers and unions representing their employees negotiated provisions for the deduction of employees' labor organization membership dues. Wis. Stat. §§ 111.70(3)(a)6., 111.84(1)(f) (2009-10). Unions may lawfully spend, and the union plaintiffs regularly do spend, union membership dues on both "representational" activities—including contract negotiation and administration of the contract—and on non-representational activities, including constitutionally-protected political speech and advocacy such as get-out-the-vote campaigns, union-to-member communications expressing endorsements of political candidates or ballot measures, and union communications to the public expressing union views on issues and causes of public concern.

69. Act 10 prohibits "general" employees who are members of a union and who want to pay membership dues from doing so through payroll deduction, even when an employee presents their employer with a signed authorization form requesting such deductions. Wis. Stat. §§ 111.70(3g); 111.845 (2011 Wis. Act 10, §§ 227, 298)

70. The Act, however, permits "public safety" employees to pay their membership dues through payroll deduction. Wis. Stat. §§ 20.921(1)(a)2.; 111.70(3)(a)6.; 111.70(3g); 111.84(1)(f); 111.845 (2011 Wis. Act 10, §§ 58, 223, 227, 295, 298).

Act 10 Treats "Public Safety" Employees More Favorably than "General" Employees with Respect to Pension Contributions

71. Before Act 10, contributions to the WRS for public-sector employees, including teachers, included both employer and employee portions, and the law permitted the employer to pay all or part of the employee-required contribution. Wis. Stat. §§ 40.05(1)(a), (b) (2009-10).

72. Act 10 amended the law and now requires "general" employees to contribute "an amount equal to one-half of all actuarially required contributions" out of their paychecks, *i.e.*, the

entire employee portion. The Act requires this same contribution from all "general" employees, including those such as certain police officers and fire fighters who are classified as protective occupation participants by WRS but not as "public safety" employees under Act 10. Wis. Stat. §§ 40.05(1)(a), (b) (2011 Wis. Act 10, §§ 67, 69-76).

73. In other words, the Act forbids employers from covering any part of the "general" employees' portion. Wis. Stat. § 40.05(1)(b) (2011 Wis. Act 10, § 74).

74. In contrast, under the Act, labor organizations representing "public safety" employees may still negotiate with employers to pay the employee portion of the contribution. *See id.*

Act 10 Treats "Public Safety" Employees More Favorably than "General" Employees with Respect to Employer Health Insurance Contributions

75. State employees receive health care coverage under plans offered by the Group Insurance Board ("State plans"). Local government employers may also participate in the State plans. Prior to Act 10, the state and local government employers who participated in the State health plans were required to contribute at least 80% of "the average premium cost of plans offered in the tier with the lowest employee premium cost" for full-time employees, and half that amount for part-time employees. Wis. Stat. § 40.05(4)(ag) (2009-10). There was no upper percentage limit on employer contributions, and state and local government employers who participated in State plans would negotiate with the unions representing their employees over the precise employer contribution.

76. Act 10 repealed the 80% contribution minimum and imposes an upper limit on employer contributions that prohibits state and local government employers from contributing more than 88% of the average premium cost in the tier with the lowest employee premium cost—

"except as otherwise provided in a collective bargaining agreement." Wis. Stat. § 40.05(4)(ag) (2011 Wis. Act 10, §§ 77, 88).

77. Under Act 10, only labor organizations representing "public safety" employees may collectively bargain for and reach agreements regarding health insurance. As a result, Act 10 provides only "public safety" employees relief from the 88% cap on employer contributions to healthcare premiums. *See* Wis. Stat. §§ 111.70(1)(a); 111.70(4)(mc); 111.91(1)(a) (2011 Wis. Act 10, §§ 77, 88, 210, 246, 303).

78. In contrast, because Act 10 prohibits state and municipal government employers from bargaining about health insurance with labor unions that represent "general" employees, health insurance premiums for "general" municipal employees are determined unilaterally by the employer under the Act. Wis. Stat. §§ 40.51(7); 111.70(4)(mb) (2011 Wis. Act 10, §§ 88, 245).

CLAIM

ACT 10's DISTINCTION BETWEEN "GENERAL" EMPLOYEES AND "PUBLIC SAFETY" EMPLOYEES VIOLATES THE EQUAL PROTECTION GUARANTEE SET FORTH IN ART. I, SEC. 1 OF THE WISCONSIN CONSTITUTION

79. Plaintiffs re-allege all previous paragraphs as if set out fully herein.

80. Act 10 divides public-sector workers into two classes: "public safety" employees and "general" employees. The Act then subjects "general" employees to a panoply of burdens and deprives them of important rights while exempting "public safety" employees from all its injurious provisions.

81. The Act forbids "general" employees and their collective bargaining representatives from bargaining collectively with their employers over any subject other than "total base wages." The Act exempts "public safety" employees and their collective bargaining representatives from this prohibition.

82. The Act forces "general" employees who wish to maintain collective bargaining representation to undergo annual recertification elections even if there is no evidence that support for union representation has declined. The Act exempts "public safety" employees and their unions from this onerous requirement.

83. The Act forbids public employers and labor organizations representing "general" employees from entering into collective bargaining agreements of more than one-year's duration. The Act exempts "public safety" employees and their collective bargaining representatives from this prohibition.

84. The Act prohibits "general" employees from using payroll deduction to pay their membership dues. The Act exempts "public safety" employees from this prohibition.

85. The Act's classifications of "general" versus "public safety" employees and its differential treatment of employees in those two categories have no rational relation to budget repair or any other legitimate government interest. Act 10's classifications are thus arbitrary and irrational.

86. The Act's distinction between "general" and "public safety" employees is not based on any real or substantial differences between the two groups.

87. Indeed, the Legislature cherry-picked certain employees designated as "protective service" employees to include in its unprecedented favored "public safety" employee classification while placing other protective service employees in the disfavored "general" employee class. By arbitrarily picking and choosing employees for its discriminatorily favored and disfavored groups, the Legislature did not equally or consistently apply its own discriminatory classification scheme.

88. Act 10's arbitrary classifications of "public safety" and "general" employees serve only the illegitimate objective of punishing the political opponents and rewarding the political

supporters of Scott Walker. All of the employees whose unions and employee associations supported the Walker campaign are in the favored "public safety" employee class; all other employees are in the disfavored "general" employee class.

89. Act 10's arbitrary classifications of "public safety" and "general" employees are thus based on political endorsements made during an election that occurred in 2010, more than 13 years ago.

90. Act 10's arbitrary and irrational classifications of "public safety" and "general" employees bear no rational relationship to any legitimate State purpose. The classifications instead bear all the hallmarks of unconstitutional classifications that violate the equal protection guarantee set forth in Article I, Section 1 of the Wisconsin Constitution. Specifically,

a. The classifications are not based upon substantial distinctions which make one class different from another;

b. The classifications are not germane to the purpose of the law;

c. The classifications are based upon circumstances that existed only at the time of enactment;

d. The classifications are not applied equally or consistently among employees who carry out traditional public safety functions; and

e. The classifications do not reasonably support the propriety of such substantially different legislation.

91. Consequently, the Act's differential treatment of public employees violates the equal protection guarantee of Article I, Section 1 of the Wisconsin Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment that the provisions of 2011 Wisconsin Act 10 referenced in paragraphs 42–78 violate the rights of Plaintiffs to equal protection under the laws in contravention of Article I, Section 1 of the Wisconsin Constitution;

B. Enter permanent orders enjoining Defendants, their successors, and all those acting in concert with them or at their direction from implementing or enforcing provisions of 2011 Wisconsin Act 10 referenced in paragraphs 42–78;

C. Award Plaintiffs' attorneys' fees and costs, pursuant to Wis. Stat. §§ 814.01, 814.045; and

D. Grant any other further relief that this Court deems just and equitable.

Dated: November 30, 2023.

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